

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9742 of 2019

Date of Decision:-21.08.2019.

Harbans Lal

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Maninder Singh Bajwa, Advocate and
Mr. J.S. Mehal, Advocate for for the petitioner.

Ms. Simran Grewal, AAG, Punjab.

Ms. Bhavana Datta, Advocate for respondent
Nos.2 and 3.

RAJIV NARAIN RAINA, J. (Oral)

1) The petitioner has filed this petition under Articles 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to release Leave Encashment as per settled law along with interest.

2) Brief facts of the case are that the petitioner is a dismissed employee of the District Court. He was caught taking bribe while posted as a Reader to a Court in the Sessions Division, Amritsar. He was convicted under the provisions of the Prevention of Corruption Act, 1988. Consequently, the petitioner was dismissed from service after issuing him a show cause notice. Service appeal of the petitioner against dismissal order was also dismissed on the administrative side. The petitioner also filed petition before this Court against his dismissal order but remained unsuccessful. He prays for payment of leave encashment on the basis of a judgment of this Court in '*Dhir Chand v. State of Haryana & others*' 2019 (1)

Court in case ***‘Punjab State Civil Supplies Corporation Ltd. & others vs. Pyare Lal’***, 2014(4) SCT 711 and two judgments of other High Courts, it was held that leave encashment cannot be legally withheld from a dismissed government employee except in accordance with rules made in this behalf. In para 5 it was held as under:-

“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.”

3. The decision rendered in Dhir Chand's case was authored by me and has been rendered per incuriam without noticing the many successive instructions issued by the Government. The subject matter is presently covered by the decision

of Brother Harsimran Singh Sethi, J, in ***‘Ram Kumar Ranga Vs. State of Haryana***

and others' (CWP-3843-2019 decided on 15.07.2019) in which the entire conspectus of instructions/clarifications/modifications of the State of Haryana issued from time to time on the point of leave encashment have been noticed and the legal principle culled out, exhaustively examined and an elaborate judgment rendered which I am full agreement with. Those instructions were not brought to my notice when the judgment was made in Dhir Chand.

4. Haryana Government instructions issued/modified from time to time clearly show that there is no rule or instructions which entitles an employee to leave encashment prior to his retirement and this benefit is only available at the time of retirement and not as and when the relationship of employee and employer comes to an end. In other words leave encashment is linked with retirement on superannuation or prematurely without any element of associated misconduct and dismissal from service by way of punishment.

5. Neither the entire instructions issued by the State of Haryana nor an order passed subsequently by the Full Bench on 11.08.2014 in Review Petition filed in Pyare Lal case itself was brought to my notice in Dhir Chand case (supra). While reviewing judgment dated 09.11.2012, the Full Bench held that the State is well within its right to withhold the grant of leave encashment during the pendency of departmental enquiry and criminal proceedings. The Full Bench held that the benefit of leave encashment cannot be extended under the Punjab Civil Services Rules if the proceedings are pending against an employee and only 100% provisional pension at the time of retirement is to be paid alongwith commutation of the pension.

6. In view of the above, on reading the judgment in Ram Kumar Ranga case (supra), I am convinced that I took an incorrect view in Dhir Chand case.

Therefore, Dhir Chand case and any other order/judgment passed by me in the same line are no longer good law.

7. Accordingly, there is neither merit nor any equity in the claim for payment of leave encashment by a dismissed employee in this petition and the same is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

August 21, 2019.
Sandeep

Whether speaking/reasoned:-	Yes
Whether Reportable:-	Yes