

CWP-2873, 2874, 2875, 7848-2005 and 19031-2014 (O/M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 6.2.2017

CWP-2873-2005 (O/M)

Paramjit Singh Bansal

..... Petitioner (s)

Versus

Panjab University, Chandigarh and others

..... Respondent (s)

CWP-2874-2005 (O/M)

Gurmel Singh Panesar

..... Petitioner (s)

Versus

Panjab University, Chandigarh and others

..... Respondent (s)

CWP-2875-2005 (O/M)

Jaswant Singh Sandhu

..... Petitioner (s)

Versus

Panjab University, Chandigarh and others

..... Respondent (s)

CWP-7848-2005 (O/M)

Prof. Ashok Kumar Sood and others

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CWP-19031-2014 (O/M)

Darshna Bansal

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Puneet Jindal, Senior Advocate, with,
Ms. Sakshi, Advocate,
for the petitioner (s) in CWP-2873, 2874, 2875, 7848-2005.

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Mr. Namit Kumar, Advocate,
for the petitioner in CWP-19031-2005.

Mr. Alok Jain, Additional A.G. Punjab.

Mr. Suvir Sehgal and Mr. Daman Dhir, Advocate,
for respondent-Panjab University in
CWP-2873, 2874, 2875-2005.

Mr. P.S. Guliani, Advocate, for respondents No. 2 and 3 in
CWP-2873-2005.

Mr. P.S. Thiara, Advocate, for respondents No. 2 and 3 in
CWP-2874-2005.

Mr. Sukhbir Singh, Advocate, for respondents No. 2 and 3 in
CWP-2875-2005.

Mr. Sameer Sachdeva, Advocate, for respondent-Management.

Mr. Vikrant Sharma, Advocate, for respondent No. 5
in CWP-7848-2005.

Mr. Vishal Khatri, Advocate, for respondent No. 5
in CWP-19031-2014.

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.

By this single judgment, I shall dispose of five above mentioned writ petitions bearing number CWP-2873-2005, CWP-2874-2005, CWP-2875-2005, CWP-7848-2005 and CWP-19031-2005, involving the identical facts. The petitioners in all the cases are retired Lecturers, Officiating Principals, Principals and in CWP-7848-2005, petitioner No. 9 is a retired Peon. The facts of the case are extracted from the lead case i.e. CWP-2873-2005.

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The petitioners were working as Lecturers, Officiating Principals, Principals in respondent-Privately Managed Government Aided Colleges. It is Khalsa College, Garhdiwala, District Hoshiarpur, in CWP-2873-2005 and CWP-2874-2005, whereas it is Babbar Akali Memorial Khalsa College, Garshankar, District Hoshiarpur in CWP-2875-2005. In the first three petitions, the colleges are affiliated to Panjab University, Chandigarh. In CWP-7848-2005, it is Mata Gujri College, Fatehgarh Sahib, affiliated to Punjabi University, Patiala. In CWP-19031-2014, it is Shri Sanatan Dharam Girls College, Bathinda, which is also affiliated to Punjabi University, Patiala. The petitioners in some of the writ petitions have been paid part of the gratuity and the remaining part of the gratuity is not paid. In some of the cases, the petitioners claim that the entire provident fund has also not been released. The petitioners also claim that they are entitled to leave encashment, which has not been paid to them. They are also entitled to interest on the delayed payment of the gratuity. In CWP-19031-2014, the petitioner claims that she is entitled to enhanced gratuity of Rs. 6,50,000/-. In the lead case (CWP-2873-2005), the petitioner claims that he retired as a Lecturer in Political Science on 28.2.2002, same is the date of retirement of the petitioner in CWP-2875-2005. In case of CWP-2874-2005, the date of retirement of the petitioner is 31.1.2003. In case of CWP-7848-2005, the date of retirement of the petitioners is between the years 1998 to 2002 and in case of CWP-19031-2014, the date of retirement of the petitioner is 31.8.2008. Therefore, in all the writ petitions, the question has been raised regarding release of balance gratuity, interest on the delayed payment of gratuity, release of provident fund and entitlement to leave encashment. In

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case of CWP-2875-2005, the revised house rent allowance in lieu of rent free accommodation is also claimed as per the instructions of the Panjab University.

