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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1390 of 2015
Date of Decision : October 04, 2018

The Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and another

....Petitioners.

Versus

Inder Pal Johar and another

....Respondents.

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CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by: Mr. Aman Chaudhary, Advocate, and
Mr. R.S. Dadwal, Advocate, for the petitioners.

Respondents exparte vide order dated 23.07.2015.

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Shekher Dhawan, J.

Petitioner - Punjab State Civil Supplies Corporation Ltd. (for short, '**the petitioner-Corporation**') has filed the present writ petition under Articles 226/227 of the Constitution of India challenging order dated 21.03.2014 (Annexure-P/4) passed by Presiding Officer, Industrial Tribunal, Bathinda (for short, 'the Tribunal'), whereby application under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short, "the Act") was allowed and applicant-workman, Inder Pal Johar (respondent No.1 herein) was held entitled to receive the benefit of leave encashment as per record subject to departmental calculations.

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2. Facts relevant for the purpose of decision of the present writ petition; that respondent No.1-workman was working as Auditor and he retired on 31.8.2011. He filed an application under Section 33-C(2) of the Act for release of payment on account of leave encashment and GIS, which was alleged to be wrongly withheld by the petitioner – Management.

3. The petitioner-Corporation contested the said application by filing written reply taking legal objections that the respondent-workman had not disclosed correct facts before the Tribunal. In fact, he had embezzled huge amount and the petitioner-Corporation was entitled to recover the same from him. Departmental proceedings are pending against the workman and the competent authority passed the order that retiral benefits of the respondent are to be withheld under the rules and as such the present application does not fall under Section 33-C(2) of the Act.

4. The petitioner-Corporation has challenged the order passed by learned Tribunal mainly on the ground that departmental proceedings for embezzlement of huge amount are pending against respondent No.1 and as such, he is not entitled to the benefit of leave encashment. Reliance on this point was placed upon judgment from Hon`ble Full Bench of this Court dated 11.08.2014 in **Punjab State Civil Supplies Corporation Ltd. Vs. Pyare Lal** **2015(1) PLR 617.** Learned Tribunal has not considered the above facts and the view taken by Hon`ble Full Bench of this Court and pronounced the award, which is liable to be set-aside.

5. Notice was issued to respondent no.1, but no body put-in appearance on his behalf.

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6. Learned counsel for the petitioner submitted that the matter in controversy, which involves payment on account of leave encashment on retirement of an employee is covered as per judgment of Hon`ble Full Bench of this Court in **Pyare Lal's case (supra).** While discussing the scope of Rule 8.21(aa) of the Punjab Civil Services Rules, Volume I, Part – I, Chapter-VIII (for short, "the Rules"), inserted on 11.02.1987 Hon`ble Apex Court observed that from leave encashment, recovery can be effected. For ready reference, Rule 8.21(aa) of the Rules is extracted here under:-

> "8.21(a) Leave at the credit of a Government employee in his leave account shall lapse on the date of his retirement:
>
> Provided that the Government employee;-
>
> xxx xxx xxx
>
> (aa) Notwithstanding anything contained in sub-rule (a) the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him and on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

7. Having considered the submissions made by learned counsel for the petitioner-Corporation, appraisal of the record and the view taken

by Hon`ble Full Bench of this Court in **Pyare Lal's case (supra)**, this Court is of the considered view that the matter was before Hon`ble Full Bench of this Court regarding review of earlier judgment dated 9.11.2012 passed in LPA No. 113 of 2012 on the ground that Rule 8.21(aa) of the Rules, adopted by the petitioner-Corporation, which provides for withholding the amount of leave encashment, but such a rule was not brought to the notice of the Court and considering the aforesaid facts, the order dated 9.11.2012 was reviewed on 11.8.2014. The matter was accordingly ordered to be placed for hearing before Hon`ble Full Bench and while relying on the principle of law laid down in **State of Jharkhand Vs. Jitendra Kumar Srivastava, (2103) 12 SCC 210**, the Hon`ble Full Bench held that withholding of other retiral benefits would be subject matter of applicable rules, if any. Since, in the present case, Rule 8.21(aa) of the Rules provides for withholding of leave encashment, the same cannot be released to respondent No.1 because the same could be recoverable. Learned Tribunal has completely ignored this fact.

8. Resultantly, the present writ petition is accepted and the order dated 21.03.2014 (Annexure-P/4) passed by learned Tribunal stands set-aside.

(SHEKHER DHAWAN)
JUDGE

October 04, 2018.
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Whether speaking/reasoned? : Yes
Whether reportable? : Yes