IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.1037 of 2015 (O&M)
Date of Decision: March 21, 2017

Ramvir Sharma and others ......Appellants

versus

State of Haryana and others .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

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Present: Mr.Anand Bhardwaj, Advocate, for the appellants.
Mr.Deepak Balyan, Additional AG,Haryana.
Mr.Sharad Aggarwal, Advocate, for respondent Nos.4 &5.

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Surya Kant, J. (Oral)

The instant letters patent appeal assails the order dated 02.09.2014 passed by the learned Single Judge to the extent the claim of appellants for grant of benefit of 'leave encashment' has been turned down.

[2] The appellants joined the Aggarwal Senior Secondary School, Ballabhgarh, District Faridabad on teaching/clerical posts on different dates. The above-stated School is a Privately Managed Government Aided School and receives 95% grant-in-aid from the State of Haryana. The appellants were admittedly appointed against the posts duly sanctioned under the grant-in-aid Scheme. All of them have now retired from service. They claimed the benefit of 'leave encashment' on retirement which was not accepted. They approached this Court by way of a writ petition seeking not only the benefit of 'leave encashment' but also for counting of their service rendered during probation towards 'qualifying service' for pension. Learned Single Judge vide the order under appeal has turned down the first claim though has granted the second.

[3] In this view of the matter, the short question which falls for consideration is whether the appellants are entitled to the benefit of leave encashment?

[4] It is an admitted fact that the service conditions of the appellants were regulated under the Haryana School Education Rules, 2003 which have been formulated by the State Government in exercise of its powers conferred under Section 24 (1) and (2) of the Haryana School Education Act, 1995. Rule 91 of these Rules, being relevant to the point in issue, is reproduced below:-

> "...91. (1) The employees shall be entitled casual leave as under:-
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> | | | |
> |---|---|---|
> | (a) | Upto ten years service | 10 days |
> | (b) | Ten to twenty years service | 15 days |
> | (c) | Above twenty years service | 20 days |
> | (d) | All female employees | 20 days |
>
> (2) The head of School shall be competent to grant casual leave to the employees and in the case of head of the School, Managing Committee.
>
> (3) <u>The employees (teaching) shall also be entitled to ten days earned leave in lieu of half pay leave on completion of one year.</u>
>
> (4) <u>The employees (non-teaching) shall be entitled to earned leave as under</u>:-
>
> | | | |
> |---|---|---|
> | (i) | Upto the service of ten years | @1/24 days |
> | (ii) | Above ten years upto twenty years of service. | @ 1/18 days |
> | (iii) | Above twenty years of service | @1/12 days |
>
> These employees shall also be entitled to twenty half pay leave on completion of one year.
>
> (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) The competent authority to sanction the leave other than casual leave shall be as under:-

(i)	Upto 30 days in case of employees	Head of the School
(ii)	Beyond 30 days upto any extent.	Managing Committee
(iii)	In case of head of the School.	Managing Committee

(7) Application shall be sent to the managing committee by the head of the school with his remarks regarding the admissibility thereof and if the remarks shall be required.

(8) The maternity leave and miscarriage leave shall also be available to the female employees as per instructions issued by the Government from time to time...."

(emphasis by us)

[5] It may be seen from the above-reproduced Rule that the teaching employees are entitled to 10 days' earned leave in lieu of 1/2 pay leave on completion of one year under sub-rule (3). Similarly, non-teaching staff is entitled to earned leave in terms of sub-rule (4). Sub-rule (5) further provides that "**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 to this account shall be reimbursed by the Department**".

[6] Learned Single Judge has viewed that since there is discretion vested in the Managing Committee to grant or not to grant the benefit of leave encashment, the appellants cannot claim such benefit as a matter of right.

[7] Learned counsel for the appellants, on the other hand, relies

upon the decision dated 30.01.2013 rendered by a Coordinate Bench in LPA No.908 of 2012 (State of Haryana and others vs. Ram Kumar Shastri and another) which deals with the identical claim of 'leave encashment' of teachers who retired from Government Aided Privately Managed Schools. This Court by way of a self-speaking order upheld the claim in the following terms:-

> "...... The respondent herein, in the writ petition filed by him had impleaded the State of Haryana (appellant herein as respondent No.1) and S.D.High School, Jind as respondent No.4. Thus, insofar as respondent No.1 is concerned, it is not supposed to make any reimbursement on account of claim of leave encashment. Liability in that behalf shall be of the School.
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> Insofar as the School/Managing Committee is concerned, it is liable to make payment to the respondents. The case in this behalf would be governed by the orders contained in Memo bearing F.D.Hr.No.11/30/87-IFR-II dated 09.04.1987, which pertains to grant of earned leave to the teachers of the private aided/unaided institutions. It, inter-alia, provides that the teachers of these schools also shall be permitted 10 days earned leave on full pay during the year in lieu of 20 days half pay leave which was prevalent prior to the issuance of these instructions. It also provides that encashment would be admissible to teachers suo motu as to other government servants subject to the fulfillment of the prescribed conditions.
>
> Insofar as the appeal of the State is concerned, same is allowed holding that government is not liable to pay any amount on account of encashment of leave to the respondent-teachers. However, the payment would be made by the S.D.High School, Jind where the respondent was employed...."

[8] On a plain reading of the complete citations, it is revealed that Rule 91(5) was explicitly noted and thereafter only the claim was accepted with a direction to the School to grant the benefit of 'leave encashment' without seeking any reimbursement from the State Government.

[9] Learned counsel for the respondent-Management has made an effort to distinguish the cited judgment on the plea that this Court had relied upon a decision of the Hon'ble Supreme Court in **State of Rajasthan and another versus Senior Higher Secondary School, Lachhmangarh and others, 2005 (10) SCC 346,** where there was no embargo against the grant of such claim. On the other hand, in the instant case, Rule 91(5) leaves it to the discretion of the Management, hence, the appellants cannot claim the benefit of leave encashment as an enforceable right.

[10] We have given our thoughtful consideration to the rival contentions and are of the considered view that there is no valid ground for us to deviate from the view taken by this Court in Ram Kumar Shastri's case (supra). It is pertinent to mention here that the decision in Ram Kumar Shastri's case (supra) was not challenged before the superior forum and it has attained finality. Rule 91(5) relied upon by learned counsel for the Management was specifically noticed by this Court in the cited decision. That apart, we find that the teaching and non-teaching employees have been statutorily held entitled to the benefit of earned leave under sub-rule(3) and sub-rule(4) of Rule 91 (ibid). Sub-rule (5) has to be, therefore, read in conjunction with these sub-rules and upon its harmonious interpretation, sub-rule (5) has to be construed to mean that while leave travel concession, bonus and medical reimbursement etc. shall be totally at the discretion of the Management, the benefit of 'leave encashment' to the extent it is

statutorily admissible under sub-rule (3) and sub-rule (4), has to be granted to the teaching and non-teaching employees. The discretion in the matter of 'leave encashment' thus stands restricted only to the extent that the benefit of leave encashment beyond the minimum period of 'earned leave' mentioned under sub-rule (3) and sub-rule (4) (ibid) shall be the discretion of the Management.

[11] In the light of the above discussion, the appeal is allowed; order passed by the learned Single Judge to the extent it has declined the benefit of leave encashment is set-aside and the appellants are held entitled to the benefit of leave encashment which shall be paid by the Management of the School without claiming any reimbursement from the State Government under the grant-in-aid Scheme. The arrears of leave encashment shall be paid within a period of two months from the date of receiving a certified copy of this order, failing which the appellants shall be entitled to interest @7% per annum.

[SURYA KANT]
JUDGE

March 21, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No