

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 17941 of 2014
Date of decision : April 1, 2015

**The Managing Director, Punjab State Civil Supplies Corporation
Ltd.and another**

..... Petitioners

Versus

Presiding Officer, Industrial Tribunal, Bathinda and another

..... Respondents

CWP No. 17954 of 2014

**The Managing Director, Punjab State Civil Supplies Corporation
Ltd.and another**

..... Petitioners

Versus

The Presiding Officer, Industrial Tribunal, Bathinda and another

..... Respondents

CWP No. 18068 of 2014

**The Managing Director, Punjab State Civil Supplies Corporation
Ltd.and another**

..... Petitioners

Versus

The Presiding Officer, Industrial Tribunal, Bathinda and another

..... Respondents

CWP No. 19820 of 2014

**The Managing Director, Punjab State Civil Supplies Corporation
Ltd.and another**

..... Petitioners

Versus

The Presiding Officer, Industrial Tribunal, Bathinda and another

..... Respondents

CWP No. 17941 of 2014

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CWP No. 19842 of 2014

**The Managing Director, Punjab State Civil Supplies Corporation
Ltd.and another**

..... Petitioners

Versus

The Presiding Officer, Industrial Tribunal, Bathinda and another

CWP No. 19919 of 2014

**The Managing Director, Punjab State Civil Supplies Corporation
Ltd.and another**

..... Petitioners

Versus

The Presiding Officer, Industrial Tribunal, Bathinda and another

..... Respondents

CWP No. 22728 of 2014

**The Managing Director, Punjab State Civil Supplies Corporation
Ltd.and another**

..... Petitioners

Versus

The Presiding Officer, Industrial Tribunal, Bathinda and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. Nitin Kaushal, Advocate
for the petitioner in CWP No.17941,17954,
18068 and 22728 of 2014.

Mr. Anil Kumar Sharma, Advocate
for the petitioners in CWP Nos.19820,19842.19919
of 2014.

Mr. D. R. Bansal, Advocate
for respondent No.2 in CWP No. 19842 of
2014.

Mr. Vikas Singh, Advocate and
Ms. Sukhmani Tiwan, Advocate
for respondent No.2 in CWP No. 22728 of 2014.

Mr. Amrik Singh, Advocate

for respondent No.2 in CWP No. 17941, 18068, 19919 and 19820 of 2014.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

This order of mine shall dispose of the aforementioned seven writ petitions by a common order as the law point involved in the aforementioned cases is identical.

The short point involved in the present cases is whether the Management can withhold the leave encashment of the workman prior and after the superannuation who is facing the departmental or criminal proceedings. The aforementioned questions came to be pondered upon by the Full Bench of this Court in **Punjab State Civil Supplies Corporation Ltd.and others Vs. Pyarelal in LPA No.113 of 2012** wherein this Court while discussing the case law on the point held that in the absence of rules the employer cannot withhold leave encashment except gratuity. The aforementioned decision rendered by the Hon'ble Full Bench in **Punjab State Civil Supplies Corporation Ltd. and others' case (supra)** was sought to be reviewed on the premise that the Punjab State Civil Supplies Corporation Ltd.(hereinafter called as 'the PUNSUP') is governed by the provisions of Punjab Civil Services Rules and as per Rule 8.21 (aa) Vol. I, Part I, Chapter-VIII of the Rules, which provide for withholding of the leave encashment. The

view expressed by the Full Bench was recalled and the hearing of the LPA which had been filed against the judgment of the Single Bench was re-listed. The Full Bench of this Court vide order dated 11.8.2014 while discussing the case law held that the PUNSUP had a right to withhold the leave encashment being part of the Statutory rules.

8.21(a) Leave at the credit of a Government employee in his leave account shall lapse on the date of his retirement:

Provided that the Government employee:

xxx

xxx

xxx

(aa) Notwithstanding anything contained in sub-rule (a) the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him and on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

From the perusal of the aforementioned rule it leaves no manner of doubt that it enables the Management/Employer to withhold the leave encashment while disciplinary/criminal proceedings are pending against the employer to meet out the possibility of recovery of said amount.

Coming to the facts of each case in all the cases the workman had been employed with the PUNSUP as Inspector Grade-I and Grade-II except CWP No. 19842 in which the workman

had been employed as Distribution Clerk and retired against their respective posts.

<u>Writ Petition No.</u>	<u>Name and designation of the employee</u>	<u>date of retirement</u>
CWP No.17941 of 2014	Balhar Singh Inspector Grade-II	30.4.2008
CWP No.17954 of 2014	Baldev Singh Inspector Grade-II	31.3.2009,
CWP No.18068 of 2014	Mdanjit Singh Inspector Grade-II	31.3.2007,
CWP 19820 of 2014	Gurnam Singh Sub Inspector Grade-I	30.4.2006
CWP 19842 of 2014	Gurdeep Singh, Distribution Clerk	30.6.2012
CWP No.19919 of 2014	Sushil Kumar Inspector Grade-I	31.12.2005
CWP No. 22728 of 2014	Makhan Singh Inspector Grade-II	31.3.2012

However, in all the cases on retirement all the aforementioned workmen filed application under Sub Section 2 of Section 33-C of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act'). In all the cases the PUNSUP came out with a stand that the departmental proceedings/criminal proceedings were pending against the employees on account of embezzlement when they were in employment of the PUNSUP. The Labour Court on the basis of the judgment rendered in **Punjab State Civil Supplies Corporation Ltd. and others Vs. Pyare Lal 2012 (4) RSJ** allowed the claim of the workman on the premise, that in view of the ratio decidendi in the aforementioned judgment the department is not entitled to withhold the leave encashment.

The present writ petitions have been filed against the award passed by the Labour Court-cum- Industrial Tribunal by

relying upon the judgment in Pyare Lal's case (supra) in LPA No. 113 of 2012.

In view of the ratio decidendi laid down in the aforementioned judgment, it is not in dispute that rule 8.21 (aa) of the Punjab Civil Services Rules *ibid* applicable to the PUNSUP, which provides, that the employer can withhold the leave encashment in respect of his employee who retires while under suspension or while disciplinary or criminal proceedings are pending against him. It is a matter of record that the aforementioned employees are facing either departmental or criminal proceedings and in some cases civil suits have also been filed for recovery of embezzled amount. Since the previous judgment rendered by the Hon'ble Full Bench of this Court has been reviewed by subsequent judgment rendered in LPA No.113 dated 11.8.2014, the PUNSUP is within its rights to withhold the leave encashment during the pendency of the departmental proceedings or criminal proceedings as per rule 8.21 (aa).

Before parting with the judgment, it has been pointed out by the learned counsel for the workman that the departmental proceedings are pending for quite a number of years against the employees and they are not being concluded for one reason or other. Be that as it may, it is directed that the employee and the PUNSUP shall cooperate with the enquiry officer and make an endeavour to complete the departmental proceedings as expeditiously as possible.

In view of what has been observed above, the award of the Labour Court in all the cases is set aside.

Accordingly the aforementioned writ petitions are
allowed.

(AMIT RAWAL)
JUDGE

April 1, 2015
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