

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 210

Civil Writ Petition No.3795 of 2013 (O & M)
Date of Decision: October 09, 2017

Jagdish Chander Madhok & others

..... PETITIONERS

VERSUS

State of Haryana & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. Ram Niwas Sharma, Advocate, for the petitioners.

Mr. C.S. Bakshi, Additional Advocate General, Haryana.

Mr. A.S. Virk, Advocate, for respondent Nos.4, 11 and 12.

Mr. S.K. Rana, Advocate, for respondent No.7.

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Jaspal Singh, J

1. The petitioners (71 in number) have preferred the instant civil writ petition under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of Mandamus, directing the respondents to make the payment of Earned Leave credited in their accounts on the dates of their respective superannuation alongwith interest @ 18% per annum as the same has been granted vide High

Court judgments dated November 17, 2010 (Annexure P-4) in CWP No.14507 of 2010, '**T.C. Dogra and others vs. State of Haryana and others**' and December 03, 2012 (Annexure P-7) in CWP No.11373 of 2003, '**Chanda Singh Pehal vs. State of Haryana and others**' and other connected cases.

2. The petitioners have averred that they have retired on superannuation from the posts of Teachers/ Masters/ Mistress/ Lecturers/ Principals/ Clerks/ Chowkidar/ Sweepers from recognized Government Aided Schools against the sanctioned aided posts. They were paid pension and gratuity. They requested the respondents – Management for payment of Earned Leave credited in their accounts as the same is being paid to teachers retired from Government Schools, but their requests have been turned down on the ground that same is not admissible to them. However, as Haryana Aided School (Special Pension and Contributory Provident Fund) Rules, 2001, employees on retirement have been allowed Pension (superannuation pension/ invalid pension/ compensation pension/ voluntary retirement pension/ compulsory retirement pension), Death -cum- Retirement Gratuity, Service Gratuity, Family Pension, who had worked against aided sanctioned posts. Services of the petitioners were governed by the Haryana Aided School (Security of Service) Act, 1971, repealed by Haryana Education Act, 1995. For security of services of the employees working in government aided school(s), The Haryana Aided School (Security of Service) Rules, 1974 were framed whereunder employees of Haryana Government aided schools have been allowed

the Leaves as per applicable from time to time to their counterparts in government service. The Haryana Aided Schools (Security of Services) Rules, 1974 were repealed and State Government notified Haryana School Education Rules, 2003 (for short, 'Rules, 2003'). Section 91 of Rules, 2003 deals with the grant of Leave to the employees of aided schools. Though Education Department, Haryana is a vocational department, however, vide Government Instructions dated April 09, 1987 (Annexure P-2) issued by the Finance Department, Haryana, employees working in vocational department were allowed 10 days' Earned Leave in lieu of 20 days' half pay leave.

3. Heard.

4. The sole point involved in this petition is to grant of amount on account of leave encashment. By now, it is settled that petitioners being employees of respondent Nos.4 to 14 – aided schools are entitled to Leave Encashment. Reference can be had of the judgment of Hon'ble Apex Court in Civil Appeal No. 9166 of 2003, titled as **State of Rajasthan and another Versus S.R. Hr. Sec. School Lachhmangarh and others**, decided on 15.9.2004 as well as judgment of this Court captioned as '**Hoshiar Singh & others vs. The Secretary, Department of Education, Chandigarh Administration, Mini Secretariat, Sector-9, Chandigarh and others**'. Similar view has been taken by this Court in the cases of **T.C. Dogra (supra)** and **Chanda Singh Pehal (Supra)**.

5. Now the question arises as to who shall be liable to make the payment of leave encashment accrued to the petitioner and

the answer to this question is clear from the settled proposition of law as well as Rule 91 of Haryana School Education Rules 2003 which reads as under:-

91. (5) The benefit of leave encashment, facilities of leave travel concession, bonus and medical reimbursement etc. shall be at the discretion of the managing committee. No grant-in-aid on this account shall be reimbursed by the Department.

6. Moreover, such a matter also came up for hearing before Division Bench of this Court in case of **Arya College, Rishi Dayanand Marg, Civil Lines, Ludhiana & another vs. State of Punjab & others**, LPA No.920 of 2012, decided on October 01, 2012, wherein it was observed that it would be the discretion of School to pay leave encashment in terms of Rule 91(5) of the Rules. Since the leave encashment is part of salary, therefore, petitioners are held entitled to leave encashment.

7. The Management – respondent Nos.4 to 12 shall make the payment of the amount accrued to the petitioners on account of leave encashment within a period of three months from the date of receipt of certified copy of this judgment, failing which, they shall be liable to pay interest @ 12% per annum from the date of filing of instant petition.

8. Disposed of accordingly.

October 09, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No