

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:166543

CWP-1752-2020 (O&M)

RESERVED ON: 21st JULY, 2023

PRONOUNCED ON: 08.11.2023

KASTURI LAL KHANNA

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Petitioner-in-person.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Pritam Singh Saini, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in nature of certiorari for quashing the orders dated 15.03.2017 & 05.06.2017 (Annexures P-12 & P-19) passed by the respondent-Corporation whereby the petitioner was directed to deposit of excess amount of leave encashment along-with interest @ 9%. Consequently the calculations of the payment of arrears, difference of the amounts of pay, emoluments and consequential benefits contained in orders dated 21.08.2017, 29.12.2017 and 14.09.2018 (Annexures P-22 to P-24 respectively).

2. Brief facts of the case are summarized below:-

Petitioner was working as an Assistant Statistician (Grade-II

Officer). He acquired qualification of Company Secretary in the year 1990 and was ordered to look after the work of Company Secretary as a stop-gap arrangement. A writ petition was filed raising grievance that the petitioner should be given promotion to the post of Secretary w.e.f. 26.06.1995 i.e. date of decision of Board of Directors. The writ petition was allowed with the direction that petitioner be treated as having been promoted to the post of Secretary w.e.f. 26.06. 1995. Considering that petitioner had retired, the direction was to pay consequential benefits alongwith interest @ 6% per annum from the date payment became due. It was further ordered that in case payment is not made within three months of receipt of certified copy of order, the rate of interest would be 12% per annum. In compliance with directions of this Court, order dated 05.06.2017 was passed by the Managing Director of Haryana State Minor Irrigation and Tubewell Corporation hereinafter referred to as 'Corporation']. It was found that the petitioner had already got excess payment of leave encashment and an amount of Rs.1,51,158/- is recoverable. Accordingly, impugned notices of recovery dated 15.03.2017 and 05.06.2017 (Annexures P-12 and P-19 respectively) were sent to the petitioner to deposit the excess amount of leave encashment within 30 days after the receipt of this order.

3. It is the contention of the petitioner that the recovery is being made after the pronouncement of judgment of this Court whereas, there was no specific direction by this Court to make any recovery. The grievance is that calculation made by the respondents with regard to interest is wrong, as after three months of receipt of order, interest @ 12% should have been awarded but the same has not been calculated properly.

The contention raised is that leave encashment has wrongly been reduced to 30 days, which is against the bye-laws of the Corporation.

4. Learned counsel for the respondents has argued that the petitioner had already availed the gratuity benefit under the bye-laws of the Corporation, later on, he moved a claim that he is entitled to gratuity under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act'). The claim was allowed and he got gratuity under the Act. As per the Act, he was entitled to leave encashment of 30 days only and not of 300 days as under the bye-laws of the Corporation.

5. Mr. Pritam S. Saini, Advocate has placed reliance upon the judgment rendered by the Division Bench of this Court in the case of **“Haryana State Minor Irrigation & Tubewell Corporation vs. Tilak Raj Sharma and others”**; CWP-6866-2002, decided on 25.03.2004.

6. Having heard learned counsel for the parties.

7. There is no dispute that the petitioner was promoted to the post of “Assistant Statistician” in the Corporation and was working as such against that post. Though the petitioner acquired the higher qualification but he was under legal obligation to obtain the prior permission of the competent authority before acquiring the same as per Haryana Government letter No. 3712-205-21-72, dated 18.07.1972. There is also no doubt that the petitioner was assigned the work of “Company Secretary” vide order dated 30.04.1991 but it was a stop gap arrangement. From the letter dated 01.07.2022 (Annexure P-2), it is crystal clear that the petitioner stands relieved from the duties of the Corporation w.e.f. 30.06.2002 (A.N) after giving him three months wages in lieu of notice as stipulated under Clause

8.2 of the Service Bye-Laws of the Corporation and the post of 'Secretary' was also abolished due to the closure of the Corporation under Section 25(O) of the Industrial Disputes Act. Accordingly, the claim of the petitioner that he served the Corporation upto 30.07.2022 is rejected.

8. The petitioner was not entitled to ADA installment as he was not in service of the Corporation at that time.

8. In view of the public notices, the petitioner was under legal obligation to furnish the 'NDC' in support of his claim but he failed to furnish the said 'NDC'. Later on, he submitted his affidavit dated 16.04.2007 in support of his 'NDC', thereafter, keeping in view the said affidavit, the Corporation released his terminal benefits i.e. DCRG and leave encashment as per the bye-laws releasing him 300 days leave encashment. If the benefit of gratuity is to be released under Gratuity Act, the petitioner is entitled for leave encashment only for 30 days. Whereas the petitioner was granted the benefit of gratuity under the payment of Gratuity Act, as per which he is entitled for leave encashment for 30 days, which was earlier released to him for 300 days.

9. ***Tilak Raj Sharma's (supra)*** case relied upon by learned counsel for the respondents is fully applicable to the instant case. It has been categorically mentioned in the said case that an employee cannot have best of both the words. The employee can either have gratuity under the Act and leave encashment of 30 days or can have gratuity under the Civil Services Rules with leave encashment of 300 days. It is an admitted fact that the petitioner has received the gratuity under the Act, thus he is entitled for leave encashment for 30 days only instead of 300 days.

10. In view of discussions made, hereinabove, this Court does not find any merit in the present petition and dismissed the same with no order as to costs.
11. The pending civil misc. application, if any, stands disposed of.

8th, NOVEMBER, 2023
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>