

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

281

CWP No.11818 of 2011(O&M)

Date of Decision: March 12, 2019

P.C. Sharma and others

.....Petitioner(s)

versus

State of Haryana and others.

.....Respondent(s)

280

CWP No.25810 of 2017(O&M)

M.P. Agrawal and others

.....Petitioner(s)

versus

State of Haryana and others.

.....Respondent(s)

281/A

CWP No.12087 of 2011(O&M)

K.C. Kaushik and others

.....Petitioner(s)

versus

State of Haryana and others.

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. P.L. Verma Advocate
for the petitioner(s).

Ms. Safia Gupta, AAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

This order shall dispose of three writ petitions bearing Nos. **CWP No.11818 of 2011, CWP No.25810 of 2017 and CWP No.12087 of 2011**, which involve the same question of law and similar facts. For the present order, the facts are being taken from CWP No.11818 of 2011.

2. In the present writ petition, the grievance which is being raised by the respondents is that their claim for the grant of leave encashment has been wrongly rejected by order dated 28.10.2010. Petitioners are the employees of the privately managed aided colleges and after working in Aided colleges, they have already retired. The grievance of the petitioners is that though they are entitled for the benefit of leave encashment and enhanced gratuity but the said benefit, which is already extended to the employees working in the Government Colleges, the same has not been extended to the employees working in the Government aided privately institutions.

3. Learned counsel for the petitioners states that similarly situated persons approached this Court by filing CWP No.12179 of 2011, wherein also the benefit of leave encashment was claimed by the employees of the privately managed colleges. After hearing the State, the said writ petition was allowed by this Court on 10.11.2016. The relevant portion of the said order is as under:-

“ 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.

It is further directed that State of Haryana shall also consider the case of all the similarly situated employees and extend benefit of judgment of Dr.Karan Singh Rathee's case (supra) to the employees, who are covered by the said judgment. However, the interest shall be payable from the date they approach the government claiming the benefit of the said judgment. ”

4. Against the said decision, the State filed Letters Patent Appeal being LPA No.1411 of 2017, which was also dismissed by the Division Bench on 11.12.2017.

5. Learned counsel for the petitioners states that after the dismissal of the LPA, the State of Haryana issued instructions on 14.08.2018 for the grant of benefit of leave encashment to its employees. The said instructions were issued keeping in view the order passed by this Court in CWP No.12179 of 2011. The instructions as issued by the Government of Haryana is as under:-

“From

Additional Chief secretary to Government Haryana Higher Education, Department, Chandigarh.

To

All Principals of Govt. Aided Private Colleges in Haryana State.

Memo No.24/12-2011 CII(2)

Dated, Panchkula the 14-08-2018

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 leaves 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 Government 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-11/13332 dated 07.06.2018.

*Superintendent College-II
For Additional Chief Secretary to Government
Haryana Higher Education, Department”*

6. Learned counsel for the petitioners states that the case of the petitioner is not only covered by the said order passed by this Court in CWP No. 12179 of 2011 but is also covered by the instructions reproduced above for the grant of benefit of leave encashment. He further submits that CWP No.9252 of 2017 has already been disposed of by this Court on 24.01.2019 after relying upon instructions dated 14.08.2018 reproduced above. The relevant portion of the order dated 24.01.2019 passed in CWP No.9252 of 2017 is 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. ”

7. Learned counsel for the respondents is unable to rebut the above-mentioned facts and states that the instructions have been issued by the Government of Haryana for the grant of leave encashment to the employees of the Government Aided Private Colleges and states that the same will be implemented qua the petitioners as well without any further delay.

8. A bare perusal of the above said order passed in CWP No.12179 of 2011 would also makes it clear that the gratuity is to be paid w.e.f. 01.01.1996. The relevant paragraph of the judgment reproduced already hereinbefore.

9. Learned counsel for the respondent is not able to rebut the said contention and very fairly states that the judgment reproduced above has already attained finality in respect of the claim for the grant of leave encashment as well as for the grant of gratuity from 01.01.1996. However, lerned counsel for the petitioners state that gratuity has been received by the petitioner from 11.05.1998.

10. In view of the above, it is clear that the present writ petitions are

covered by the decision rendered by this Court in ***CWP No.12179 of 2011***, which has already attained finality and are disposed of in terms of order passed by this Court in ***CWP No.12179 of 2011*** already upheld by the Division Bench of this Court, while dismissing LPA No.1411-2017 decided on 11.12.2017.

March 12, 2019
sonia arora

[HARSIMRAN SINGH SETHI]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes