IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1 **CWP-1957-2005**

Date of Decision : March 04, 2020

HARPAL SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

2 **CWP-2228-2005**

SHYAM SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

3 **CWP-10806-2005**

RATI RAM

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

4 **CWP-8050-2005**

KABUL SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

5 **CWP-10794-2005**

RAM DHARI

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

6 **CWP-11568-2005**

SUKHBIR SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

7 **CWP-10801-2005**

MAYA RAM

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

8 **CWP-11581-2005**

PUNNA SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

9 **CWP-2069-2006**

BALBIR SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

10 **CWP-2329-2009**

RAM DIA

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

11 **CWP-17039-2010**

KESHRA RAM AND OTHERS

.....Petitioners

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Virender Kumar, Advocate
for the petitioner(s).

Mr. Gaurav Jindal, Addl. AG, Haryana.

Ms. Neha Jain, Advocate for
Mr. R.N.Lohan, Advocate
for the respondents in all the cases.

NIRMALJIT KAUR, J.

All the above mentioned writ petitions shall stand disposed of by this common order as the issue involved is identical.

For convenience, the facts are being taken from CWP No.1957 of 2005.

The prayer in the present writ petitions is for release of payment of leave encashment of the balance 270 days and balance payment of gratuity at their credit at the time of retirement on attaining the age of superannuation.

While praying for the grant of leave encashment towards 300 days of earned leave instead of just 30 days, reliance is placed on the instructions dated 12.8.1998 issued by the respondent-State of Haryana which were adopted by the Board on 11.10.2000 vide which the limit of leave encashment for the employees of the Corporation on retirement at attaining the age of superannuation was enhanced from 240 days to 300 days w.e.f. 1.10.2000. The legal notice sent by the petitioner was rejected vide order dated 4.5.2004 which is impugned herein.

Reply has been filed. As per the said reply, the Board of Directors of the respondent in their 146th meeting held on 27.9.2001 had decided that the work charge employees of the Corporation may be allowed gratuity as per the Payment of Gratuity Act and leave encashment of 30 days on their superannuation. The petitioner also made an application placed on record as Annexure R-1 asking for the payment of the gratuity as per Sub-Section 1 of Section 4 of the Payment of the Gratuity Act on account of superannuation which was duly paid. Thus, as per the resolution of the Board dated 27.9.2001 placed on record as Annexure R-3 as also the application made by the petitioner Annexure R-1 for release of his gratuity as per the Payment of Gratuity Act, the petitioner was given the payment as per the Gratuity Act and leave encashment of 30 days. Moreover, the petitioner cannot take double benefits. Either he avails the benefit of payment of gratuity under the Payment of Gratuity Act alongwith leave encashment of 30 days or can claim gratuity as per the Gratuity Act available under the Rules of the

Department and avail 300 days' leave encashment. The petitioner chose to apply for gratuity as per the Payment of the Gratuity Act. Therefore, the petitioner is entitled for leave encashment only for 30 days.

The issue infact stands settled by this Court in the case of **Haryana State Minor Irrigation and Tubewells Corporation Limited, Chandigarh** Vs. **Tilak Raj Sharma and others**, CWP No.6866 of 2002 which is reproduced as under:-

> "It is not a matter of dispute that exception has not been granted to the petitioner-Corporation under Section 5 of the Act for payment of gratuity by adopting the Death-cum-Retirement Gratuity Rules of the State of Haryana. That being so, the contention of the learned counsel for respondent No. 1 is unexceptionable. It is, therefore, hereby concluded that the option exercised by respondent No. 1 while accepting to be paid gratuity under the Death-cum-Retirement Gratuity Rules cannot be binding on him in view of the mandate of Section 14 of the Act. We, therefore, find no infirmity in the determination of the authorities under the Act in holding that respondent No. 1 is entitled to the benefit of gratuity in terms of the provisions of the Payment of Gratuity Act, 1972. It would be pertinent to mention that the petitioner-Corporation did not contest the determination by the aforesaid authorities, to the effect, that the said benefit was to be determined by adding the service rendered by respondent No. 1 in the Irrigation Department, Haryana (upto 31.1.1970) to the service rendered by him in the Corporation (w.e.f. 1.4.1970).
>
> The next contention of the learned counsel for the petitioner-Corporation is that respondent No. 1 cannot

> have the best of both worlds. In this behalf, it is pointed out that respondent No. 1 was expressly given an option under the order dated 27.5.1992 to accept payment of gratuity under the Act. Had he accepted the aforesaid option, he would have chosen the bundle of rights in respect of accumulation of earned leave, encashment of earned leave, medical leave and leave travel concession as are available to the employees originally inducted into the service of the Corporation. By exercising option for conditions of services as are applicable to the employees of the Irrigation Department, Haryana, respondent No.1 became entitled to a different bundle of rights. If respondent No. 1 chooses to seek payment of gratuity under the Act, then, he must also accept the bundle of rights, which would have been available to him had he exercised an option in furtherance of the order dated 27.5.1992 so as to be paid gratuity under the Act."

