IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. NO.16546 C OF 2016 &
REGULAR SECOND APPEAL NO.6302 OF 2016
DATE OF DECISION: FEBRUARY 05, 2019

Kalu Ram

.....Appellant

VERSUS

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amit Choudhary, Advocate,
for the appellant.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.16546 C of 2016

Prayer in this application is for condonation of delay of 30 days in refiling the appeal. The application is supported by an affidavit of Clerk of counsel for the applicant-appellant.

In the interest of justice and for the reasons mentioned in the application, the same is allowed and delay of 30 days in refiling the appeal stands condoned.

R.S.A. No.6302 of 2016

It is the contention of learned counsel for the appellant-plaintiff that the plaintiff was entitled to encashment of earned leave of 160 days for the period from 10.07.1974 to 18.03.1998, which was lying to his credit at the time when the Haryana State Minor Irrigation and Tubewell

Corporation, Panchkula (hereinafter referred to as "the HSMITC") was wound up and thereafter the services of the plaintiff were absorbed in the Department of Revenue as Patwari. He contends that initially he was appointed as a Patwari in the HSMITC on 10.07.1974 and continued as such upto 19.03.1998. His services were absorbed in the Revenue Department on winding up of the Corporation. The plaintiff had 160 days leave encashment to his credit whereas he has been held entitled to 30 days of earned leave encashment only, which is not acceptable as the leave due when he was serving in the HSMITC had to be taken into consideration and not when he was absorbed in the Revenue Department, Government of Haryana, and superannuated from the said Department. He, thus, contends that the judgments and decrees as passed by the Courts below, rejecting the claim of the appellant cannot sustain and deserve to be set-aside.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the records of the case.

It is an admitted position that the appellant was working with the HSMITC from 10.07.1974 to 18.03.1998. Thereafter his services were absorbed in the Revenue Department, Haryana, from where he superannuated on 30.04.2011. At the time of his retirement, only 10 days leave encashment relating to period from 19.03.1998 to 30.04.2011 was due to him and was given.

The issue, which requires to be considered and decided is whether the service rendered by the appellant in the HSMITC, prior to his absorption in the Revenue Department, Haryana, would entitle him to the benefit of leave encashment, which he is claiming?

The said issue has earlier been considered by this Court in its judgment in R.S.A. No.3767 of 2009 (<u>The Managing Director, Haryana State Minor Irrigation and Tubewell Corporation Vs. D.R.Grover and others)</u>, decided on 30.06.2010. The question of law which was framed by this Court has been reproduced in Para 15 of the judgment passed by the lower Appellate Court. As per the same, the matter was regarding entitlement of leave encashment of 300 days as per the State Civil Services Rules inspite of he having taken the benefit under the Payment of Gratuity Act, 1972. It would not be out of way to mention here that the plaintiffs therein were also employees of the HSMITC and were similarly placed as the appellant. This Court proceeded to hold that once a benefit under the Payment of Gratuity Act, 1972 has been taken by an employee, he would not be entitled to the benefit of leave encashment for more than 30 days.

This is also apparent from the statutory rules governing the service and from the provisions of the Payment of Gratuity Act and the Rules, which govern the services of the HSMITC and exhibited as Exhibit D3. Rule 5.5 of Service Bye-Law, 1980 of the HSMITC deals with the leave rules and leave travel concession and travelling allowance, according to which the Corporation employees were governed by the same Rules as are applicable to the Haryana Government employees. Rule 6.3 of the said Bye-laws, Ex.D4, deals with death-cum-retiral gratuity, where it has been mentioned that if the said employee is covered under the Payment of Gratuity Act, 1972, he shall not be entitled to this benefit.

This aspect has been elaborately dealt with by the lower Appellate Court in Para 19 of the said judgment, which reads as under:-

"*19. From the above, it is clear that once an employee of the*

HSMITC was covered under the Payment of Gratuity Act, 1972, he was not entitled to the benefit of Rule 5.5. Ex.D2 is the copy of plaintiff's application before the Controlling Authority under the Payment of Gratuity Act, 1972, wherein he claimed gratuity under the Payment of Gratuity Act, 1972. During the course of arguments, no dispute has been raised that plaintiff has obtained gratuity under the Payment of Gratuity Act vide application Ex.D2. Statement of DW1 Naresh Kumar, Assistant, regarding payment of gratuity to the plaintiff under the Payment of Gratuity Act was also not challenged in cross-examination. It was not suggested to DW1 Naresh Kumar that gratuity was not paid to the plaintiff under the Payment of Gratuity Act, 1972. Thus, once plaintiff chose to seek gratuity under the Payment of Gratuity Act, 1972, he cannot obtain the benefit of leave encashment by choosing the alternative option. He could either have gratuity under the Payment of Gratuity Act, 1972, with encashment of 30 days or gratuity under the Civil Services Rules with encashment of 300 days. Once he has obtained gratuity under the Act, he is entitled to encashment of leave for 30 days only and learned trial court rightly observed so."

There being no illegality in the judgment and decree dated 03.03.2016 as passed by the learned Additional District Judge-I, Fatehabad as also the judgment and decree dated 14.09.2015 passed by Civil Judge (Junior Division), Fatehabad, this Court would not interfere with the same.

At this stage, counsel for the appellant has asserted that the appellant has deposited the benefit which he had received from the HSMITC even prior to filing of the civil suit but that aspect has not been dealt with by the courts below. He, however, could not dispute the fact that it was neither pleaded nor any evidence brought on record to substantiate such a contention. If that be so, this plea cannot be permitted to be raised at this belated stage.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

February 05, 2019 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No