

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20658 of 2015

Date of Decision: 28.05.2016

Harjit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.D. Anand, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. Amrit Paul, Advocate,
for respondent No.3.

Ms. Madhu Dayal, Advocate,
for respondents No.4 and 5.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. Mr. Amrit Paul, learned counsel has filed written statement in Court today. Taken on record.
2. Mr. R.D. Anand, learned counsel for the petitioner has insisted on addressing arguments for judgment as he does not wish to file rejoinder.
3. Heard Mr. Anand, Mr. Harkesh Manuja, Addl. AG, Punjab, Mr. Amrit Paul, learned counsel appearing for respondent No.3/GNDU and Ms. Madhu Dayal, learned counsel appearing for respondents No.4 and 5 for the College
4. The brief facts are that the petitioner was borne on the strength

of the non-teaching staff of respondent College and has retired in 2011 from service as an Office Superintendent. He was paid the terminal benefits but not all of them as on the date of filing of the petition. However, due to pay revision he became entitled to arrears. The funds for disbursing arrears were received by the College on April 22, 2016 and the amount was released on May 10, 2016. The right to arrears accrued on January 01, 2006. The amounts were paid in installments by the Punjab Government to the respondent-College after delay. The college is a privately managed aided institution receiving grant-in-aid from the Government of Punjab. The subsisting claim firstly, is for interest on delayed payment of arrears of pay revision. The second claim is for payment of leave encashment dues which has been denied to the petitioner. What has been denied further is the arrears of revised gratuity as a result of pay revision. A statement is made by Ms. Madhu Dayal that the amounts would now be disbursed to the petitioner without any delay.

5. Ms. Madhu Dayal, says that the amount could not be paid in time because the petitioner was not in town when effort was recently made to contact him. Hence the petitioner would be free to collect the money from the college. However, since the amounts were admittedly due and payable from retrospective dates, but have not been paid on time, the amounts would earn interest at the rates equivalent to rates of interest paid by Nationalized Banks on long term deposits at rates current on the date of actual payment for the reason that money was due legally and was withheld without legal justification. The reason for delay may lie either in the college or in the Government of Punjab but would not deprive the right of the petitioner of

his right to claim those amounts since either the college or the State Government has earned interest on those amounts lying with them in custody. The other grievance of the petitioner is qua leave encashment. Leave encashment has not been paid and is claimed by the petitioner on the basis that non-teaching staff of the college are entitled to benefit of leave encashment.

6. The specific stand taken by Guru Nanak Dev University which is the affiliating University of the 4th and 5th respondent-College in its written statement is as under:-

“3. GNDU's Provisions Qua Leave Encashment Regarding the superannuated Teaching and Non-teaching staff/ employees of its private affiliated Colleges:

*(1) That it is submitted that there is no statutory provision available under the Guru Nanak Dev University Act, 1969, by which pecuniary benefits qua **Leave Encashment** can be extended by the private aided colleges of the respondent No.3-Guru Nanak Dev University, Amritsar, to their superannuated **Teaching and Non-teaching staff/ employees** who retired prior to 1-1-2012.*

(2) That, however, only the Principals and teaching staff of the Colleges affiliated to the respondent No.3 who retired on or after 1-1-2012 are entitled to leave encashment of unutilised earned leave to a maximum number of days as per the Pb. Govt. C.S.R., vide GNDU's amended Ordinance 22(3), GNDU Calendar-2007, Vol.-IV, 31.

*(3) That, accordingly, there is no statutory provision available under the Guru Nanak Dev University Act, 1969, by which pecuniary benefits qua **Leave Encashment** can be extended by the private aided colleges of the respondent No.3-Guru Nanak Dev University, Amritsar, to their superannuated **Non-teaching staff/ employees**, such as the petitioner, who retired from any date, i.e., whether prior to 1-1-2012 or after 1-1-2012.”*

7. Mr. Amrit Paul has relies on the decision of the Coordinate Bench in CWP No.16723 of 2007 titled *Kamal Raj Gupta v. State of Punjab and others*, decided on July 10, 2015. The learned Single Judge has held that there is no provision in the Guru Nanak Dev University Calendar with regard to benefit of leave encashment. The claim made for leave encashment was rejected there being no right to receive.