In the reply, the Managing Committee of Khalsa College, Gardhiwala, District Hoshiarpur, has taken the stand that for the payment of gratuity and provident fund, a communication has been sent to the petitioner to produce no dues certificate and collect the cheque but the petitioner has not produced the no dues certificate. The payment of gratuity amounting to Rs. 1,75,000/- has been made and the provident fund to the tune of Rs. 2,19,232-70 will be brought on the next date of hearing. However, the claim was contested regarding the leave encashment. It was submitted that the petitioner is not entitled for the same. It was stated that as per Rule 8.117 of Punjab Civil Services Rules, Volume-I, Part-II, an employee in the vacation department in respect of duty performed in any year, in which he avails himself full vacation, is not entitled to get the benefit of earned leave. The Lecturers are entitled to summer vacations for a period of 1 ½ months. They are also entitled to winter vacations for a period of 8-10 days and another autumn break of 10 days. Therefore, they being the employees of vacation department are not entitled to the benefit of leave encashment.

The Panjab University, Chandigarh, in the written statement has taken the stand that the petitioner is entitled to gratuity in terms of Regulation 13.1 of Chapter VIII-E of the Panjab University Calendar, Volume-1, 2000. The provision has also been made for payment of provident fund to the teachers in the non Government affiliated colleges on their retirement under Regulations 12.1 and 12.2 of Chapter VIII-E of

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Panjab University Calendar, Volume-1, 2000. There is no provision in the Panjab University Calendar nor there are any rules and regulations framed for encashment of un-availed leave.

The Director of Public Instructions (Colleges), Punjab, has taken the stand that the management of Government Aided Privately Managed College is to grant the gratuity, leave encashment and provident fund and that the DPI (Colleges) has nothing to do with the same.

The petitioner filed the rejoinder, in which he claimed that the remaining gratuity was received during the pendency of the present writ petition and he is entitled to interest on the delayed payment of the gratuity. The provident fund is lying with the Regional Provident Fund Commissioner and some amount is still lying with the Regional Provident Fund Commissioner, which has not been released. Regarding the leave encashment, it was claimed that the petitioner is entitled to leave encashment as Rule 8.117 (a) of Punjab Civil Services Rules, Volume-I, Part-I has been amended with effect from 1.1.1990 and the Panjab University has circulated the amendment through the circular dated 8.3.1990/22.10.1990, effective from 1.1.1990 (Annexure-P-14). As per the said circular dated 8.3.1990/22.10.1990 (Annexure-P-14), the members of the teaching faculty, who enjoy vacations, are entitled to 8 days' earned leave in every completed year spent on duty. This eight days' earned leave is apart from the earned leave accrued in favour of the employees as a result of the duties being performed by him during summer vacations in terms of Rule 8.117 (b) of Punjab Civil Services Rules, Volume-I, Part-I. Once the earned leave is credited in the account of the petitioner with effect from

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1.1.1990, as per circular dated 8.3.1990/22.10.1990 (Annexure-P-14), on the date of retirement, the petitioner is entitled to encashment of un-utilized earned leave.

In CWP-2875-2005, the petitioner, who retired as a Principal from Babbar Akali Memorial Khalsa College, Garshankar, District Hoshiarpur, has claimed that as per the letter/circular dated 9.4.1992 (Annexure-P-2), issued by the Panjab University, Chandigarh, the Principal is entitled to house rent allowance, as sanctioned by the Government for the area concerned (7.5% to 12.5% of pay plus 10% of basic pay in lieu of free accommodation). The Panjab University, Chandigarh, vide letter/circular dated 9.4.1992 (Annexure-P-2), has made applicable the house rent allowance (revised rates) in lieu of rent free accommodation to the Principals of Non Government affiliated colleges, as also applicable to the Government employees.

