

(2013) 09 DEL CK 0393

In the Delhi High Court

Case No : Writ Petition (C) No. 510 of 2012

Shri Ashok Kumar

APPELLANT

Vs

North Delhi Power Ltd. and Another

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2013) 202 DLT 696 : (2014) 1 SLJ 325

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Anuj Soni, for the Appellant; Vikram Nandrajog, Advocate, Mr. Sushil Jaswal, Advocate and Mr. Sumeet Pushkarna, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—Petitioner, by this writ petition, seeks direction for release of his terminal benefits which were payable on his retirement from the respondent No. 1/North Delhi Power Ltd. (now known as Tata Power Delhi Distribution Ltd.) on 31.10.2011. The only ground on which payment of terminal benefits was withheld was that a criminal case was pending against the petitioner under the Prevention of Corruption Act and the connected relevant provisions of Indian Penal Code, 1860. The issue in the present case as to entitlement of an employer to withhold the terminal benefits such as gratuity and/or pension is covered by a recent judgment of the Supreme Court in the case of State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr. in Civil Appeal No. 6770/2013 decided on 14.8.2013. In the case of Jitendra Kumar Srivastava (supra) Supreme Court has said that terminal benefits such as pension and gratuity are not a bounty. Supreme Court has further held that such benefits cannot be taken away as per Article 300A of the Constitution of India without following the due procedure of law. Supreme Court has further held that merely because a criminal case or departmental proceedings are pending against an employee, terminal benefits cannot be withheld and can only be withheld when there is a finding of

grave misconduct against the employee.

Admittedly, in the present case no departmental proceedings are pending against the petitioner and there is no judgment against the petitioner in the criminal case. Accordingly, following the ratio in the case of Jitendra Kumar Srivastava (*supra*) the writ petition is allowed and the respondent Nos. 1 and 2, namely, North Delhi Power Ltd. and DVB Employees Terminal Benefit Fund are directed to release the terminal benefits of the petitioner. Terminal benefits be released by the respondents within two months from today. In case, the terminal benefits are not paid within two months from today, thereafter petitioner will be entitled to interest @ 9% per annum simple. Parties are left to bear their own costs.