

AFR

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 3158 of 2007

1. K.P. Tiwari S/o Shri S.L. Tiwari, aged about 66 years, Retired Additional Executive Engineer., R/o C-59, Agyeyanagar, Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Chhattisgarh State Power Distribution Company, through its Managing Director, Daganiya, Raipur, Dist. Raipur, Chhattisgarh
2. Senior Accounts Officer, C.G. State Power Distribution Company, Tifra, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner

Shri Vishnu Koshta & Shri N.P.
Koshta, Advocates

For Respondents

Shri Abhishek Sinha, Advocate

Hon'ble Shri Prashant Kumar Mishra, JOrder On Board7/11/2019

1. Short question arising for decision making in the present writ petition is -

Whether services rendered by a workcharged employee in the said capacity would make him entitle for leave encashment only for the reason that such period of service has been counted for calculation of qualifying service for grant of pension ?

2. Brief facts of the case, necessary for appreciating the issue, are that the petitioner was employed as contingency paid employee before being regularised in the service. On his retirement he was allowed all the pensionary benefits including leave encashment for the period during which he rendered services as a regular employee, however, leave encashment for the period during which he served in the contingency paid establishment was not allowed, therefore, he moved representation before the respondents, which has been turned down vide Annexure – P/1. The representation was decided by a reasoned order pursuant to the direction of this Court in WP No.1810 of 2002 directing the respondents to decide petitioner's grievance pertaining to the subject issue. The reason assigned for refusal to allow leave encashment for the period during which he has rendered service in the capacity of workcharged employee is that by virtue of circular dated 24-9-2003 (Annexure – R/1) the Board has not made applicable the benefit of encashment of earned leave to a member of workcharged employee.
3. Shri Koshta, learned counsel appearing for the petitioner, would harp on the decision rendered by the Division Bench of the High Court of Madhya Pradesh in *Madhya Pradesh State*

*Electricity Board and Another v T.N. Karunakaran*¹ and other connected matters, which, in turn, was based on the decision rendered by the Supreme Court in *Ram Kumar Agrawal v State of M.P. and Others*².

4. In substance Shri Koshta would argue that once the period rendered as contingency paid employee is counted for the purpose of qualifying service for pension it is deemed that such period is regularised for all purposes and, thus, the entire period of service rendered in the capacity of contingency paid employee would be treated to have been rendered as regular employee and leave encashment would automatically be admissible to the petitioner.
5. Shri Abhishek Sinha, learned counsel appearing for the respondents, *per contra*, would argue that leave encashment is never treated to be a part of pension or pensionary benefits. According to Shri Sinha, the legal position is settled that period rendered in the capacity of contingency paid employee would be counted for qualifying service for pension, however, the same does not apply for granting benefit of leave encashment. Learned counsel would next submit that Section 2 (1) (c) of the Chhattisgarh Civil Services (Leave) Rules,

¹ LPA No.233 of 2002 (decided on 12-5-2003)

² 1995 Supp (3) SCC 67

1977 (henceforth 'the Rules, 1977') expressly excludes applicability of the Rules to a member of contingency paid employee.

6. There is no dispute about factual position that petitioner has been granted benefit of pension and other pensionary benefits including leave encashment for the regular period of service. The petitioner claims leave encashment for the period during which he worked in the capacity of contingency paid employee.
7. In ***T.N. Karunakaran*** (supra) the High Court of Madhya Pradesh has held that the service rendered by an employee in the work charged establishment has to be counted for the purpose of calculating the qualifying service under Rule 42 (1)(a) of the Madhya Pradesh/Chhattisgarh Civil Services (Pension) Rules, 1976 (henceforth 'the Rules, 1976'), however, it nowhere holds that such service would also be counted for according benefit of leave encashment. Similarly, the Supreme Court in ***Ram Kumar Agrawal*** (supra) has not dealt with the issue of admissibility of leave encashment to a contingency paid employee.
8. Earned leave has been made admissible to a Government servant under Rule 25 of the Rules, 1977. The said provision

reads thus :

25. *Earned leave for Government servant serving in Departments other than vacation department.*--(1) (a) A Government servant who is serving in a Department other than vacation department shall be entitled to 30 days earned leave in every calendar year.

(b) The leave account of every Government servant shall be credited with earned leave in advance in two installments of 15 days each on 1st January and 1st July every year.

(c) The leave at the credit of a Government servant at a close of the previous half year shall be carried forward to the next half year subject to the condition that the leave so carried forward plus the credit for the half year do not exceed the maximum limit of 240 days.

