IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20751 of 2019
DATE OF DECISION:28.08.2019

Gurdeep Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.K. Walia, Advocate
for the petitioner.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the claim which is being raised by the petitioner is that though the petitioner has been dismissed from service after being convicted by the competent court of law in respect of FIR No.65 dated 30.11.2010 vide order dated 04.03.2015 but he will be entitled for the grant of the benefit of leave encashment, which was available to the credit of the petitioner on the date when the petitioner was dismissed from service and hence a direction needs to be issued to the respondents to grant the said benefit to the petitioner.

Further claim of the petitioner is that even the General Provident Fund, which is lying with the respondents, has not been released so far despite the fact that the petitioner has made a representation on 20.03.2019 i.e. after a period of four years of his dismissal.

Though a prayer has been made for the release of the leave encashment but no Rule has been cited by the petitioner, which entitles a dismissed employee for the benefit of leave encashment. The only reliance being placed is on the judgment passed by a coordinate bench of this Court in **Dhir Chand Vs. State of Haryana and others**, CWP No.27383 of 2013(O&M) decided on 19.11.2018.

In order to appreciate the claim of the petitioner, who is a dismissed employee, for grant of leave encashment, the Rules governing the service in this regard are necessary to be noticed. The claim for the benefit of encashing the earned leave can be made by the petitioner only in case the Rules governing the service allow for the same. The relevant rule, which governs the service in respect of leave encashment is Rule 8.21. The same is reproduced herein for the ready reference:

> "*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, –*
>
> *(A) retiring on superannuation; or*
>
> *(B) retiring prematurely, voluntarily or on invalidation; or*
>
> *(C) retiring compulsorily as a measure of punishment and in whose case cut in the amount of pension has not been ordered by the competent authority;*
>
> *shall, subject to the provisions of sub-rule (c), be entitled to cash payment in lieu of the un-utilised earned leave due as leave preparatory to retirement as under :–*
>
> *(i) the cash payment shall be equivalent to leave salary limited to a maximum of 300 days" earned leave;*
>
> *(ii) the cash payment shall become payable on retirement in the above cases in lump sum as a one-time settlement;*

(iii) the leave salary for the purpose of this rule shall not include city compensatory allowance or house-rent allowance; and

(iv) no deduction on account of pension and pensionary benefit equivalent to other retirement benefits shall be made from the cash thus paid.

(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 shall become eligible to the amount so withheld after adjustment of Government dues, if any.

(b) In case of a Government employee, who is granted extension in Service, on the completion of his extended period of Service, shall be entitled to draw cash equivalent to un-utilized earned leave at his credit on the date of his superannuation:

Provided that a Government employee, who continues in Service after his superannuation, shall earn leave at the rate applicable to him on the date of his superannuation:

Provided further that if a Government employee, avails earned leave in excess 119 [Chap. VIII] LEAVE [8.21-8.22] of leave earned by him during the period of his extension, in that case the excess leave availed by him, shall be deducted from the un-utilized leave at his credit on the date of his superannuation.

(c) the cash payment for the unutilised leave admissible under the

aforesaid subrule (a), shall be calculated as follows, namely: –

$$\frac{\text{Pay admissible on the date of retirement plus Dearness Allowance admissible on that date.}}{30} \times \text{Number of days of unutilised earned leave at credit on the date of retirement subject to a maximum of 300 days.}$$

(d) Omitted.

Note 1.–In the case of the person re-employed after retirement the provisions of these rules shall apply as if he had entered Government service for the first time on the date of his re-employment.

Note 2. Omitted.

Note 3. Omitted.

Note 4.–The period of 300 days mentioned in this rule includes any period of vacation with which leave is combined.

Note 5.–Omitted.

Note 6.–In the case of a Government employee, who is serving in a vacation department, the provisions of rule 8.117 shall also apply for computing his leave under sub-rule (b), of this rule.

Note 7.–The authorities empowered to grant earned leave, as specified in Appendix-12 of Part II of this Volume, shall be competent to sanction cash equivalent of unutilized earned leave admissible under the provisions of this rule.

(c) Encashment of earned leave along with Leave Travel Concession while in service."

A bare perusal of the above Rule would show that the leave to the credit of government employee in his/her leave account shall lapse on the date of his/her retirement but an employee, who is retiring on attaining the age of superannuation or retiring prematurely, voluntarily or on invalidation or employee who has been compulsorily retired as a matter of punishment and in whose case, the cut in the amount of pension has not been ordered by the competent authority, will only be entitled for the encashment of the unutilised earned leave.

In the present case, the petitioner is not covered under any of the provisions of the Rule mentioned above as vide order dated 04.03.2015, petitioner was dismissed from service after being convicted by the competent court of law. No Rule has been cited by the learned counsel for the petitioner, which grants the benefit of leave encashment to a dismissed employee. In the absence of any Rule, which specifically grants benefit of leave encashment to a dismissed employee, no claim can be made by the petitioner. Therefore, under Rule 8.21, the case of the petitioner is not covered for the grant of leave encashment and, therefore, the same is liable to be rejected.