In CWP-7848-2005, the Management of Mata Gujri College, Fatehgarh Sahib, in the written statement has claimed that the petitioners are working in grant in aid posts for which no sanction is accorded by the government for the grant of leave encashment. As per the provisions of Rules, 25 and 26 of Chapter XX of the Punjabi University, Calendar Volume-III Part-II, Service and Contract Rules of Teachers in Non-Government Colleges, the payment of leave encashment for 240 days is permissible to those employees who have opted for the amended rules. The petitioners have not opted for the amended rules and, therefore, they are not entitled for grant of leave encashment. It was stated that the college receives 95% grant-in-aid from the State and only 5% is contributed from

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amongst its own resources.

In the replication, the petitioner No. 7 has reiterated Rule 8.117 (a) of the Punjab Civil Services Rules, Volume-I, Part-I to take the same stand as taken in the lead writ petition, claiming that the teaching staff retiring from the Government Colleges under the Punjabi University, Patiala, is also getting the leave encashment with effect from 1.4.1990.

In CWP-19031-2014, the Management of Shri Sanatan Dharam Girls College, Bathinda, in the written statement has claimed that the petitioner has claimed the gratuity of Rs. 6,50,000/- in view of notification dated 17.8.2009, claiming that earlier she was paid Rs. 3,50,000/- as on 23.6.2009. The management has made a reference to the Special Leave to Appeal (Civil) No. 13110 of 2008 against the judgment and order dated 18.12.2007, passed by this Court in CWP-4081-2007, decided on 29.2.2008. It is stated that the said SLP was disposed of by the Hon'ble Supreme Court of India, vide order dated 26.11.2013 holding that as far as contributory fund is concerned, the State is liable to reimburse 95% of that amount. It was claimed that the petitioner was not entitled to gratuity of Rs.3,50,000/- earlier paid on 23.6.2009 and that the same was wrongly paid to the petitioner and the answering respondent had not challenged the same at the time of payment. The same cannot be treated as an estoppel against respondents. Regarding the Service and Conduct Rules of the teachers in Non-Government Colleges, framed by the Punjabi University, Patiala, incorporated in Chapter XIX, published in Calendar Volume-II Part 2, Clause 39 under the head 'Gratuity Rules', it was claimed that the Punjabi University, Patiala, is not empowered to frame such rules for the Non-

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Government Colleges, governed by grant-in-aid scheme and that the rules so framed are beyond the Punjabi University Act, 1961. The Government of Punjab has introduced grant-in-aid scheme and in the scheme, it is made clear that the employees in grant-in-aid scheme will be governed by CPF and the Colleges will be governed by Act No. 23 of 1974, as amended from time to time and the Colleges will comply with the directions and orders issued by the Director of Public Instructions (Colleges), Punjab. The teachers in grant-in-aid scheme retire at the age of 60 years instead of superannuation age of 58 years as teachers in Government Colleges. The Director of Public Instructions (Colleges), Punjab, circulated a scheme, namely, 'The Privately Managed, Affiliated and Punjab Government Aided Colleges, Pensionary Benefit Scheme, 1996', vide memo No.6/10587-Pension, dated 18.12.1996 with a rider that the same shall have to come into force with effect from 1.4.1992. The petitioner did not opt for the said scheme. It was made clear that those teachers, who opted the said scheme, shall have to opt to retire on attaining the age of 58 years. The Punjab Government thereafter framed 'Punjab Affiliated Colleges Pension and Contributory Provident Fund Rules 2002' by virtue of Section 9B under the Act No. 23 of 1974. No teachers opted for the said scheme and preferred to be governed by CPF and to retire on attaining age of 60 years instead of 58 years. In short, the management resisted the payment of gratuity as well as the leave encashment to its retired teachers.

I have heard the learned senior counsel for the petitioners, the learned counsel for the petitioners, the learned State counsel, the learned counsels for respondents and have also carefully gone through the file.

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First of all, small issue is regarding the gratuity and interest on the delayed payment of the gratuity.

As per University calendar and stand of University, gratuity is payable. Its affiliated colleges are bound by University calendar/instructions. Therefore, gratuity is payable by the management of the colleges as it is not covered under grant-in-aid scheme.

I am of the view that if the gratuity is payable and it is paid late after a reasonable time of three months of retirement, the management is liable to pay 9% per annum interest till the date of payment.

So far as the provident fund is concerned, in some of the writ petitions, the provident fund was deposited with the Regional Provident Fund Commissioner and is to be paid to the petitioners. The undisbursed provident fund is ordered to be disbursed by the Regional Provident Fund Commissioner through the College concerned within thirty days from the date of receipt of certified copy of this order alongwith interest, as applicable to the provident fund and thereafter the College concerned shall disburse the same to the petitioners within next ten days.

Now, coming to the house rent allowance, claimed in CWP-2875-2005, it comes out that the management is bound by the instructions of the Panjab University, Chandigarh. The Panjab University, Chandigarh, has issued a letter/circular dated 9.4.1992 (Annexure-P-2), vide which the house rent allowance (revised rates) in lieu of rent free accommodation granted to the Government employees has made applicable to the Principals of non-government affiliated colleges. Therefore, in terms of the said letter/circular, the management of Babbar Akali Memorial Khalsa College,

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Garshankar, District Gurdaspur, is directed to release the house rent allowance to the petitioner with interest at the rate of 9% per annum from the date it became due till payment.

So far as petitioner No. 9 in CWP-7848-2005 is concerned, who is a peon, he is governed by different set of rules and even if it is found that some earned leave is credited to his account, then the same has to be encashed as per the rules applicable to the Clause IV employees of the said College.

Now, surviving are the two claims i.e.

(i) whether Shri Sanatan Dharam Girls College, Bathinda, is liable to pay the enhanced gratuity to the petitioner in CWP-19031-2014 and whether respondents are liable to pay ?

(ii) whether the petitioners in all the writ petitions are entitled to leave encashment and if it is so, who is liable to pay the same and whether the management is entitled to reimbursement of the same under the grant-in-aid scheme from the Government ?

First of all, taking up the case of enhanced gratuity in CWP-19031-2014, it comes out the the petitioner retired from service on 31.8.2008. Earlier, the gratuity of Rs. 3,50,000/- was payable, which was in fact paid to the petitioner on 23.6.2009. It also comes out that as per the report of the Fifth Punjab Pay Commission, the gratuity was revised from Rs. 3,50,000/- to maximum limit of Rs. 10,00,000/- with effect from 1.1.2006. The Punjabi University, Patiala, in its letter dated 10.8.2010 (Annexure-P-5), addressed to all the Principal Colleges affiliated to Punjabi University, had directed that the Vice Chancellor has ordered the enhanced

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limited of DCRG of concerned staff of affiliated non Government Colleges of the University from Rs. 3,50,000/- to Rs. 10,00,000/- with regard to the recommendation of the Fifth Pay Commission in terms of the Punjab Government letter dated 17.8.2009.

I am of the view that the directions of the Punjabi University, Patiala, is binding upon the affiliated colleges. Now, College cannot now claim that they had paid the gratuity wrongly and that now they are not liable to pay the enhanced gratuity. Therefore, in terms of the report of the Fifth Pay Commission and as per the instructions dated 10.8.2010 (Annexure-P-5) of the Punjabi University, Patiala, the petitioner is entitled to the enhanced gratuity. The balance gratuity in terms of the said letter shall be paid to the petitioner within three months from the date of receipt of certified copy of this order alongwith interest at the rate of 9% per annum, starting three months from the date of letter dated 10.8.2010 (Annexure-P-5) till payment.

Now, coming to the main question as to whether the teaching staff of colleges affiliated to Panjab University, Chandigarh and Punjabi University, Patiala, are entitled to the leave encashment? One is to see the relevant rules.

