AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3174 of 2017

M.N.Prasad Rao S/o Late Shri M. J. Rao, Aged About 63 Years R/o Aprakunj, State Bank Colony, Timber Market, Fafadih Raipur, District Raipur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Food, Civil Supply & Consumer Protection, Mantralaya, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.
2. Managing Director, Chhattisgarh State Civil Supplies Corporation Limited, Head Office Avanti Vihar, Hitvad Building Raipur, Chhattisgarh.
3. The Managing Director, Chhattisgarh State Civil Supplies Corporation Limited, Head Office Avanti Vihar, Hitvad Building Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sourabh Dangi, Advocate
For State/Res. No.1	:	Shri Chandresh Shrivastava, Panel Lawyer
For Res. No. 2 & 3	:	Shri Animesh Tiwari, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

17/08/2017

Heard.

1. The petitioner’s grievance is that upon his retirement, leave encashment benefit has been withheld from the petitioner even though it is not permissible under the Law.
2. In response to the said claim of the petitioner and challenge to the action, reply has been filed by the respondents-Corporation and what has been stated therein is that in view of the provision contained in Rule 8 of the Chhattisgarh Civil Services (Leave) Rules, 2010, imposition of a major

penalty would entail complete forfeiture of leave encashment benefit.

3. Learned counsel for the respondent-Corporation sought to convince this Court by submitting that where the provision requires forfeiture of the benefit on account of imposition of a penalty of dismissal or removal from service, the intention of the Rule Making Authority has to be seen that the benefit of leave encashment would be applicable when there is no imposition of major penalty. Therefore, even in case where there is no dismissal or removal but any other major penalty, Rule 8 of the Leave Rules 2010 has to be interpreted to include every major penalty.
4. Leave encashment benefits are ordinarily admissible to an employee unless they are specifically withheld. Moreover, the extent to which it can be withheld are also required to be specifically provided under the Law.
5. Rule 8 of the Rules of 2010 which is relevant, is extracted hereinbelow:

> **"8. Effect of dismissal, removal or resignation on leave at credit.**- (1) Any claim to leave to the credit of a Government servant, who is dismissed or removed or who resigns from Government service, ceases from the date of such dismissal or removal or resignation.
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> (2) Where a Government servant applies for another post under the State Government but outside his parent office or department and if such a plication is forwarded through proper channel and the applicant is required to resign his post before taking up the new one, such resignation shall not result in the lapse of the leave to his credit.
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> (3) A Government servant, who is dismissed or removed from service and is reinstated on appeal or revision, shall be entitled to count for leave his service prior to dismissal or removal, as the case may be.
>
> (4) A Government servant, who having retired on compensation or invalid pension or gratuity, is re-employed and allowed to count his past service for pension, shall be entitled to count his

former service towards leave."

6. Having gone through the contents of aforesaid provision, this Court finds that the Rule, as it reads, does not admit of any ambiguity that withholding of leave encashment would be permissible only in three specific circumstances which are as below:

    (i) Dismissal

    (ii) Removal

    (iii) Resignation

7. Except this, no order contingency has been stated in the said Rules. There is no warrant for this Court to extend the meaning of provision to include all cases of major penalty. If that was the intention of the Rule Making Authority, nothing prevented the Rule Making Authority to include even penalty of compulsory retirement for the purpose of depriving a Govt. servant from the benefit of leave encashment. As specific penalties have been exhaustively enumerated in the provision itself, provision needs to be strictly construed particularly when the provision seeks to deprive an employee of certain benefits to which he is otherwise entitled upon his retirement.
8. Therefore, I am of the considered opinion that except in cases specifically provided in Rule 8 of the Rules of 2010, leave encashment could not be withheld. The petitioner has been subjected to a penalty of compulsory retirement, which cannot be categorized as dismissal or removal.
9. Therefore, withholding of leave encashment cannot be sustained in law. In the result, the petition has to be allowed and is accordingly allowed. Leave encashment benefit of the petitioner shall be released forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen