

CWP No. 21718 of 2016 and another connected case

1

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

(1)

**CWP No. 21718 of 2016
Date of Decision : 27.05.2019**

K.R. Bhardwaj and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(2)

CWP No. 23548 of 2016

Satya Babu Goel

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjit Singh Saini, Advocate for the petitioners.

Ms. Safia Gupta, A.A.G., Haryana.

Harsimran Singh Sethi, J.(Oral)

By this common order, two writ petitions, the details of which have been mentioned in the heading, are being decided as both the writ petitions involve same question of law and are on similar facts.

For the purpose of the present writ petition, the facts are being taken from CWP No. 21718 of 2016.

In the present writ petition, the petitioners, who were the

employees working in the Privately Managed Government Aided Schools are claiming the leave encashment on the same analogy as being given to the employees in the Government Schools.

Learned counsel for the petitioners relies upon the judgment passed by a Coordinate Bench of this Court in CWP No. 12179 of 2011, titled as ***Dr. K.L. Johar and others Vs. State of Haryana and others***, decided on 10.11.2016, to contend that the question of law, which has been raised in the present writ petition, has already been answered by the Coordinate Bench and the employees of the Government Aided Institutions, who are working on the Aided Post, have been held entitled for the grant of leave encashment. The relevant portion of the said judgment is as under:-

“I have heard learned counsel for the parties and have also carefully gone through the file.

The perusal of judgment of Dr.Karan Singh Rathee's case (supra) shows that in the said case, the dispute was whether the petitioners, who were Lecturers in All India Jat Heroe's Memorial College, Rohtak, which is privately managed government aided institution, are entitled to enhanced gratuity of Rs.3.5 lacs at par with their counter parts in the government colleges w.e.f. 1.1.1996 or a different date i.e. 11.5.1998 and also whether they are entitled to leave encashment? The matter was considered by this Court and this Court, while considering that the government has allowed enhanced gratuity of Rs.3.5 lacs to the Lecturers in the Government colleges w.e.f. 1.1.1996 and to the Lecturers working in the privately managed government aided colleges from 11.5.1998, took a view that there is no justification for fixing a different date for the Lecturers working in the government colleges and Lecturers working in the privately managed government aided colleges. Therefore, it was held that the Lecturers of privately managed Government-aided colleges are also entitled to

enhanced Rs.3.5 lacs gratuity w.e.f. 1.1.1996 and not from 11.5.1998.

So far as leave encashment was concerned, this Court relied upon the judgment passed in CWP No.14188 of 1999 and CWP No.3096 of 2001 and also relied upon the judgment of the Hon'ble Supreme Court in State of Rajasthan & another vs. S.R. Hr.Sec. School, Lachhmangarh and others (Civil Appeal No.9166 of 2003) and took a view that the same controversy has already been settled. Consequently, the following order was passed:-

“The present writ petition shall stand allowed accordingly. A writ of mandamus is issued directing the respondents to raise the limit of gratuity for employees of different privately managed Government-aided Colleges with effect from the very date it (enhancement) was ordered to be effective in the case of their counterparts functioning in Government Institutions. The petitioners shall also be entitled to leave encashment in terms of the adjudication rendered by this Court in Civil Writ Petition No.14188 of 1999 (Annexure P7) and Civil Writ Petition No.3096 of 2001 (Annexure P8). The respondent shall undertake the exercise of calculation in the relevant behalf and pay up the dues in entirety with interest @ 6% with effect from the date of filing of the petition till the payment thereof.”

It is not disputed that the appeal filed against the said judgment has been dismissed by a Division Bench of this Court and Hon'ble Supreme Court has refused to interfere in the same.

xxxx xxxx xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx xxxx xxxx

I am of the view that the argument can be set at rest by passing appropriate direction.