On behalf of respondents, a plea has been raised that since the petitioners belong to vacation department, therefore, they are not entitled to the leave encashment. The petitioners have, however, claimed that Rule 8.117 (a) of the Punjab Civil Services Rules, Volume-I, Part-II, has been amended and 8 days' earned leave has been allowed and infact credited to their respective account. On behalf of respondents, it is stated that non such

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amendment has been carried out since the colleges affiliated to the Panjab University, Chandigarh, as well as the Punjabi University, Patiala, are bound by the instructions and rules, framed by the said universities. It is necessary to reproduce the copy of the letter/circular dated 8.3.1990/22.10.1990 (Annexure-P-14), issued by the Panjab University, Chandigarh, in terms of the letter received from the Government of Punjab, implementing the Third Pay Commission regarding grant of eight days' earned leave to the employees of Government Colleges with effect from 1.1.1990. The relevant extracts from the said letter/circular are reproduced as under :-

“ I am directed to address you on the subject cited above and to say that as per provision contained in Rule 8.117 (a) of Punjab Civil Services Rules, Volume I, Part 1, the employees of the Vacation Department are not entitled to any earned leave in respect of duty performed in any year in which the staff avails itself of 1. full vacation, now, in pursuance of recommendations of the Third Punjab Pay Commission, the President of India is pleased to decide that the employee of the vacation department shall be entitled to eight days earned leave for every completed year spent on duty. This concession of earned leave of eight days shall not be admissible to such Government employee in respect of any year in which he is prevented from availing himself of the full vacation as he is entitled to the earned leave as is admissible to the employee of non-vacation, as per provision of rule 8.117 (b) of the Panjab Civil Services, Vol. I, Part 1. If any employee of the vacation department avails himself of a part of vacation earned, the earned leave proportionately admissible to him under Rule 8.117 (b) together with eight days additional earned leave will not exceed the maximum earned leave admissible under Rule 8.117 (b). The

benefit will accrue to the staff from the Calendar year, 1990, i.e. from the 1st Jan. 1990. 2. Necessary amendment in the relevant rules will be made in due course.”

The copy of the said letter/circular was forwarded to the Principals of all the Non Government Colleges, affiliated to Panjab University, Chandigarh.

The respondents have laid great stress on the ground that it is a vacation department and the teachers in the vacation department are not entitled to the earned leave. For this purpose, the reliance has been placed upon the authority of “*State of Maharashtra v Nowroskee Wadia College*”, (2013)11 Supreme Court Case 762. However, the instructions of the Universities are binding on its colleges affiliated to it, which shows that eight days' earned leave was made admissible to the teaching staff, as per the instructions of the University above. It comes out that in fact such leave was credited in the account of the petitioners, now the only question is as to whether the petitioners are entitled to encashment of such earned leave, which are accumulated in their account ?

So far as the Punjabi University, Patiala, is concerned, it has also accepted recommendations of Third Pay Commission. Therefore, it is in the same position as the Panjab University.

Therefore, the affiliated colleges cannot say that they are not bound by the instructions of the respective university, to which they are affiliated.

On behalf of the State, it is claimed that even if this Court holds that the earned leave is to be encashed, the same is not a part of the grant-in-aid scheme and, therefore, it is the duty of the management to encash the

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earned leave and the State is not liable to reimburse the same under the grant-in-aid scheme.

However, on behalf of the management, it is stated that even if this Court holds that the leave is to be encashed by the management, the same is a part of the salary and is to be reimbursed by the State.

The terms and conditions of the financial grant to be given to the private colleges on the basis of 95% of the deficit are not disputed. Clause 3 (i) of the said terms and conditions is relevant in this regard, which shows that the pay and allowances of the teaching and non teaching staff are approved items of expenditure.

Now, the question is as to whether the leave encashment is a part of the salary and on payment to the teaching staff, the management can claim it as a part of the grant-in-aid from the Government ?

It is also not disputed that the matter regarding the same benefits claimed by the teachers are still pending before a Coordinate Bench of this Court on account of remand by the Apex Court.

