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KANWAR PAL SINGH Petitioner
Through : Mr. Mohan Kumar, Adv.

versus

UOI AND ORS Respondents
Through : Mr. Anurag Kasana, Adv.
for R-1 to 3.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

GITA MITTAL, J. (Oral)

1. By way of this writ petition, the petitioner assails an order dated 6th February, 2010 whereby his prayer for leave encashment has been rejected. The petitioner had joined the Central Industrial Security Force ('CISF' hereafter) on 25th August, 2001 in the post of Constable. He came to be dismissed from service by an order passed on 8th April, 2009 pursuant to disciplinary proceedings conducted against him. The petitioner has assailed his dismissal from service by way of WP(C)No.13193/2009 which is stated to be still pending.

2. In the meantime, the petitioner made representations to the respondents seeking encashment of the leave to which he

was entitled to. Reliance is placed on Article 300A of the Constitution of India in support of the contention that entitlement to leave and provisions thereof have been recognized as a right of an employee which could not be abrogated, curtailed or taken away by the respondents in any manner not permissible by law. The petitioner maintains his challenge to the legality of the dismissal order. However, for the reason that an independent challenge in respect thereof is pending, we are not required to examine the same in the present proceedings, especially in view of the limited prayer in the present writ petition and the petitioner's challenge to the same separately pending.

3. The petitioner's claim has been opposed by the respondents on the sole ground that in view of his dismissal from service, the petitioner forfeits all benefits in view of the applicable Central Civil Services Rules. It has been submitted by the respondents that upon removal or dismissal from service, a government servant forfeits his past service and shall not be entitled to gratuity and pension.

4. It is noteworthy that the respondents are unable to place any specific rule which touches upon any aspect of a person's entitlement to the benefits of the policy with regard to encashment of leave or any adverse consequences thereof on account of interdiction of service because of an order of dismissal or removal.

5. Learned counsel for the petitioner has drawn our attention to the judgment dated 11th September, 2002 of the Division Bench of this court in WP(C)No.3545/2002 titled LAC R Bhaskaran vs. Union of India and Others wherein this court on a detailed consideration of the applicable rules, regulations and circulars has held as follows:-

“21. The Central Government having adopted a scheme for grant of leave encashment, if leave is not availed of by an employee, in our opinion, the same would be paid to a personnel, despite the fact that he was dismissed from Government service. Once a provision is made for payment of certain amount by way of leave encashment, it becomes akin to a right of property in terms of Article 300A of the Constitution of India. Such a right can neither be taken away nor curtailed by reason of a mere circular. We, therefore, are of the opinion that the petitioner herein will be entitled to leave encashment.”

6. Placing reliance on this finding by a pronouncement, learned counsel for the petitioner has placed before us copy of an order dated 19th May, 2008 passed in WP(C)No.495/2008 titled Subhash Pandey vs. Union of India wherein this court issued a writ of mandamus directing the respondents to pay leave encashment amount to the petitioner who was serving as an Air Force officer and had been dismissed from service. It is, therefore, evident that the denial of leave encashment as well as opposition to the writ petition has no legal basis at all and is completely unjustified.

In view of the above, we direct as follows:-

- (i) The respondents are directed to pay the leave encashment benefit permissible to the petitioner

within a period of six weeks from the date of communication of this order.

- (ii) In case the matter is delayed, the petitioner would be entitled to simple interest @ 8% per annum on the said amount with effect from today.

This writ petition is allowed in the above terms.

Dasti to the parties.

GITA MITTAL, J

J.R. MIDHA, J

DECEMBER 01, 2010

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