

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

CWP No.4489 of 1996

Date of Decision:18.12.2017

Som Nath Vohra

... Petitioner

Vs.

Presiding Officer and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Dinesh Nagar, Advocate for the petitioner.

Mr. Siddharth Sanwaria, Addl. A.G. Haryana.

Mr. Raman B. Garg, Advocate for respondents No.2 and 3.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the validity of the Labour Court award dated 18.12.1995 (Annexure P-2).

Petitioner is stated to have joined service of the respondent-Rajya Bal Bhawan which is managed by the office of the Director Social Welfare Haryana and Secretary Board, Chandigarh. Petitioner attained age of superannuation and retired from service on 31.10.1991 after rendering 34 years of service. Petitioner has been denied the benefit of leave encashment on the score that there were no statutory provisions. In view of the denial of leave encashment, petitioner submitted an application under Section 33-C-2 of the Industrial Disputes Act, 1947 (for short "the Act") before the Labour Court seeking benefit of leave encashment for 240 days. Labour Court held that petitioner is not entitled by saying that there is no provision for employees of Rajya Bal Bhawan by which benefit of leave encashment could be granted. In the absence of regulation, petitioner is not entitled to leave encashment of 240 days. Labour Court has also taken note of extending the benefit of leave encashment to one Shri Pan Singh in para-12

of the award to the extent that there was resolution passed in favour of Shri Pan Singh. Whereas there is no resolution in favour of the petitioner. Thus, the present petition in challenging the order of the Labour Court.

Learned counsel for the petitioner submitted that the Labour Court failed to appreciate the Minutes of the 4th meeting of the Standing Committee held on 31.8.1995 wherein item No.1 (2/6) relating to leave rules for the employees, it was decided that the Government pattern of leave should be followed for the employees of Bal Gram excepting House Mothers. It was also submitted that co-employee Shri Pan Singh has been extended the benefit of leave en-cashment. Thus, the Labour Court has erred in rejecting the petitioner's application filed under Section 33-C-2 of the ID Act.

Per contra, learned counsel for the respondent submitted that decision of the minutes of the 4th meeting of the Standing Committee and item No.1 (2/6) relating to leave rules for the employees on the Government pattern leave is concerned, it is only for the purpose of extending the benefit of leave to the employees and it does not speak of extending benefit of leave encashment. Therefore, in the absence of specific provision or a decision to extend leave encashment benefit, petitioner is not entitled. Shri Pan Singh was extended the benefit of leave encashment based on the resolution passed by the Board. Such a resolution has not been passed in favour of the petitioner. That apart from time to time meeting were held on 12.7.1989, 10.1.1992, 4.5.1992 and 19.8.1993, decision in respect of leave encashment has not been taken in those meetings. Whereas decision has been taken in respect of other issues like payment of gratuity. Even though payment of gratuity and leave encashment was not approved in respect of the petitioner

by proceedings dated 10.1.1992. Therefore, petitioner is not entitled for the benefit of leave encashment.

Heard learned counsel for the parties.

Short question for consideration in the present petition is whether employees of Rajya Bal Bhawan are entitled to leave encashment or not?

Leave encashment would accumulate with reference to availing number of days leave by the employees, even though, leave rules for the employees are approved on the Government pattern on 31.8.1995. Leave encashment is required to be extended for the reasons that extending leave encashment would depend upon the number of leave availed by the employees. Therefore, merely not mentioning the word of leave encashment in the meeting held on 31.8.1995, employees of the respondent-Rajya Bal Bhawan cannot be denied the benefit of leave encashment. Moreover, the respondents have extended the benefit of leave encashment to one Shri Pan Singh by passing a resolution. Thus, there is a discrimination among the employees of the respondent to the extent of passing a resolution to extend the benefit of leave encashment to a particular employee and denial of leave encashment by passing a resolution. In view of these facts and circumstances and the fact that respondents have adopted the leave rules for the employees of the Rajya Bal Bhawan on the pattern of Government Employees Leave Rules. Once the respondents have adopted the Government pattern of leave, employees of the respondent-Trust are entitled to the benefit of leave encashment. The Labour Court has failed to appreciate that leave rules for the employees are to be taken note of accumulation of leave for the purpose of extending the benefit of leave

encashment and accumulation of leave with the concerned employee is required to be taken into consideration. When the employee availed leave benefit under the leave rules on the Government pattern of leave, in that event, automatically he is entitled for leave encashment depending upon the number of days leave availed by him or not. The said issue has not been taken note and appreciated by the Labour Court.

Accordingly, award passed by the Labour Court dated 18.12.1995 is set aside and petitioner is entitled to leave encashment benefit with reference to the Minutes of the 4th meeting of the Standing Committee on 31.8.1985 read with the leave encashment rule in the respective State Government and further on the ground of discrimination on par with one Shri Pan Singh. Therefore, concerned respondent is hereby directed to calculate leave encashment benefit of the petitioner in accordance with the Government pattern of leave encashment rules and extend the monetary benefit to the petitioner within a period of four months from the date of receipt of a certified copy of this order.

Petition stands allowed accordingly.

18.12.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No