The learned counsel for the petitioners has relied upon the Full Bench judgment of this Court in Surjit Kumar Sharma Versus State of Punjab, 1992 (3) SCT 485, in which the Full Bench has observed as under :-

“4. A resume of the above leave rules clearly brings out that there is a marked distinction between earned leave and half pay leave former is correlated to the periods spent on duty while the latter becomes available to a government employee in respect of completed years of service. Further, in respect of the admissibility of earned leave, a distinction has been made between the employees in Vacation Department and those in non-vacation Department. In unequivocal terms--, Rule 8.117

does not permit an employee in Vacation Department to grant of any earned leave in respect of the duty performed in any year in which he avails himself of full vacation. It is only when he is prevented from availing himself of full vacation that he is entitled to some earned leave in proportion to the number of days for which vacation is not permitted to him. The Punjab Government notification dated 25th January, 1978, referred to by us above, permits the payment of money equivalent only in respect of unutilised earned leave. To us, it is, clear that a permanent government employee is entitled to leave encashment only in respect of unutilised earned leave to the extent mentioned in that notification. Since, as we have seen, all employee in Vacation Department availing himself of the full vacation in a given year is not entitled to any earned leave, he also can not be permitted any leave encashment. It is only when earned leave as may become due to him in terms of Clause (b) of Rule 8.117, remains unutilised at the time of his retirement on retiring officer that he would become entitled to encash that unutilised earned leave and shall become entitled to be paid its money equivalent. We are, however, clear that in no case such an employee in Vacation Department shall become entitled to leave encashment on his retirement in lieu of half pay leave then remaining due to his credit.”

It comes out that in the above noted judgment, the instructions of the Panjab University, Chandigarh, dated 8.3.1990/22.10.1990, were not considered, the observations would follow that if the earned leave has accumulated, which in the present case has accumulated in view of the instructions of the Panjab and Punjabi University, they shall become entitled to encashment of leave on their retirement.

The other authorities of this Court in Prof. Y.L. Chopra Versus State of Punjab and others, 2006 (2) SCT 410 and Ishwar Chander Sharma

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Versus State of Haryana, 1996 (1) SCT 374, are not attracted, since as per the instructions of the University, certain amount of leave has been made admissible to the employees of the vacation department.

The learned senior counsel for the petitioners has relied upon the authority of the Apex Court in State of Rajasthan and another Versus Senior Higher Secondary School, Lachhmangarh and others, (2005) 10 Supreme Court Cases 346 (decided on 15.9.2004), in which it was held that the leave encashment is a part of the salary and covered in the wider expression 'scales of pay and allowances'. The Apex Court was examining Section 29 of the said Act, applicable in the said case. The Apex Court has observed as under :-

“14. There is additional reason for rejecting the contention advanced on behalf of the aided private institutions and the State that encashment of leave salary is neither “pay” nor “allowances” within the meaning of Section 29 of the Act. Section 29 directs maintenance of parity in respect of “scales of pay and allowances” between same categories of employees of private aided institutions and government institutions. A closer scrutiny of the relevant provisions, quoted above, would show that the expressions “pay and allowances” in the title to the section and “scales of pay and allowances” in the body of Section 29 have been used to give it a wider meaning so as to encompass within them “aggregate of emoluments” and “other allowances and reliefs”, as per the definition of the word “salary” in Section 2(r) of the Act. Clause (r) in Section defines “salary” to mean the aggregate of the emoluments of an employee including “dearness allowance or any other allowance or relief”. The wider definition of the word “salary” has to be read into Section 29 which directs maintenance of parity in pay and allowances of the employees of aided

institutions and government institutions.”

The matter was also examined by this Court in Hoshiar Singh and others Versus The Secretary, Department of Education, Chandigarh Administration, Mini Secretariat, Sector-9, Chandigarh, and others, (CWP-21773-2011, decided on 19.7.2016), which pertains to the Privately Managed Government Aided Schools. This Court has observed as under :-

“ Now, this Court is to examine that what is nature of the leave encashment ?

