

RSA-1129-2021 (O&M)

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2023:PHHC:067165

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4957-C-2021;
CM-4958-C-2021 in/&
RSA-1129-2021 (O&M)
Date of Decision :09.05.2023

Om Parkash

....Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sumit Sangwan, Advocate for the appellant.

Ms. Vibha Tewari, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

CM-4958-C-2021

Present application has been filed under Order 41 Rule 27 read with Section 151 of the CPC for leading additional evidence in the present appeal.

In the application, it is being stated that one Suresh Kumar, Pump Mechanic, got superannuated on 29.02.2020 and he had received certain amount as leave encashment, which benefit has not been extended to the applicant-appellant at the time of his retirement, which act is discriminatory.

Notice of the application to the respondent-State.

Ms. Vibha Tewari, AAG, Haryana accepts notice on behalf of the respondent-State and submits that as per her instructions, the benefit which was extended to Suresh Kumar, was given under a mistaken belief and without any entitlement and department is contemplating recovery of the

same after following due process of law.

Learned counsel for the respondent-State submits that no other person has been given the benefit of leave encashment as the same is not admissible to the employees of the agency.

Keeping in view the fact that factual position sought to be brought on record is relevant, application is allowed and document Annexure A-1 is taken on record.

RSA-1129-2021

1. Learned counsel for the appellant argues that in present case, the claim of the appellant for the grant of benefit of leave encashment has not been dealt with in a manner required for, by the Courts below as the appellant was working in the Indo-Italian Agriculture Development Agency, he was entitled for the leave encashment, which is a part of retiral benefits.

2. On being asked to show the rules according to which, the employees of the agency are entitled for the said benefit, learned counsel for the appellant has not been able to show any such rule brought on record as evidence to prove the assertion that the employees of the agency are to be treated as Government employee so as to grant the retiral benefits such a leave encashment.

3.. In the absence of any such evidence brought on record, it cannot be said that the judgments and decrees of the Courts below are perverse in any manner.

4. Learned counsel for the appellant submits that keeping in view the fact that his application under Order 41 Rule 27 read with Section 151 of the CPC for leading additional evidence has been allowed and document

annexure A-1, which the appellant received under the Right to Information Act, 2005 from the respondent-department shows that the benefit claimed has been extended to one Suresh Kumar with regard to the release of leave encashment.

5. It may be noticed that learned counsel for the respondent-State has submitted that said benefit has wrongly been given to Suresh Kumar without there being any rules entitling him for the same and the said benefit will be recovered from Suresh Kumar after following due process of law as the same was not admissible to him. It may be noticed that there is no negative discrimination available. In case any employee has been given benefit without there being any entitlement, the said benefit cannot be asked by another employee on the ground of discrimination. Entitlement has to be shown as per the rules governing the service. Relevant law on the said aspect has already been settled by the Hon'ble Supreme Court of India in **Civil Appeal No.2273-2011** titled as **Chaman Lal vs. State of Punjab and others** decided on 16.05.2014. Relevant paragraph of the judgment is as under:-

"15. More so, it is also settled legal proposition that [Article 14](#) does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise it may not be a ground to grant similar relief to others. This Court in [Basawaraj & Anr. v. The Spl. Land Acquisition Officer](#), AIR 2014 SC 746 considered this issue and held as under:

"It is a settled legal proposition that [Article 14](#) of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a

wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, [Article 14](#) cannot be stretched too far for otherwise it would make functioning of administration impossible.”

6. Further, Hon’ble Supreme Court of India in **Civil Appeal No.7295-2019** titled as **State of Odisha and another vs. Anup Kumar Senapati and another** decided on 16.09.2019 has held that there is no concept of negative equality under Article 14 of the Constitution of India and negative equality when the right does not exist, cannot be claimed.

7. In the present case, learned counsel for the appellant has not been able to show any such rule to this Court, which has come on record to prove that employees of the agency are also entitled for the grant of benefit of leave encashment.

8. Keeping in view the facts and circumstances noticed hereinbefore, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

CM-4957-C-2021

Application is disposed of.

May 09, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No