

CWP No.22128 of 2014

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22128 of 2014

Date of Decision: 02.05.2017

The Managing Director, Punjab State
Civil Supplies Corporation Limited & another

...Petitioners

Vs.

The Presiding Officer, Industrial Tribunal,
Bathinda & another

...Respondents

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

Present: Mr. Anil Kumar Sharma, Advocate,
for the petitioners.

None for respondent No.2.

RAJIV NARAIN RAINA, J. (Oral)

PUNSUP assails the order passed by the Learned Industrial Tribunal, Bathinda dated February 06, 2014 in this petition. The Tribunal has allowed the application granting benefit of leave encashment to the claimants in proceedings under Section 33 C (2) of the Industrial Disputes Act, 1947. There is hardly any doubt that the claimant was either facing disciplinary proceeding or criminal case registered against him for embezzlement of money belonging to the employer. The amounts of defalcation of money is not a material fact for determination of the present case since the law point involved in this case is covered by an order passed in review application in the Full Bench decision of this Court in LPA No. 113 of 2012, Punjab State Civil Supplies Corporation Limited and others vs. Pyare Lal rendered on August 11, 2014. It transpires that the Full Bench while deciding the main case overlooked Rule 8.21(aa) of the Punjab Civil

Service Rules, Volume 1, Part I, Chapter VIII which was adopted by PUNSUP. This provision authorised employer to withhold the monetary value of leave encashment in cases of employees causing financial loss. The error which occurred in deciding the Full Bench was corrected by the Full Bench itself in the aforesaid Letters Patent Appeal by review application. The Full Bench considered the provisions of the rules in Rule 8.21(aa) and the provisions of law contained in Rule 2.2 and 9.9 of the Punjab Civil Service Rules, Volume II which permitted withholding of gratuity which is a one-time right to money maturing and payable on the date of retirement. The Full Bench concluded while reviewing its earlier judgment that the right to withhold leave encashment is part of the framework of statutory Rules and satisfies the test identified in State of Jharkhand vs. Jitendra Kumar Srivastava, (2013) 12 SCC 210. Money representing leave encashment is capable of being withheld for offsetting loss of money caused by employee to the coffer which is larger than sum due.

In view of the declaration of law, the impugned orders passed by the Labour Court under Section 33C (2) of the Industrial Disputes Act, 1947 granting relief of payment of leave encashment have deservedly to be set aside as illegal and non est. It is ordered accordingly.

This order will, however, remain subject to finalization of the departmental proceedings against the respondent and the criminal trial, as the case may be, and appellant PUNSUP would be at liberty to act in accordance with law as per the rules of service after recording in conclusion of those proceedings that gives rise to entitlement and right to claim money becoming due and payable to owner, and to what effect.

The petition is for the reasons recorded above allowed subject to the directions as have been issued above to serve the ends of justice.

(RAJIV NARAIN RAINA)
JUDGE

02.05.2017
neeraj

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>