IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

LPA No.1177 of 2016 (O&M)

Date of Decision:- 19.04.2017

Harjit Singh ...Appellant

VERSUS

State of Punjab & Ors.
....Respondents

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

Present:- Mr. R.D.Anand, Advocate for the Appellant.

Mr. Amrit Paul, Advocate for Respondent No.3.

Ms. Madhu Dayal, Advocate for Respondent Nos.4 and 5.

SUDIP AHLUWALIA, J.

This Letters Patent Appeal is directed against the Judgment passed by the Ld. Single Judge in CWP No.20658 of 2015.

2) The Appellant had filed the Writ Petition for enforcing the payment of the arrears of his salary in the Revised Pay Scales, the arrears towards Employer's Contribution to CPF out of the enhanced salary due to revision of Pay Scales with effect from 01.01.2006, the balance amount of Gratuity payable, and the Leave Encashment on the basis of the Revised Pay Scales alongwith interest. He had retired as Non-Teaching Staff/Office Superintendent in the Respondent/College (Sant Baba Dalip Singh Memorial Khalsa College, Village Domeli, Tehsil Phagwara, District Kapurthala) in 2011. He was paid some of the Terminal

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benefits. However, due to revision of pay, he became entitled to arrears. Some of those were disbursed by the College only on 10.05.2016 after certain funds were received by it on 22.04.2016 i.e. during the pendency of the Writ Petition. Vide the impugned Judgment, Ld. Single Judge after hearing the parties was pleased to grant payment of interest on the late payment of the Appellant's arrears post revision and the Gratuity, but dismissed his claim in respect of Leave Encashment. Being aggrieved by such denial of Leave Encashment, he has filed this Appeal.

3) We may now advert to the reasoning of the Ld. Single Judge in rejecting the Appellant's claim for Leave Encashment, which is contained in Para 13 of the impugned Judgment, and is set out as below -

> *"Mr. Anand has not produced on record any rules of the 4th and 5th respondents from where he can claim as a matter of right leave encashment. Encashment of leave is not a fundamental right and is only a civil right governed by deeds and documents, rules and regulations and the constitution of private society running a college either with or without grant-in-aid. If rule does not permit there can be no enforceable right to leave encashment. The relationship between the petitioner and college is contractual in nature by way of personal service and a claim for leave encashment cannot be enforced as an actionable right against the respondents without legal foundation."*

4) It has been contended before us on behalf of the Appellant that such denial was not in accordance with the Standing Instructions of the State Government and that the Respondent/College which though privately managed nevertheless receives Grant-in-aid from the State on account of which, it is under obligation to follow the relevant Instructions issued by the State Government in this regard. To this end, our attention has been drawn to the Letter No.14/65/88-

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6Ed. I/7539 Dated Chandigarh the 12.07.88 (Annexure P-5) from Government of Punjab, Department of Education (Education-I Branch) to the DPI, Chandigarh, in which it has been mentioned -

> *"Subject: Regarding treatment of Dearness Allowance and adhoc dearness allowance as dearness pay to the non-teaching staff of the Govt. aided private Colleges.*
>
> ....
>
> *Reference your letter no.3/144/88-Gr.I(5) dated 25.3.88 on the subject cited above.*
>
> *The Govt. observes that since the non-teaching staff of the Govt. aided Private Colleges have been equated with the non-teaching staff of the Govt. Colleges in the matter of scales of pay as such the provision of notification issued vide letter no.2/90/87-3FPI/2219 dated 24th February, 1988 by the Department of Finance will also be applicable to the non-teaching staff of the privately managed aided colleges."* *(Emphasis Added)*

5) Ld. counsel appearing for the University has submitted before us that neither the University is liable to make any payment to the Appellant, who was an employee of the Respondent/College represented by Respondent Nos.4 and 5, nor the University opposes the Appellant's claim which is actually in accordance with the aforesaid Instructions of the State Govt. Ld. counsel appearing for Respondent Nos.4 and 5 however, urged before us that the aforesaid Letter (Annexure P-5) only covers the entitlement of 'Dearness Allowance and Adhoc Dearness Pay' to the Non-teaching Staff of the Government Aided Private Colleges. According to her, 'Leave Encashment' is therefore, outside the ambit of this Letter of Instructions, since it cannot be described as 'Dearness Allowance/Dearness Pay'. This submission is however, found to be untenable in view of the Gazette Notification No.2/90/87-3FPI/2219 dated 24.2.1988 (Annexure P-6) issued by the

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Department of Finance, Govt. of Punjab. In Clause 4 of which, it has been categorically mentioned -

> *"4. Treatment of Dearness Allowance and Adhoc Dearness Allowance as Dearness Pay:- With effect from the appointed day, the Dearness Allowances and the Adhoc Dearness Allowance admissible from time to time up to consumer price index 608 in terms of the orders in force in this behalf from the first day of January, 1986, to the employees of the Government of Punjab to whom these rules apply, shall be treated as dearness pay for the following purposes namely :-*
>
> *i. to vi.............*
>
> *vii. Encashment of leave at the time of retirement in terms of the provision of Rules 8.21 of the Punjab Civil Services Rules, Vol. I, part I."*

6) In this view of the matter, we have no hesitation in concluding that the view taken by the Ld. Single Judge to the effect that the Appellant/Writ Petitioner being a Non-teaching Staff in a privately managed College was altogether not entitled to encashment of leave was erroneous. We say so for the reason that apart from the aforesaid Instructions and Notification already referred to Annexures P-5 and P-6, even in the impugned Judgment, the Ld. Single Judge had, while holding the Respondent/College liable to pay the interest arrears, referred to the ruling of the Supreme Court in *'Shri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Samarak Trust v.V.R.Rudani and others'* *AIR 1989 SC 1607*, in which it was held that a privately managed Government Aided College has to pay up the dues of its staff upfront and then claim the same from grant-in-aid if law allows. We therefore, find no reason to

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hold that Respondent Nos.4 and 5 representing the College were obligated to similarly pay up the Leave Encashment due towards the Appellant when according to the Government Notification (Annexure P-6), it squarely forms a part of 'Dearness Allowance'.

7) For the aforesaid reasons, the Appeal is allowed and the Impugned Judgment is modified to the extent that Respondent Nos.4 and 5 are found liable to pay the admissible Leave Encashment to the Appellant alongwith interest at the rate of 6% per annum from the date of filing of the Writ Petition within a period of three months, failing which the rate of interest shall be enhanced to 10% per annum till the date of actual payment.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

19.04.2017
AS

Whether speaking/reasoned : Yes

Whether Reportable : Yes

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