Further, the reliance is being placed by the learned counsel upon the order passed by this Court in CWP No.27383 of 2013 dated 19.11.2018 titled as **Dhir Chand Vs. State of Haryana and others**. Though in the said judgment, the learned Single Judge has allowed the benefit of leave encashment to a dismissed employee but the said benefit was extended on the ground that no Rule was brought to the notice of the Court that a dismissed employee is not entitled for the grant of leave encashment and further a coordinate bench in **Dhir Chand's case (supra)** relied upon the judgment of Full Bench in **Punjab State Civil Supplies Corporation Ltd. and others Vs. Pyare Lal**, 2013(1) PLR 36. The same question came up for consideration before this Court in CWP No.3843 of 2019, titled as **Ram Kumar Ranga Vs. State of Haryana and others**, decided on 15.07.2019. The relevant paras are reproduced as under:

> "A bare perusal of the facts recorded above clearly go to show that while deciding Dhir Chand's case (supra), the instructions regarding grant of leave encashment as well as review order dated 11.08.2014 passed by the Full Bench in Pyare Lal's case (supra) were not brought to the notice of the Court. Rather it can be said that this Court was misled in passing the order in Dhir Chand's case (supra) by not providing due assistance and concealing the instructions on the grant of leave encashment issued by the Government of Haryana from time to time as well as the review order passed in Pyare Lal's case (supra) by the Full Bench and therefore, no reliance can be placed by the petitioner on the said judgment to claim the benefit of leave encashment, though not eligible under the rules governing the service as well as instructions issued by the Government of Haryana from time to time in this regard."

In **Ram Kumar Ranga's case(supra)**, after noticing the relevant Rule governing the services as well as instructions issued by the Government of Haryana for the grant of leave encashment, which have been noticed and reproduced in the abovesaid judgment, it was held that the dismissed employee is not entitled for the leave encashment. Further, it was noticed in **Ram Kumar Ranga's case (supra)** that the review order passed by the Full Bench dated

11.08.2014, by which the earlier order of the Full Bench dated 09.11.2012 was reviewed, wherein it was held that the government has the power to withhold the leave encashment in case the disciplinary proceedings are pending, was not brought to the notice of the Hon'ble Court at the time of hearing in **Dhir Chand's case (supra),** which led to the grant of benefit of leave encashment to a dismissed employee.

Therefore, keeping in view the subsequent judgment in **Ram Kumar Ranga's case (supra)**, no benefit can be claimed by the petitioner, who is a dismissed employee in the present writ petition.

Even otherwise, the Rules relating to the grant of leave encashment in the State of Haryana and Punjab are not identical. The petitioner, who is claiming the benefit from the State of Punjab has to base his claim upon Rule 8.21, which has been reproduced hereinbefore, which does not entitle a dismissed employee the benefit of leave encashment. Therefore, keeping in the view the Rule governing the grant of leave encashment in respect of the employee of the State of Punjab as well as order passed in **Ram Kumar Ranga's case (supra)**, no benefit can be granted to the petitioner by placing reliance upon **Dhir Singh's case (supra)** for the grant of leave encashment being a dismissed employee.

Further, as per Rule 3.17-A(1) (ix), an employee who has been removed from service for misconduct, insolvency, inefficiency or failure to pass an examination, will entail forfeiture of the past service. In the present writ petition, the petitioner has been dismissed from service on account of conviction and, therefore, the past service, for which the petitioner was claiming for grant of leave encashment, also stands forfeited. The relevant Rule is reproduced hereunder:

> 3.17-A. (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-
>
> xx xx xx
>
> (ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service."

Therefore, the claim of the petitioner for the grant of leave encashment is liable to be rejected on this ground as well.

Now the question remains with regard to the grant of release of General Provident Fund, which the petitioner had deposited prior to his dismissal. From the pleadings, it transpires that after the period of four years of his dismissal from service, one representation claiming GPF has been made by the petitioner in March, 2019 only.

Counsel states that the said representation is still pending consideration with the respondents. Though the claim of the petitioner for the grant of leave encashment is rejected but with regard to the claim of the petitioner for the release of the General Provident Fund, which was deducted from the salary of the petitioner and according to the petitioner, the same is still lying with the respondents. Counsel for the petitioner prays that a direction be issued to respondent No.4 to decide the representation

(Annexure P-4) dated 20.03.2019 keeping in view the instructions issued by the Government of Punjab on 09.12.2014.

Without going into the merit of the claim of the petitioner as raised in the representation dated 20.03.2019 (Annexure P-4), a direction is issued to the respondent to pass a speaking order on the representation filed by the petitioner within a period of three months from the date of receipt of certified copy of this order.

Disposed of in the above terms.

August 28, 2019
jt **(HARSIMRAN SINGH SETHI)**
JUDGE

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No