(2) Subject to the provision of sub-rule (3) the maximum earned leave that may be granted at a time to a Government servant shall be 120 days.

(3) Earned leave may be granted to a Government servant exceeding a period of 120 days but not exceeding 180 days if the entire leave so granted or any portion thereof is spent outside India, Bangladesh, Burma, Ceylon, Bhutan, Nepal and Pakistan:

Provided that where earned leave exceeding a period of 120 days is granted under this sub-rule the period of such leave spent in

India shall not in the aggregate exceed the aforesaid limit of 120 days.

9. The above rule is applicable to the Government servants who are appointed to the civil services and posts in connection with the affairs of the State, however, it has not been made applicable to a person employed on workcharged establishment as provided under Section 2 (1) (c) of the Rules, 1977. The opening part of Rule 2 (1) clearly provides that the Rules will apply to regular member of service who is appointed to the civil services and posts meaning thereby that the Rules apply to a person who is holder of a civil post. There is no quarrel about the legal position that a daily wager or a work charged employee is not holder of a civil post. Thus, Rule 2 of the Rules, 1977 would not apply to any person employed on workcharged establishment and it only applies to a regular employee.
10. While rejecting the petitioner's representation there is reference of circular dated 24-9-2003 issued by the respondent Board. Copy of the said circular has been placed on record as Annexure – R/1. The same is quoted below for ready reference :

CHHATTISGARH STATE ELECTRICITY BOARD

NO.01-05/PD-V/4670 /Raipur dtd.24/09/03

CIRCULAR

Sub.- Counting service of work-charge period for the purpose of pensionary benefit.

A doubt has been raised whether the period of work-charge may also be counted for payment/encashment of earned leave to the retired employees. The matter has been examined and it is to clarify that as mentioned in this office Order No. 01-05/PD-V/1402 dated 1.5.2003, the work-charge period of the officer and employee is only counted for pensionary benefit i.e. for calculating the qualifying service for the purpose of pension/DCRG under Rule 42 (1) (a) of the Pension Rule 1976 applicable to Board's employees. It will not be applicable for encashment of Earned leave which is to be decided as per Leave Rules & Rules provided in this regard separately.

Sd/-

JOINT SECRETARY (P)-1
CSEB : RAIPUR

11. A plain reading of the circular would manifest that the period spent as workcharged employee or officer is only counted for pensionary benefit i.e. for calculating the qualifying service for the purpose of pension/DCRG under Rule 42 (1) (a) of the Pension Rule 1976 and is not made applicable for encashment

of Earned leave which is to be decided as per Leave Rules. Since Leave Rules would not apply to a person employed on work charged establishment, counting of such services for the purpose of according benefit of leave encashment would not arise.

12. At this juncture, Shri Koshta. learned counsel appearing for the petitioner, would refer to the decision rendered by the coordinate Bench of this Court in *Prem Das v State of Chhattisgarh & Others*³ wherein referring to an earlier decision rendered in *M.A. Hakim v State of Madhya Pradesh (now CG) & Others*⁴ it has been held that on absorption of temporary employee without interruption against any regular pensionable post, the service rendered w.e.f. 1-1-1974 onwards, if such service was rendered in a regular post shall be counted for qualifying service. Citing this Shri Koshta would argue that once the period rendered as contingency paid employee is taken to the permanent service for the purpose of counting of pension it remains a permanent service for all purposes.
13. A regular employee would be treated to be a regular employee from the date of holding the post in regular capacity.

³ WPS No.3140 of 2009 (decided on 25-3-2010)

⁴ WP No.4135 of 2004

Calculation of qualifying service for the purpose of pension, if regular service falls short of qualifying service or otherwise, would not make the period of contingency paid service for counting towards benefit of leave encashment, which is dealt with specifically under the Leave Rules. Even otherwise, if the contingency paid employee is not entitled to leave by making the Leave Rules inapplicable to them, he cannot be held entitled to earned leave for a leave for which he was never entitled.

14. For the reasons stated hereinabove, this Court is of the considered view that the respondents have not committed any error by rejecting the petitioner's grievance for grant of benefit of leave encashment for the service rendered by him in the capacity of contingency paid employee.
15. As a sequel, the writ petition, being bereft of merit, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3158 of 2007

K.P. Tiwari

Versus

Chhattisgarh State Power Distribution Company & Another

HEAD NOTE

A workcharged employee regularised subsequently is not entitled for leave encashment for the period rendered in the workcharged establishment.