IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 25427 of 2013 (O/M)
Date of decision : 5.10.2016

Kulbir Singh .... Petitioner (s)

Versus

State of Haryana and others .... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ramesh Goyat, Advocate, for the petitioner.
Mr. Naveen Sheoran, Deputy A.G. Haryana.

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

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KULDIP SINGH J. (ORAL)

The petitioner has impugned the order dated 8.10.2013 (Annexure-P-3), vide which arbitrary ceiling has been put by the respondents on more than 300 days un-utilized earned leaves of petitioner. The petitioner claims that he is entitled to leave encashment for 300 days un-utilized earned leaves, as per the Government notification dated 12.8.1998 (Annexure-P-4), followed by clarificatory letters dated 30.7.2010 and 17.8.2010 (Annexure-P-5 Colly.)

The petitioner was working as an Assistant Turner with the respondent-department and ultimately retired as a Turner, vide order dated 6.4.2011 with effect from 30.4.2011. The petitioner was granted the benefit of 118 days of un-utilized earned leaves and the payment of leave encashment was accordingly disbursed to him. The petitioner claims that he had got more that 249 days earned leave to his credit, therefore, he is entitled to 249 days leave encashment.

It comes out that subsequently, the respondents re-calculated and came to the conclusion that the un-utilized earned leave is 148 days. Accordingly, the benefit was released to the petitioner. The petitioner still maintains that he has un-utilized earned leave of 249 days to his credit and he is accordingly entitled to the said benefit.

Both the parties were directed to file their calculations of the earned leave. The petitioner accordingly filed his own calculation sheet and respondents filed their own calculation sheet. Both the calculation sheets have been compared.

I have heard the learned counsels for the parties and have also carefully gone through the file.

It comes out that before the year 1998, the petitioner was entitled to maximum leave encashment of 240 days. After the year 1998, he is entitled to maximum 300 days leave encashment. The calculations by the respondents shows that a deliberate mischief has been done in calculating the earned leave. The chart shows that on 30.7.1991, the petitioner has 279 days of earned leave to his credit. Since at that time, the maximum leave encashment was restricted to 240 days, therefore, the said earned leave was reduced to 240 days and subsequent leave taken by the petitioner was accordingly deducted from said 240 days. Similarly, on 30.8.1993, the petitioner had 244 days of earned leave to his credit, which was again reduced to 240 days and on 12.3.1996, the petitioner had 357 days earned leave, which was reduced to 300 days.

I am of view that the approach of the respondents is wholly illegal. If an employee is entitled to leave encashment for particular days, that does not mean that the un-utilized earned leave is to be accumulated upto the maximum limit, upto which leave encashment is allowed on retirement. The un-utilized earned leave will continue to accumulate and only at the time of retirement, the benefit of maximum leave encashment, as permissible under the rules, is to be given and the remaining un-utilized leaves will lapse. It being so, the impugned order is set aside. The calculations submitted by the petitioner are accepted and that of the respondents are set aside. The respondents are ordered to calculate the un-utilized earned leave of the petitioner of 249 days and pay the petitioner the leave encashment equal to remaining 101 days with interest at the rate of 9% per annum from the date of retirement till payment. The payment of remaining amount of the leave encashment be made within two months from the date of receipt of copy of this judgment. The department is also directed to hold an inquiry and take follow up action and fix the responsibility of the delinquent official, who made the wrong calculations, which resulted in dragging the respondent-department to the Court, resulting the un-necessary expenses to State exchequer and wastage of time of the Court.

The present writ petition is allowed.

(KULDIP SINGH)
JUDGE

5.10.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No