

Item-4. 11-10-2023

FMA 619 of 2023
CAN 1 of 2023

sg Ct. 8

Dr. Biswanath De
Versus
The State of West Bengal & Ors.

Mr. Chittapriya Ghosh, Adv.
Mr. Samir Kumar Adhikari, Adv.
...for the appellant
Mr. Suman Basu, Adv.
...for the respondent no.3
Mr. Ritwik Pattanayak, Adv.
...for the respondent no.5
Ms. Debjani Sengupta, Adv.
Mr. Abhijit Chatterjee, Adv.
...for the respondent no.6
Mr. Amitava Chaudhuri, Adv.
Mr. Nirmalya Roy, Adv.
Mr. Chandan Chakraborty, Adv.
...for the DPI
Mr. S.N. Mookherji, Ld. AG.
Mr. Santanu Kr. Mitra, Adv.
...for the State

1. The appeal is arising out of an order dated 9th January, 2023 in which the grievance of the writ petitioner that he was not given leave encashment for 300 days was not entertained.
2. The learned Single Judge dismissed the writ petition on the ground that the claim of the petitioner is based on the Rules dated 1st March, 2013, namely, "Leave Rules applicable to all Teachers of Govt. aided including erstwhile sponsored Colleges in the State under Vidyasagar University". The Rules were sent to the Secretary to the State Higher Education Department on 25th March, 2013. The Chancellor accorded his concurrence on 26th April, 2013 and the same was communicated to the University on 7th May, 2013.
3. The writ petitioner retired from service on 31st March, 2013. The learned Single Judge proceeds on the basis that the

impugned order of the Director of Public Instruction dated 20th April, 2015 would not show that the said authority had declined to extend the benefits of maximum 300 days leave encashment benefit under the said Rules to the petitioner.

4. The learned Counsel for the appellant submits that the question is not with regard to wrong calculation but the entitlement of the writ petitioner to receive leave encashment benefit for 300 days as recommended by the Higher Education Department for 300 days had preceded his date of retirement.
5. In view of the fact that the Chancellor accorded his concurrence on 26th April, 2013 and the same was communicated to the University on 7th May, 2013, we requested the learned Advocate General to assist this Court in arriving at a proper finding.
6. The learned Advocate General has taken a very fair stand. Mr. Advocate General has submitted that the Memorandum No. 972-Edn(CS)/2L-24/13 dated 20th December, 2013 issued by the Joint Secretary, Government of West Bengal, Higher Education Department has categorically stated that Governor has been pleased to accept the recommendation with regard to uniform leave rules for the whole time teachers of Government aided College (including erstwhile sponsored Colleges) in the State with some modifications and had approved the benefits which would appear from the annexure as stated in his order. The Universities were directed to incorporate amendments in their Statutes where necessary for incorporation of the provisions of this

Memorandum.

7. Initially, by a Memorandum No. 44-Edn.(U) dated 28th January, 2008, the Assistant Secretary to the Higher Education Department, University Branch, the concerned Universities were directed to make amendments in their States/Ordinances/Rules etc. where necessary for incorporation of the provisions of the Government order therein is required. In view of the recommendation made by the Government with regard to uniform leave rules for whole time teacher of the said Universities, which, inter alia, include Vidyasagar University, the said order in terms of clause 4 of the Memorandum would be effective from 28th January, 2008. That was followed by the Memorandum of 2009.
8. Mr. Advocate General has drawn out attention to Clause 15 of the annexures relating to leave rules of teachers of Government sponsored colleges in the State, which reads as follows:

“15. Every Teacher shall be entitled to leave salary of the earned leave accumulated at his/her credit after cessation of his/her service by way of retiring on superannuation, voluntary retirement or death in harness provided the maximum number of accumulated leave and maximum of leave encashable shall be 300 days.”
9. The aforesaid Rule clearly mentions that a teacher shall be entitled to leave encashment maximum 300 days.
10. In reiteration to the aforesaid, the Joint Secretary, Government of West Bengal, Higher Education Department, by Memorandum No. 972-Edn(CS)/2L024/13 dated 20th

December, 2013 had clarified that “every whole time teacher & Principal of Government aided colleges including erstwhile sponsored colleges shall be entitled to leave salary of the earned leave accumulated at his/her credit after cessation of his/her service by way of retiring on superannuation/voluntary retirement or death-in-harness provides the maximum number of accumulated leave and maximum leave encashable shall be 300 days subject to the Universities making suitable amendments to their Statutes, in the light of the G.O. No. 762 dated 03.12.2009 as amended by the instant Memorandum”. It further states that “Subject to the Universities amending their Statutes in this regard this will take effect from 3rd December, 2009 taking into account this Dept.’s G.O. No. 762-Edn(CS) dated 03.12.2009”.

11. The writ petitioner in the supplementary affidavit has disclosed a document, wherefrom it will appear that Ex-Principals of the University who retired on 31st January, 2013 had received leave encashment of 300 days although the amendment to the Rule was to be effected.
12. Mr. Advocate General has fairly submitted that the Government having issued the said Circular and/or Orders and/or Memoranda cannot resile from its obligation and is bound to honour the commitments and the entitlement of the appellant to receive leave encashment of 300 days cannot be denied. Mr. Advocate General has very fairly submitted that Government is clearly bound by the Circular dated 20th December, 2013 by which retrospective effect was given to the Circular dated 3rd December, 2009.

13. In view of the fact that the appellant retired after 3rd December, 2009 and the persons similarly situated have received the benefit of leave encashment of 300 days, we direct the authorities to release the remaining amount towards leave encashment as the petitioner has already received a leave encashment for 276 days within a period of two weeks from the date of communication of this order by either of the parties.
14. With the above observations, the impugned order is set aside and the appeal and the application are disposed of accordingly.
15. We record our appreciation for the fair stand taken by the learned Advocate General.

(Uday Kumar, J.)

(Soumen Sen, J.)