

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

CWP-18836-2021

Date of Decision:-23.09.2021

Krishan Chander

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. C.R. Narwal, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The petitioner has filed the present writ petition seeking
following reliefs:-

- i. Writ in the nature of Certiorari for quashing the vires of
Rules 9(a)(13) and 68 of the Haryana Civil Services
(Leave) Rules, 2016 (in short the Rules of 2016), whereby

leave encashment is not admissible to an employee dismissed or removed from Government service.

- ii. Writ in the nature of Certiorari for quashing the action of the respondents for their inaction in the communication dated 26.2.2019 (Annexure P-5) to prepare the pension case of the petitioner.
- iii. Writ in the nature of Mandamus directing the respondents to release provisional pension benefits to the petitioner.

Briefly stated the case of the petitioner is that he joined Haryana State Minor Irrigation and Tubewell Corporation Limited on regular basis as Clerk, on 8.1.1982. Later on, he was permanently absorbed in Revenue Department as Clerk in the office of Deputy Commissioner. FIR No.30 dated 23.6.2009, under Sections 3, 13, 49 of Prevention of Corruption Act was registered against him in the State Vigilance Bureau, Hisar. On this, he was placed under suspension. The petitioner faced trial, and was convicted and sentenced to imprisonment in the aforesaid criminal case. Consequently, he was dismissed from service on 16.1.2015. The appeal filed by the petitioner against the aforesaid judgment is still pending in the High Court. The petitioner has challenged Rules 9(a) (13) and 68 of the Rules of 2016, as per which an employee dismissed or removed from Government service is not entitled to leave encashment.

We have heard the counsel for the petitioners and the State counsel who was having advance notice of the writ petition.

The counsel for the petitioner contended that the impugned the Rules of 2016 are totally arbitrary and discriminatory. The learned counsel for the petitioner further argued that the hard earned benefit of the leave encashment which accrues to a Government employee is in the nature of 'property'. The learned counsel further contended that this right of 'property' cannot be taken away without due process of law, as per the provisions of Article 300-A of the Constitution of India. Learned counsel further submitted that leave encashment earned by the Government employee by rendering service to the State for number of years, is not a bounty payable at will. In support of his arguments, the counsel for the petitioner referred to the decision of the Hon'ble Supreme Court of India in **Civil Appeal No.6770 of 2013, State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava and Anr.** decided on **14.8.2013**. Further, reliance has been placed by the learned counsel for the petitioner in support of his prayer, on a decision rendered by this Court in **Dhir Chand vs. State of Haryana and Ors., 2019(1) SCT 134.**

On the other hand, the State counsel submitted that the petitioner was dismissed from service on 16.1.2015 and as such Rules of 2016 are not applicable to him. So prayer is made that the writ petition be dismissed on this sole ground. Besides, the State counsel has referred to **Ram Kumar Ranga vs. State of Haryana and Ors., 2019(4) SCT 999,** wherein the learned Single Judge of this Court while interpreting Rule 8.21 Volume I Part I of Punjab Civil Services Rules (as applicable in Haryana), held that dismissed Government employee is not entitled for grant of leave

encashment. The State counsel further argued that even otherwise, the petitioner has failed to show as to how the Rules of 2016 are violative of the Fundamental Rights.

We have considered the contentions raised by both the parties.

Admittedly, the petitioner was dismissed from Government service on 16.1.2015. The petitioner has impugned certain provisions of the Rules of 2016 as has been detailed in the writ petition itself. The Rules of 2016 which were notified on 19.7.2016, are Annexure P-4. Sub-Rule 2 of Rule 1 of the Rules of 2016 states that these Rules came into force w.e.f. 19th July, 2016, thus making it clear that the said Rules are applicable, prospectively. It being so, the petitioner has failed to establish that Rules of 2016 are applicable in his case, he being dismissed from service on 16.1.2015. The petitioner, to our mind has failed to demonstrate as to how he has been discriminated or prejudiced by the Rules of 2016, which are not having retrospective effect. The case of the petitioner is governed under the old Rules which were operative as on 16.1.2015, when he was dismissed from service. However, the said old Rules are not challenged in the present writ petition.

The judgments referred by the counsel for the petitioners are not helpful in any manner to advance the case of the petitioner. In **Jitendra Kumar Srivastava's** case (supra) it was held by the Hon'ble Apex Court that a person cannot be deprived of his pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the

Constitution. It follows that attempt of the appellant-State to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instructions cannot be countenanced. In **Dhir Chand's** case (supra), the learned Single Judge of this Court directed the Government to give benefit of leave encashment in lieu of unutilized leave to the Government employee, while observing that no provision of law except for Rule 2.5 of Punjab Civil Services Rules Volume-II, has been brought to the notice of the Court by which leave encashment can be denied to a dismissed employee even if he is convicted under Section 13 of Prevention of Corruption Act, 1988. To our mind both the said judgments were passed by the Hon'ble Supreme Court and High Court respectively in entirely different facts and circumstances.

In the light of the above, we are of the view that the present writ petition filed by the petitioner, challenging the Rules of 2016, which are not applicable to the petitioner, is totally misconceived and it being so, deserves to be dismissed.

Accordingly, the writ petition is hereby dismissed.

Needless to say, the petitioner is at liberty to challenge the old Rules (applicable to him), if he is having any grievance qua the said Rules.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

23.09.2021
Gaurav Sorot

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No