

Sl. No.180
07.07.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 10145 of 2019

Dhanonjoy Das & Ors.
versus
State of West Bengal & Ors.

Mr. Kajal Roy

... for the Petitioners

None appears on behalf of the Chandernagore
Municipal Corporation.

The order dated 21st February, 2019 passed by the
Commissioner, Chandernagore Municipal Corporation
rejecting the prayer of the petitioners for payment of leave
encashment is under challenge in the present writ
petition.

The petitioners are the retired employees of the
Chandernagore Municipal Corporation and they are
guided by the West Bengal Municipal (Employees'
Service) Rules, 2010.

The Commissioner of the Corporation was of the
opinion that there is no provision in the aforesaid Rules
which creates any right to an employee to pray for
encashment of such earned leave on his superannuation.

The petitioners have alleged that the Corporation
was adopting pick and choose method to pay few of their

employees, the amount equivalent to the earned leave, as reward.

The Commissioner was of the opinion that according to the provision of Section 97(4) (P) of the West Bengal Municipal Corporation Act, 2006, such reward may be granted in favour of employees on account of uninterrupted honest, diligent, dedicated service towards the Corporation without availing earned and admitted leave.

The Commissioner further opined that with the limited financial capacity, the Corporation cannot allow the prayer of the employees even from its own fund.

Learned advocate for the petitioners has relied upon Rule 4(11) of the Rules of 2010 which mentions that :

“Earned leave means leave credited under Rule 64”.

Reliance has been placed upon Rule 4(12) of the aforesaid Rules, which mentions that-

“earned leave due” means the amount of earned leave to the credit of an employee on the date immediately preceding the date of effect of this rule under the regulation in force on that day plus the amount of earned leave calculated as prescribed in Rule 70, as the case may be, diminished by the amount of earned leave taken after the introduction of these regulation.

Rule 64 of the said Rules, which deal with the amount of earned leave has been quoted in the impugned order.

Rule 63 deals with leave salary. It mentions that an employee during earned leave is entitled to leave salary.

The Commissioner by the impugned order has simply negated the right of the employees to pray for encashment of earned leave on superannuation.

The Rules guiding the service of the petitioners clearly mentions about leave salary that an employee is entitled to earn during the period of leave. It is not the case of the Commissioner that the amount of salary which the employees were entitled to receive on account of their leave salary has been disbursed in their favour. The Commissioner has refused to accept the right of employees to seek encashment of their earned leave. The amount equivalent to the earned leave was never paid to the petitioners.

In such a situation, the employee will certainly be entitled to leave salary during the period of leave in accordance with Rule 63 of the West Bengal Municipal (Employees' Service) Rules, 2010 and the employer is statutorily bound to disburse the same at the time of superannuation of the employee.

The limited financial capacity of the Corporation cannot stand in the way of the employees to receive their leave encashment which is their statutory right. It is for

the employer to arrange for funds for liquidating the statutory dues of the employees at the time of their retirement.

The employer cannot disown its liability to pay the statutory dues of the employees.

The interpretation given by the Commissioner for the purpose of negating the claim of the petitioners to receive payment on account of earned leave on their superannuation cannot be accepted by the Court.

In view of the above, the impugned order dated 21st February, 2019 is set aside.

The Commissioner, Chandernagore Municipal Corporation is directed to take steps for disbursal of the amount equivalent to earned leave of the petitioners strictly in accordance with the provision of the Rules indicated hereinabove.

Necessary steps shall be taken in the matter at the earliest but positively within a period of four months from the date of communication of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)