In view of what has been discussed above, impugned orders Annexures P3 and P4 are hereby quashed. The respondents are directed to release the gratuity to the petitioners w.e.f. 1.1.1996 @ Rs.3.5 lacs, in terms of judgment of Dr. Karan Singh Rathee's case (supra). Gratuity already paid to them shall be adjusted against the balance payment. Leave encashment shall also be paid in terms of judgment of Dr.Karan Singh Rathee's case (supra). The said benefit shall be available only to those petitioners who were working against the regular and aided posts. The petitioners shall also be entitled to interest. Since there is difference of six months only in filing the present petition and the earlier writ petition, therefore, all the petitioners shall be entitled to interest @ 6% per annum as granted in judgment of Dr.Karan Singh Rathee's case (supra) from 12.7.2011, the date when the present writ petition was filed.

Learned counsel for the respondents, on the other hand, states that the Government of Haryana has passed Instructions on 14.08.2018 keeping in view the order passed by this Court in CWP No. 12179 of 2011, whereby the Government of Haryana had decided to grant the benefit of leave encashment to the employees of the Government Aided Private Colleges at par with their counterparts working in the Government Colleges. The relevant portion of those Instructions is as under:-

*“Subject: Grant the benefit of Encashment of Earned Leave to Govt. Aided Private College employees at par with their counterpart working in Govt. Colleges.
Kindly refer to the above cited subject.*

Keeping in view the judgment of Hon'ble Punjab and Haryana High Court in CWP No. 12179 of 2011 dated 10.11.2016 the State Govt. has decided to grant the benefit of

encashment of earned leave to all Govt. Aided Private Colleges (Teaching and Non-Teaching) employees at par with their counterpart working in Govt. Colleges. The leave encashment benefit will be given on the basis of calculation of earned leave w.e.f. 09.04.1987 and as per Govt. instructions issued from time to time thereafter. The amount of leave encashment will be borne to the extent of 95% by State Govt. and 5% share shall be contributed by the management of College.

These instructions may kindly be brought to the notice of all concerned for strict compliance.

This is issued in concurrence with FD-II U O No. 60/22/2017-2FD-II/13332 dated 02.06.2018.”

Keeping in view the above Instructions issued, this Court has disposed of CWP No. 9252 of 2017, titled as ***Inder Singh Hooda and others Vs. State of Haryana and others***, on 24.01.2019 which reads as under:-

“Prayer made in this petition is for releasing the payment in respect of earned leave at the time of retirements of the petitioners, who are employees of the Aided Colleges.

Learned counsel for the respondents has placed on record a letter dated 14.8.2018 by which the Government of Haryana has decided to extend the benefit of grant of encashment of earned leave to the employees of the Government Aided Private Colleges at par with the counterparts working with the Government Colleges. Said leave encashment benefit is to be given in terms of calculation of earned leave w.e.f 09.04.1987 and as per Instructions issued in this respect from time to time thereafter. Further, the amount to be paid as leave encashment is to be shared in the ratio of 95% to be paid by the State Government and the remaining 5% by the concerned College.

In view of the above, present writ petitions have been rendered infructuous and are disposed of as such. It is

expected that the cases of all the petitioner(s) on the basis of orders being passed by the Government of Haryana in this regard, who have become entitled for grant of the benefit of leave encashment, will be processed expeditiously and the payment will be released within a period of four weeks from the receipt of certified copy of this order.

In case, the petitioners have any other grouse including grant of interest, they shall be at liberty to file appropriate representation with the respondents.

Learned counsel for the petitioners prays that the present writ petitions, whereby same questions are raised, be disposed of in terms of order passed in CWP No. 9252 of 2017, titled as ***Inder Singh Hooda and others Vs. State of Haryana and others***, dated 24.01.2019.

Learned counsel for the respondents after going through the orders, which have been reproduced hereinbefore, raises no objection and also states that the State Govt. will have no objection in case the present writ petitions are also disposed of in terms of order passed in CWP No. 9252 of 2017, titled as ***Inder Singh Hooda and others Vs. State of Haryana and others***, on 24.01.2019.

Keeping in view the above, both the writ petitions, which involve the same questions of law and the similar facts, are disposed of in terms of order passed in CWP No. 9252 of 2017, titled as ***Inder Singh Hooda and others Vs. State of Haryana and others***, dated 24.01.2019.

May 27, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*