

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 1128 of 2011 (O&M)

Date of decision: 26.05.2015

K.C. Gupta

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. P.R. Yadav, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Jitendra Chauhan, J. (Oral)

The prayer in the present petition is for quashing the impugned show cause notice dated 11.08.2010 (Annexure P-1), order dated 25.09.2009 (Annexure P-4) and for issuance of directions to the respondents to release the retiral benefits along with interest @ 18% per annum.

The petitioner has two fold prayers, the first pertains to the release of the payment of leave encashment and the second being the release of 25% of the gratuity amount along with the interest on the delayed payment of retiral benefits.

The learned counsel refers to the judgment passed by this Court in case of **Chanda Singh Pehal** Vs. **State of Haryana and others**, rendered in CWP No. 11373 of 2003, decided on 03.12.2012

and states that the LPA preferred by the Managing Committee also stands dismissed, therefore, the learned counsel contends that the matter has attained finality. The petitioner is held entitled to the leave encashment as per Rules.

So far as the the second relief is concerned, the learned counsel refers to Annexure P-6, the minutes of the 66th meeting of Board of Management of the institute held on 03.12.2009, wherein the matter pertaining to the petitioner was deliberated upon being the item No. 66.3, vide which the Board of Management of the institute after deliberation reached to the conclusion that in the admissions made, a due procedure was followed by the petitioner. Consequently, the matter against the petitioner was dropped, thus, the learned counsel for the petitioner contends that as on now no inquiry or charge sheet is pending against the petitioner.

There is no representation on behalf of the learned counsel for the respondents-Management.

In Chand Singh's case (supra), it has been held as under:-

“It may be noticed at this stage that entitlement of the petitioners to the benefit of leave encashment is not disputed either by the Management or the State and the only dispute raised is as to who shall discharge the liability.

At this stage, it is useful to refer to the judgment dated 1.10.2012 passed by a Division Bench of this Court in LPA No.920 of 2012 titled as “Arya College, Rishi Dayanand Marg, Civil Lines, Ludhiana and another vs. State of

Punjab and others, wherein after noticing the similar contentions raised, this Court has concluded as under:-

“(ii) As far as leave encashment is concerned, again amount is payable to the private respondents on this account. Whether it is a part of salary or not is an issue which now is in the lap of the Apex Court. Though this Court has held it to be a part of salary of which grant-in-aid is payable by the State Government, that direction has virtually been stayed by the Apex Court, by staying the contempt proceedings. This dispute between the non-Government colleges and the State Government cannot be allowed as a shield for denying the payment to the private respondents, which is admittedly, due to them. Whether it comes from the pocket of the appellants or from the coffers of the State Government is not their concern. Having regard to the dicta of Shri Anandi Murti’s case (*supra*), we are of the opinion that the appellants should meet this liability as well by making payment to the private respondents without any further ado, inasmuch as, the private respondents were the employees of these appellant-colleges and, therefore, having regard to the relation of master and servant between them, the appellants cannot shy away from their primary responsibility to pay this amount. It would, however, be open to these non-Government colleges to claim reimbursement from the State of Punjab in case Division Bench judgment of this Court dated 5.4.2011 in LPA No.519 of 2011 [*Anglo Sanskrit High School Khanna Trust and Management Society (Regd.), Khanna and Anr. Vs. State of Punjab and others*] is ultimately upheld by the Supreme Court.”

In view of the fact and circumstances and the case law

laid down above, the present petition is allowed. The respondents Nos. 3 & 4 are directed to pay the amount of leave encashment and release the remaining amount of 25% of gratuity within a period of four months after the receipt of certified copy of this order.

The petitioner is also at liberty to move an appropriate representation/application for interest on the delayed payments of retiral benefits within one month from the receipt of certified copy of this order. The competent authority shall decide the same in terms of *The Financial Commissioner and Principal Secretary to Govt. of Haryana, Irrigation Department, Civil Secretariat, Chandigarh* Vs. *Hasan Singh Kanwar*, 2010(1) SLR 788. within three months on receipt of such representation.

26.05.2015

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(JITENDRA CHAUHAN)
JUDGE