The leave encashment is the payment made to the retired employee in lieu of earned leaves, not availed by him. It follows that, if during service, an employee avails the earned leave, he/she is paid full salary for the said earned leave availed by him. It is apparent that in order to encourage the employees to work more during service, the provision of leave encashment is made. Apparently, the Management does not want that the work of teaching should suffer on account of the employees taking leave during service with full pay on account of their entitlement. Therefore, apparently, the leave encashment is a part of the salary and is paid in lieu of the earned leave, not availed by the employee during service. Therefore, I am of the view that the leave encashment is a part of the salary.

Now, admittedly, the Chandigarh Administration is releasing 95% grant-in-aid to the privately managed aided schools. The stand of the Chandigarh Administration is that it is for the Management to pay the leave encashment. In this way, the Chandigarh Administration admits that the leave encashment is to be paid to the employees of the aided schools of the Union Territory, Chandigarh. Therefore, it is held that the leave encashment is payable to the retired employees of the aided schools of the Union Territory, Chandigarh. However, since it is a part of the salary, the Management, after paying the

same to the employees, can claim it in grant-in-aid from the Government as a part of salary in the ratio of grant-in-aid payment of salary.”

I am of the view that the pay and allowances are to be reimbursed by the Government in terms of grant-in-aid scheme and if the earned leave accruing to the teacher is availed by him during his service, it is paid as a part of the salary and consequently, reimbursed in grant-in-aid scheme. That would mean that the said earned leave availed by the teacher during his service was treated as a part of the salary when the teacher was in service. Therefore, after the retirement, it cannot be said that the said earned leave, which was not availed by him in the interest of the duties to teach the students, can be excluded from the definition of salary after the retirement. Therefore, it has to be held that the admissible earned leave, which can be encashed under the rules, is covered under the term 'pay' and thus, covered under the grant-in-aid scheme of the Government. It is for the management to first pay and then claim it as a part of the salary, as done in case of serving employees.

The learned senior counsel for the petitioners has also relied upon the Division Bench authority of this Court in Mrs. Savitri Sachdeva and others Versus State of Punjab and others, (CWP-2099-2004, decided on 9.1.2006). As in the present case, it is held that on account of the instructions of the University, the petitioners are entitled to leave encashment. Therefore, it is followed that the leave can be encashed.

On the contrary, the State has relied upon the Division Bench authority of this Court in Ajmer Singh Versus State of Punjab, 1996 (2) SCT 399. However, in view of the later Division Bench authority of this

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Court in Mrs. Savitri Sachdeva's case (supra), I am of the view that the State cannot deny to pay leave encashment under the grant-in-aid scheme.

So far as the gratuity is concerned, there is no dispute that the gratuity is not a part of grant-in-aid scheme and it is to be made by the management and the management cannot claim reimbursement of the same from the Government under the grant-in-aid scheme.

In view of the foregoing discussion, all the writ petitions are allowed. The respondent-Management of the Government Aided Privately Managed Colleges are ordered to release the remaining part of the gratuity with interest at the rate of 9% per annum. In CWP-19031-2014, the enhanced gratuity, as directed above, shall be payable to the petitioner. In CWP-2875-2005, the revised house rent allowance shall be payable as directed above. The provident fund, which is lying deposited with the Regional Provident Fund Commissioner, shall be disbursed to the petitioners within thirty days from the date of receipt of certified copy of this order alongwith interest, as applicable to the provident fund and thereafter the College concerned shall disburse the same to the petitioners within next ten days. The petitioners-teachers shall be entitled to encashment of their accumulated earned leave, subject to maximum limit permissible under the rules. The leave encashment shall be first paid by the management of the Privately Managed Government Aided Colleges and then it can claim reimbursement of the same from the Government under the heading of pay. The petitioners shall also be entitled to interest at the rate of 9% per annum on the delayed payments, starting three months from the date of retirement till the date of payment. Petitioner No.9 in CWP No.7848

CWP-2873, 2874, 2875, 7848-2005 and 19031-2014 (O/M)

of 2015 shall be entitled to encashment of earned leave as per rules applicable to him.

(KULDIP SINGH)
JUDGE

6.2.2017

sjks/sarita

Whether speaking / reasoned : Yes

Whether Reportable : Yes