Learned counsel for the petitioner, however, stated that the same was not applicable because in the said case, the issue was only with respect to the payment of gratuity and the petitioners in the said case had exercised their option whereas, the petitioner herein except petitioner-Rati Ram in CWP No.10806 of 2005 had not exercised their option. Therefore, the said judgment was not applicable to the case in hand.

However, the said argument cannot be sustained. The present petitioner as well as Tilak Raj Sharma and others petitioners in the said case had duly submitted their option for allowing the benefit of gratuity under the provisions of Gratuity Act and, therefore, it was held that they were entitled to only leave encashment of 30 days which comes alongwith bundles of rights available to the employees originally inducted into the Corporation like the petitioner. The petitioner herein as well as Tilak Raj Sharma and other-petitioners in CWP No.6866 of 2002 were originally inducted in the service of Irrigation Department, Haryana where they continued uptill 1970 before being transferred to some other works of the Irrigation Department as well as to the respondent-Corporation. The erstwhile employees of the Irrigation Department like the petitioner were granted to opt either to accept the same condition relating to earned leave, leave encashment, payment of gratuity etc. as applicable to the Irrigation Department or alternative conditions as applicable to the employees of the Corporation. To say that they did not exercise their option is of no consequence as it is evident from Annexure R-1 itself that the petitioners had applied for payment of gratuity under the Payment of Gratuity Act, 1972 and as per the resolution of the Board, all those employees who claim gratuity under the Gratuity Act are entitled for the encashment of 30 days leave only.

In any case, the argument that the petitioner is entitled to the gratuity under the Gratuity Act and at the same time is also entitled to 300 days of leave encashment cannot be sustained as the earlier resolution of the Board dated 11.10.2000 taken in its 142nd meeting held on 27.9.2000 as relied upon by the petitioner stood superseded by the resolution dated 27.9.2001 taken by the Board of Directors in their 146th meeting placed on record as Annexure R-3. As per the said resolution, the Board decided that the work charge staff be paid the gratuity under the Gratuity Act and the leave encashment shall be restricted to 30 days as it used to be prior to 1.6.1992.

Moreover, the issue is no more res-integra in view of the judgment rendered by this case in RSA No.3767 of 2009 decided on 30.6.2010 titled as **The Managing Director, Haryana State Minor Irrigation and Tubewell Corporation Limited, Chandigarh Vs. D.R.Grover and others** wherein the specific question of law for determination was whether the plaintiffs in the said RSA were entitled to encashment of earned leave of 300 days as per the State Civil Services Rules inspite of having taken the gratuity under the Act. The said question was duly answered by holding that an employee can either have gratuity under the Act and leave encashment of 30 days only or can have gratuity under the Civil Services Rules of the Government with leave encashment of 300 days. The relevant and operative part of the said judgment reads as under:-

> "Following substantial question of law arises for determination in the instant second appeal :-
>
> > *"Whether plaintiffs are entitled to encashment of earned leave for 300 days, as per State Civil Services Rules in spite of having taken the gratuity under the Act ?"*
>
> Learned counsel for the appellant vehemently contended that the aforesaid question stands authoritatively determined in favour of the appellant by Division Bench of this Court, vide judgment dated 25.03.2004 in C.W.P. No.6866 of 2002 titled **Haryana State Minor Irrigation and Tubewells Corporation Limited, Chandigarh vs. Tilak Raj Sharma and others**.
>
> On the other hand, learned counsel for the respondents contended that the aforesaid judgment dated

25.03.2004 is not applicable to the instant case as the plaintiffs have not exercised option pursuant to instructions dated 27.05.1992 and therefore, in view of instructions Ex.D-8 and Ex.D-9, the plaintiffs are entitled to encashment of earned leave for 300 days, as per rules of Government adopted by HSMITC.

I have carefully considered the rival contentions.

Judgment in the case of **Tilak Raj Sharma *(supra)*** is fully applicable to the instant case. It has been categorically laid down in the said case that an employee cannot have best of both the worlds. The employee can either have gratuity under the Act with encashment of leave for 30 days or can have gratuity under the Civil Services Rules with leave encashment of 300 days. Under instructions Ex.D-8, as reproduced at page 57 of the paper book in the impugned judgment of the lower appellate court, HSMITC adopted rules of Government for purpose of gratuity, leave encashment and other purposes. It is thus manifest from the instructions that an employee can either have gratuity under the Act with leave encashment of 30 days only or can have gratuity under the Civil Services Rules of the Government with leave encashment of 300 days. However, the plaintiffs cannot have best of both the worlds. The plaintiffs have admittedly received the gratuity under the Act and therefore, they are entitled to leave encashment for 30 days only."

In view of the above discussion, as well as the question being no more res-integra, the present writ petitions are dismissed being devoid of merit.

March 04, 2020 **(NIRMALJIT KAUR)**
ajay-1 **JUDGE**

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