

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

CWP No.27383 of 2013 (O&M)

Date of Decision : 19.11.2018

Dhir Chand

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. G.S. Wasu, Addl. A.G. Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. Heard counsel for the parties on the issue of leave encashment following the petitioner's dismissal from service upon conviction by the trial court on a criminal charge of corruption with sentence to serve imprisonment. Also perused the file.

2. The right to cash value of leave encashment partakes of the character of salary as it is paid in lieu of unutilized leave or earned leave due to an employee every year of service for leave foregone and unspent. It is payable on cessation from service and the sum is exempt from tax. The benefit is a privilege given to encourage employees to desist from truancy. It carries a ceiling of 300 days at the rate of last drawn salary. Once it is part of salary, it cannot be legally withheld except in accordance with rules made in this behalf. Rule 2.5 of the Punjab Civil Services Rules, Volume II, relied

upon by the police department to deny benefit of leave encashment to the petitioner does not apply to the facts of this case. Rule 2.5 covers cases of pension and reads as follows:-

“No pension may be granted to a govt. employee dismissed or removed for misconduct, insolvency or inefficiency, but to government employee so dismissed or removed, compassionate allowance may be granted when they are deserving of special consideration. Provided that the allowances granted to any government employee shall not exceed two-third of the pension, which would have been admissible to him if he had retired on medical certificate.”

3. No other provision of law has been brought to the notice of this court by which leave encashment can be denied to a dismissed employee even if he is convicted under Section 13 of the Prevention of Corruption Act, 1988. I am told that an appeal against conviction is pending in this court but that is of no grave concern in the present service matter where the only subsisting claim, as noticed in the interim order dated 12.12.2013, is for cash value of Leave Encashment on the day when the employer-employee relationship snaps.

4. The legal position regarding leave encashment has been subject matter of attention of the Full Bench decision of this Court in case titled ***Punjab State Civil Supplies Corporation Ltd. & others Vs. Pyare Lal***, 2014(4) SCT 711. The Court specifically dealt with the issue of leave encashment in the background of criminal and disciplinary proceedings. Agreeing with the opinions expressed by the Allahabad and Jharkhand High Courts in their Full Bench decisions in cause titled ***Bengali Babu Misra Vs. State of U.P. & others*** reported as 2003 3 AWC 1760 and MANU/UP/1042/2002 decided on 05.12.2002 and ***Dr. Dudh Nath Pandey***

Vs. The State of Jharkhand & others, 2009 (2) SLJ 105 both the Courts were of one mind in holding that leave encashment is a right in property, withholding of which, in the absence of statutory rule would mean depriving a person from his property without the procedure established by law. The action would be rendered in violation of Article 300-A of the Constitution of India. The result of dismissal would be only deprivation of pension and gratuity. But this is not true of leave encashment as it is part and parcel of salary.

5. The Full Bench in ***Pyare Lal*** case ruled that leave encashment is payable to a retiring employee notwithstanding pendency of departmental inquiry or criminal proceedings. The only distinction in this case is that it is not one of a retiring employee as this is a case of dismissal from service. However, this difference, to my mind, will not tilt the balance in favour of the State as still the settled legal position remains that leave encashment is part of salary and salary, like credit in General Provident Fund account of an employee, cannot be withheld in the event of dismissal because it represents money saved/earned for unutilized leave as a matter of right for work performed and duties discharged while in service.

6. For the reasons as have been stated above, I find substantial merit in this petition and would consider accepting it. The impugned order to the extent it deprives the petitioner of his leave encashment dues is held to illegal, arbitrary and without authority of law and is thus quashed.

7. What remains to be considered is the question of payment of interest on the outstanding dues of leave encashment. If there is no provision of law which may deprive person of leave encashment lying in his credit for unutilized leave, then this benefit should have been paid to the

petitioner at the time of dismissal as a matter of right. If it remains unpaid, then Mr. Bhardwaj may not be wrong in insisting that the principal amount of leave encashment should carry interest at such rate as is deemed fit by the Court. The rate of interest would depend upon the nature of infraction of the petitioner's right to money and if it has been withheld without just cause or legal justification then interest should follow at the rate payable on fixed deposits in nationalized banks which would be the appropriate rate of interest enforceable to compensate the petitioner of his deprivation of money lying used in the pocket of the State. I would, therefore, rule that the petitioner is entitled to simple interest @ 8% per annum from the date of dismissal in 2012 till payment.

8. As a last gesture, and on the request of Mr. Bhardwaj it is observed that in case the petitioner has any other valid and genuine grievance based on any pre-existing right while he was in service, he may lodge his representation, including for alleged unpaid salary for 12 days as prayed for in this petition; and, if he does appeal to the department, I have no reason to believe the authorities would not address the grievance in a just, fair and reasonable manner and upon doing so after notice and hearing offered to him convey the final decision to the petitioner as expeditiously as possible. Needless to say, if orders are adverse to his interest, the petitioner is free to seek legal redress.

9. Before parting with this order, I may add as a matter of caution that the service benefits, other than leave encashment and other entitlements which are not covered by this order, shall remain subject to the final outcome of the pending criminal appeal pending in this Court against the judgment and order of conviction and sentence handed down by the Special

Court.

10. Petition is hereby allowed in the above terms.

19.11.2018
pooja saini/Vimal

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>