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

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**CWP No. 22248 of 2013**
Date of decision : 08-03-2016

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Darshan Kumar Singla

...........Petitioner

Versus

Haryana State Minor Irrigation and Tubewells
Corporation Limited

...........Respondent

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**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

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Present: Mr. Naveen Darya, Advocate for the petitioner.

Mr. D.K Khanna, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers 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?*

**<u>RITU BAHRI, J</u>**

# RESERVED JUDGEMENT

The petitioner is seeking writ of certiorari directing the respondents to release the payment of leave encashment of 300 days and release all the consequential benefits along with interest.

The petitioner was working on the post of Junior Engineer in the HSMITC, Sirsa Line, Division No.2, Sirsa. He joined the duty on 3.2.1979 in the respondent-Department. The petitioner served with the department without any break up to 30.6.2002 and thereafter the services of the petitioner was retrenched due to closing of activities of HSMITC after 23 years, 5 months and 23 days of regular service. On an application made under the Payment of Gratuity Act, 1972, (hereinafter referred to as `the Act') an order dated 19.1.2012 (Annexure P-1) was passed in favour of the petitioner. Vide order dated 19.1.2012, the petitioner was granted relief as under:

> "The applicant has rendered 23 years of service and his last drawn salary comes to Rs. 10,108/- gratuity comes to the tune of Rs.10,108 x 15/26x23= 1,34,125/- (Rupees one lac thirty four thousand one hundred twenty five only). So, the applicant is entitled to the amount of Gratuity worth Rs.1,34,125/- along with interest @ 10% per annum w.e.f 01.08.2002 till the payment is made. Therefore, the respondent is directed to deposit the awarded amount within 30 days failing which they are further liable to pay simple interest @ 10% p.a from the next day of date of this order till its realization."

The petitioner filed a legal notice to the respondent for releasing the leave encashment on 29.10.2011 (Annexure P-2) with the prayer that the due payment of leave encashment along with interest @ 18% per annum should be released within a period of 2 months. As per Punjab Civil Service Rules, Vol-II, Rules 2.2 (I) and 2.2 (c), leave encashment is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings. Only gratuity or death-cum-retirement gratuity can be withheld and not other retiral benefit.

In the written statement filed on behalf of the respondent, it has been stated therein that the petitioner has been paid gratuity as per Payment of Gratuity Act and leave encashment for 30 days vide office order dated 6.1.2014 (Annexure R-2) in view of the law settled by this Court in CWP No.6866 of 2002 titled ***'Haryana State Minor Irrigation and Tubewell Corporation Vs. Tilak Raj Sharma and others'*** (Annexure R-3) decided on 25.3.2004, wherein it has been held that a retiree/retrenched employee who has been paid gratuity under the Payment of Gratuity Act shall be entitled to leave encashment of 30 days. This judgment has been subsequently followed by this Court in CWP No. 9027 of 2007 titled ***'Haryana State Minor Irrigation and Tubewell Corporation Vs. M.R Arora and others' (Annexure R-4)*** *and thereafter in RSA No.3767 of 2009* ***`Haryana State Minor Irrigation and Tubewell Corporation Vs. D.R Grover and others' (Annexure R-5).*** It was further submitted in the written statement that the services of the petitioner were terminated on 30.6.2002 and it was also made clear through Public Notice dated 1.7.2002 to all the workmen/employees/supervisory officers that they stand relieved from the duties of the Corporation w.e.f 30.6.2002. All the ex-employees of the Corporation were served through another Public Notice dated 8.8.2002 that they should hand over the charge of HSMITC assets/properties/record etc. to the respective Irrigation Officers as indicated from 1.8.2002 to 31.8.2002 positively failing which necessary action as per law shall be initiated against them and they may obtain `No-dues-certificate' from the said respective officers so that the payment of leave encashment/gratuity/Provident Fund and other dues be paid to them. Keeping in view the said public notices, the petitioner was under legal obligation to furnish the NDC but he failed to furnish the same. However, later on, he submitted an affidavit dated 24.10.2006 (Annexure R-6) in support of NDC. As such, the delay, if any, was on the part of the petitioner. A perusal of the affidavit dated 24.10.2006 (Annexure R-6) shows that the petitioner was not occupying any residential accommodation of HSMITC and no items of store and stock, T & P articles, Books and periodical, recovery on account of loans and advances, imprest misc. advance and no other type of recovery was pending against him. After the said affidavit was given by the petitioner, sanction was accorded for the payment of 30 days leave encashment amounting to Rs. 9503/- to the petitioner vide order dated 6.1.2014 (Annexure R-2).

I have carefully considered the rival contentions. Judgment in the case of ***Tilak Raj Sharma (supra)*** is fully applicable to the instant case. It has been categorically laid down in the said case that an employee cannot have best of both the worlds. The employee can either have gratuity under the Act with encashment of leave for 30 days or can have gratuity under the Civil Services Rules with leave encashment of 300 days. As the petitioner has admittedly received the gratuity under the Act and therefore, he is entitled to leave encashment of 30 days only.

However, as regards the point of delay in payment of leave encashment of 30 days to the petitioner, the order dated 6.1.2014 (Annexure R-2) regarding the payment of leave encashment for a period of 30 days had been passed after a period of two years since the order dated 19.1.2012 (Annexure P-1) with regard to payment of gratuity under the Act was passed. There is no explanation for two years delay in making the payment to the petitioner who was rendered surplus way back in the year 2002 after putting in 23 years of service. In view of the judgment in ***Tilak Raj Sharma's case (supra)***, no case for delay in payment of leave encashment of 30 days is made out. Hence, for delayed payment of gratuity and leave encashment, the respondents are directed to give interest @ 9% w.e.f 19.1.2012 (Annexure R-1) till the payment is made.

Disposed of.

**( RITU BAHRI )**
**JUDGE**

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