

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP No.4564 of 1997(O&M)**

Haryana Agro Industries Corporation Limited ...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal-cum-labour Court & Anr.
...Respondents

2. **CWP No.4634 of 1997(O&M)**

Haryana Agro Industries Corporation Limited ...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal-cum-labour Court & Anr.
...Respondents

Date of Decision: 27.03.2017

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

Present: Mr. H.S. Gill, Sr. Advocate,
with Mr. Ramesh Kumar Dhiman, Advocate,
for the petitioner.

Mr. Samrat Malik, Advocate,
for the respondent(s).

RAJIV NARAIN RAINA, J. (Oral)

1. This order will dispose of CWP No. 4564 of 1997(O&M) and CWP No.4634 of 1997 as a common question of law and facts arise in these cases.

2. The challenge brought by the Haryana Agro Industries Corporation limited, Chandigarh against the order of the Labour Court, Panipat dated December 20, 1996 has to be repelled in the face of the letter dated March 06, 1992. This letter reflects the decision of the Board of the Corporation approving grant of privilege of encashment of earned leave of

240 days to its employees. If leave encashment was admissible then the Labour Court committed no mistake in noticing the decision of the Board and allowing 7 months of leave encashment/earned leave in favour of the claimants/respondents. The conditions of service of the petitioners may be governed also by the Certified Standing Orders of the Corporation and the Factories Act but the circular-letter recognizes the right not only conferred by the Board but statutorily prescribed in Section 79(5) of the Factories Act, 1948. The provision reads:

“ (5) If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year: Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child: Provided further that a worker, who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down in sub-sections (8) and (9) 2[or in contravention of sub-section (10)] shall be entitled to carry forward the 3[leave refused] without any limit.”

3. The Circular-Letter was duly exhibited on the record of Labour Court as Ex. P1. It may be noted that the 2nd respondent worked as a Spray Painter with the Corporation from August 09, 1969 to April 30, 1993 and, therefore, fell in the beneficial scheme of the letter Ex. P1. The rights created by the Circular-Letter eminently became a pre-existing right, vested and accrued to the respondent which could easily be computed in term of money and, therefore, the application under Section 33 C (2) of the

Industrial Disputes Act, 1947 was maintainable and was rightly allowed in part.

4. For these reasons, while finding no error apparent on the face of record, I would dismiss the petitions. However, before parting with the order, I may record from the motion order passed on April 03, 1997 passed by the Division Bench, ad interim holding categorically that no case for staying the recovery of amount in question is made out it should be made absolute. The Court ordered that the amount be deposited with the Labour Court who will deposit the same with Nationalized Bank in Fixed Deposit and the interest accruing on fixed deposit amount would be paid to the workman regularly till further orders. Those amounts are held to be the right of the respondents and their LRs.

5. With the passing of this order the respondents through their legal heirs and representatives would be free to collect the money lying deposited in the Bank from the Labour Court, Panipat on applications made for payment who will release the amounts after due verification of identities. If it is not possible, then the outstanding dues will be open for execution under Section 11 (9) of the ID Act. A copy of this order be sent to the Labour Court, Panipat with the direction to take steps as may be necessary after verifying the identity of the LRs of the late 2nd respondent in CWP 4564 of 1997 and the amounts in favour of the rightful owners be released within reasonable time as and when the LRs come forward to claim the dues.

6. In CWP No. 4634 of 1997 notice issued to 2nd respondent has been received back with the report that he has also expired. The above

directions in CWP 4564 of 1997 will be activated when the LR's of the deceased respondent come forward in execution of the award.

7. Office to send this order to the LR's of respondent No 2 brought on record 14.5.2004 for their notice to enable them to take appropriate steps in execution of the fruit of this order.

8. In the second case, that is, CWP 4634 of 1997 the office would send copy of this order to the process serving agency of Sessions Division, Karnal to serve the LR's of late Shri Arur Chand s/o Barkat Ram of Village & PO, Sandhir, Tehsil Nilokheri, District Karnal, (respondent No 2) if they are found residing in the village.

9. In case any further directions are required from this Court the LR's in both cases can come forward for any further orders, if the necessity arises in the disposed of matters.

(RAJIV NARAIN RAINA)
JUDGE

27.03.2017
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Whether speaking/reasoned
Whether reportable

Yes
No