

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11164 of 2019
Date of Decision: 09.01.2020

The Punjab State Cooperative Supply &
Marketing Federation Ltd.

... Petitioner

VS.

Shyam Sharma & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. GS Sullar, Advocate for the petitioner

GIRISH AGNIHOTRI, J. (Oral)

(1) The present writ petition has been filed by the Punjab State Cooperative Supply & Marketing Federation Ltd. (MARKFED), *inter alia*, with the prayer to quash the order dated 25.04.2018 (P11) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh. A perusal of the order (P11) clearly shows that respondent No.1 on attaining the age of superannuation at 58 years had retired on 31.10.2012. Respondent No.2 had served the petitioner-Federation for 30-years 10-months & 12-days. Respondent No.2 had therefore approached the Labour Court for a direction to the petitioner-Federation to release the amount under the leave encashment along with interest. The Labour Court vide order dated 25.04.2018 has awarded the same by observing, *inter alia*, as under:-

“Further the stand taken by the respondent that due to pendency of disciplinary proceedings against the applicant his leave encashment was withheld also stands demolished from order Exhibit ‘W2’ & ‘W3’ vide which the respondent has released the amount gratuity of the applicant and has deposited the same in bank account of the applicant, respectively. The claim of the applicant with regard to leave encashment is

maintainable as such the applicant is held entitled to leave encashment amount. The respondent is directed to calculate the leave encashment amount of the applicant as per his entitlement and to pay the same to the applicant. Further since the respondent had withheld the leave encashment amount of the applicant without any justification so the applicant is also held entitled for the interest at the rate of 10% per annum from the date of retirement till the date of its realization. Accordingly, both these issues are decided in favour of the applicant and against the respondent.”

(2) Learned counsel for the petitioner has vehemently argued that in fact the impugned order has fallen to error because the civil suit filed by respondent No.1 was dismissed although it is a matter of fact that the appeal against the same is pending. He also submits that the respondent No.1 did not come to this Court with clean hands as he did not disclose that he retired from service facing departmental action. Learned counsel further submits that the workman had caused a huge loss to WEAVCO (WEAVCO was merged with the petitioner-Federation in the year 2014). He also submits that as per the Rules applicable, Gratuity could be withheld in a case where loss has been caused.

(3) The above submissions do not find merit with this Court because on the asking of this Court no provision has been brought to the notice as per which the leave encashment can be stopped. It is also a matter of fact that no recovery suit has been filed till date *qua* the alleged loss caused in the year 2014. Therefore in absence of any provision permitting

the petitioner to withhold or stop the leave encashment, the said amount cannot be withheld.

(4) Accordingly, this Court is of the view that there is no infirmity in the order dated 25.04.2018 and thus the same calls for no interference.

(5) The writ petition is accordingly dismissed.

09.01.2020
Vvishal

(Girish Agnihotri)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No