8. On the other hand, Mr. Anand relies on circular letter of the Punjab Government dated July 12, 1988 (Annex P-5) which deals with the subject which reads as follows:-

“Subject: Regarding treatment of Dearness Allowance and adhoc dearness allowance as dearness pay to the non-teaching staff of the Govt. aided Private colleges.

.....

Reference your letter no.3/144/88-Gr.I(5) dated 25-3-88 on the subject cited above.

The Govt. observes that since the non-teaching staff of the Govt. aided Private Colleges have been equated with the non-teaching staff of the Govt. Colleges in the matter of scales of pay as such the provision of notification issued vide letter no.2/90/87-3FPI/2219 dated 24th February, 1988 by the Department of Finance will also be applicable to the non-teaching staff of the privately managed aided colleges.”

9. This policy circular refers to notification dated February 24, 1988 which has been placed on record as Annex P-6. The notification is issued Article 309 read with clause (3) of Article 187 of the Constitution of India. These are the rules called the Punjab Civil Services (Treatment of Dearness Allowance and Adhoc Dearness Allowance as Dearness Pay) Rules, 1988. They came into force on April 01, 1988.

10. Mr. Anand would specifically refer to Rule 4 (vii) in his favour

which reads as follows:-

(vii) Encashment of leave at the time of retirement in terms of the provision of Rules 8.21 of the Punjab Civil Services Rules, Vol. I, part I.”

11. Rule 4 deals with treatment of Dearness Allowance and Adhoc Dearness Allowance as Dearness Pay but not leave encashment. I fail to see how they are of any help to the petitioner.

12. Mr. Manuja, on the other hand, refers to the written statement filed by the State and points out to para.4 of the counter averring that the 95% grant-in-aid scheme of the State of Punjab has no provision of payment of retiral benefits such as Gratuity and Leave Encashment. And this leaves the petitioner without remedy before the State of Punjab. If 95% grant-in-aid scheme does not cover leave encashment then the only question which remains to be examined is whether the 4th and 5th respondents have a liability to pay leave encashment of their own outside the disabilities expressed by the State of Punjab and the Guru Nanak Dev University that they are not liable to pay and thus the case of the college may be seen. The relationship between the petitioner and the 4th and 5th respondents is governed by the rules and regulations of the college.

13. Mr. Anand has not produced on record any rules of the 4th and 5th respondents from where he can claim as a matter of right leave encashment. Encashment of leave is not a fundamental right and is only a civil right governed by deeds and documents, rules and regulations and the constitution of private society running a college either with or without grant-in-aid. If rule does not permit there can be no enforceable right to leave encashment. The relationship between the petitioner and college is

contractual in nature by way of personal service and a claim for leave encashment cannot be enforced as an actionable right against the respondents without legal foundation.

14 Nevertheless, interest on the delayed payments of due amounts with respect to gratuity and arrears of revised pension is a different matter and will be the liability of the 4th and 5th respondents to meet in view of the reasons assigned above. The element of interest is thus directed to be calculated at the rates prescribed on FDRs and paid to the petitioner within three months by the college authorities from the date of receipt of certified copy of this order. It will be open to the 4th and 5th respondents to recover the element of interest from the State of Punjab via the grant-in-aid. However, in view of ruling of the Supreme Court in Shri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Samarak Trust v. V.R. Rudani and others, AIR 1989 SC 1607 the college has to pay up front and then claim from grant-in-aid if law allows. This issue as to liability will remain inter se between the 4th and 5th respondents and the State of Punjab and no opinion is expressed by this Court on the point of pay-and-recover least it prejudices either of the parties other than the University.

15. Mr. Paul states that so far as University is concerned it pays leave encashment to its employees of both categories i.e. teaching and non-teaching staff at GNDU which has nothing to do with the petitioner or the respondent-College as the petitioner is not their employee. There are no rules and regulations which compel GNDU to shoulder the liability of leave encashment for employees of its affiliated colleges and payments cannot be

compelled against University to pay the petitioner leave encashment.

16. As a result, there is no merit found in this petition which is ordered to stand dismissed with respect to leave encashment but succeeds to the extent of payment of interest on late payment of arrears of pay revision and gratuity as directed in para.14 above.

(RAJIV NARAIN RAINA)
JUDGE

28.05.2016
manju