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

CWP-5773-2015

Date of Decision :28.02.2017

OM PARKASH

.....Petitioner

Versus

STATE OF HARYANA AND ORS

.....Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. S.N.Pillania, Advocate
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

KULDIP SINGH, J. (ORAL)

The petitioner was previously working with the Haryana State Federation of Consumers' Cooperative Wholesale Stores Limited (for short “Confed”) and was retrenched from the service. Later on he was given fresh appointment as a Clerk in State Consumer Disputes Redressal Commission, Haryana vide appointment letter dated 27.10.2006 (Annexure P-1). It was stipulated in Clause 2, that it is a fresh appointment and that the petitioner will be entitled to draw minimum pay of the post being offered and he will not claim any benefit of past service, for the period prior to retrenchment, as per the declaration oath or for the period he remained out of service as a result of retrenchment in any manner. The petitioner retired from the service of (Consumer Commission) on 30.11.2012.

The petitioner is aggrieved by the order dated 19.09.2014 (Annexure P-7), vide which the leave encashment of 91 days was denied to him on the ground that he has already availed leave encashment equal to 300 days from the previous employer. The petitioner seeks the quashing of

order Annexure P-7 and release of leave encashment of 91 days unutilized Earned Leave.

In the written statement plea is taken that petitioner has already been granted leave encashment of 300 days from his parent Department vide order No.Estt/EA/20069-72 dated 01.02.2001.

On receipt of application dated 04.10.2013 (Annexure R-3) of the petitioner for encashment of unutilized Earned leave, a letter dated 27.01.2014 (Annexure R-4) was written to the parent Department of the petitioner. In reply to the said letter the parent Department vide letter dated 25.02.2014(Annexure R-1) has intimated that the leave encashment of 300 days amounting to ₹63450/- has already paid to the petitioner by the parent Department. The maximum limit for leave encashment of unutilized Earned Leave is of 300 days. Therefore, the impugned order was correctly passed.

I have heard learned counsel for the parties and have also gone through the file very carefully.

The letter dated 27.01.2014 (Annexure R-4) issued by the State Consumer Dispute Redressal Commission to Confed dated 27.01.2014 shows that information was sought from the Confed regarding grant of leave encashment to the petitioner. It is the stand of the respondent that reply was received from Confed on 25.01.2014, that the leave encashment of 300 days amounting to ₹63450/- has already been paid to the petitioner. It goes to show that the leave encashment of 91 days is denied to the petitioner on account of the fact that he has already received 300 days leave encashment from his previous Department (Confed). It is also the stand of the respondent that under the Government instructions maximum 300 days unutilized Earned leave can be encashed.

I am of the view that the stand of the respondent is not tenable. The appointment letter Annexure P-1 shows that it was a fresh appointment with a stipulation that the benefit of past service rendered by the petitioner shall not be claimed by him, which means that the past service of the petitioner will not be considered for any purpose whatsoever and he was to get the minimum pay of the post being offered to him.

It is not the case of the respondent that the petitioner on retrenchment from Confed was absorbed with the Consumer Commission and that his past service was considered for all intent and purposes including the grant of pensionary benefits and therefore, the leave encashment granted to him by Confed is to be considered while releasing leave encashment by the Consumer Commission also. Therefore, the services of the petitioner with the Consumer Commission was a fresh service and the Consumer Commission could not rely upon the earlier payment of leave encashment made to the petitioner, so as to deny the encashment of 91 days Earned Leave which he has earned while working with the Consumer Commission. Even the stand of the respondent that entire 300 days leave encashment was paid to the petitioner by Confed is factually incorrect. It also goes to show that when the petitioner was retrenched from Confed a litigation broke out between the employee and the employer regarding the payment of retrenchment compensation which ended up in the Apex Court, which passed the judgment Annexure P-13, whereby the retrenchment compensation was ordered to be paid, while relying upon Rule 35(b). Under the Rules of the Confed, only one month retrenchment compensation was payable for each year of service and thus leave encashment was paid for one month only. Under the said Rule the

accumulated leave of maximum one month could be encashed. The copy of the order dt. 23.08.2010 (Annexure P-2) shows that Confed while releasing the retrenchment compensation, also release the leave encashment for one month and the leave encashment of 300 days already released to the petitioner was adjusted in the retrenchment compensation and the balance of retrenchment compensation and encashment of one month Earned Leave was released to him.

In this way, it is factually incorrect that the petitioner was in fact paid 300 days leave encashment by Confed. In fact the order dated 23.08.2010 (Annexure P-2) makes it clear that only one month Earned Leave was encashed by Confed. It being so the impugned order dated 19.09.2014 (Annexure P-7) is found to be illegal and hereby quashed. The respondents are ordered to release 91 days leave encashment to the petitioner along with interest @ 9% per annum starting from the date the leave encashment became due, till the payment.

(KULDIP SINGH)
JUDGE

February 28, 2017

Sunil Devi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No