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

(227) **RSA-2849-2017 (O&M)**
Date of Decision : 24.03.2023

Punjab State Electricity Board (Now Punjab State Power Corporation Limited) and others

...Appellants

Versus

Sukhdev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Harpreet Kaur Dhillon, Advocate for the appellants.

Mr. Ajay Pal Singh Rehan, Advocate for the respondent.

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Harsimran Singh Sethi J. (Oral)

CM-7083-C-2017

Application is allowed, as prayed for.

CM-5648-C-2021

Application is allowed, as prayed for.

RSA-2849-2017

In the present regular second appeal, the challenge is to the judgment and decree of the trial court dated 12.10.2011 by which, the suit filed by the respondent-plaintiff qua the release of the leave encashment has been allowed along with interest as well as to the judgment and decree of the lower appellate court dated 07.02.2017 by which, the appeal preferred by the appellants-defendants was partly allowed qua the interest part only.

Certain facts need to be mentioned for the correct appreciation of the controversy in hand.

While the respondent-plaintiff was in service of the appellant-Corporation, he was arrested by the police in respect of FIR No. 190 dated 08.09.2000. Due to the said arrest, the respondent-plaintiff was placed under suspension on 29.09.2000. As per the FIR No. 190 dated 08.09.2000, the allegations alleged against the respondent-plaintiff were proved and he was convicted by the competent court of law vide judgment and order dated 09.01.2002 and was ordered imprisonment for life.

Keeping in view the conviction suffered under Section 302 IPC, after following the due process envisaged under law, the respondent-plaintiff was dismissed from service vide order dated 11.01.2003. After the dismissal, the respondent-plaintiff demanded the release of the provident fund as well as the leave encashment. As the request of release of the provident fund and the leave encashment was not accepted by the appellant-Corporation, the respondent-plaintiff filed a civil suit claiming the benefit of provident fund as well as leave encashment along with interest.

During the pendency of the suit, provident fund amounting to Rs. 76,825/- was extended in favour of the respondent-plaintiff, which also included interest and the question only remained qua the grant of the benefit of the leave encashment. The trial court by interpreting the evidence, which has come on record, allowed the suit filed by the respondent-plaintiff to hold that after the dismissal, leave encashment was also to be extended to the respondent-plaintiff and as the same has not been done, a direction was given to release the leave encashment to him along with interest @ 6%

compounded.

Feeling aggrieved against the judgment and decree of the trial court dated 12.10.2011, the appellants-defendants filed an appeal before the lower appellate court and the lower appellate court upheld the judgment of the trial court qua the grant of benefit of leave encashment but only modified the grant of interest from 6% compounded to 9% per annum. Hence, the present regular second appeal.

Learned counsel for the appellants-defendants argues that the leave encashment is only admissible to an employee at the time of retirement, whereas in the present case, respondent-plaintiff was dismissed from service on being convicted by a competent court of law hence, the trial court as well as the lower appellate court failed to consider the said aspect before granting the benefit of leave encashment.

Learned counsel for the respondent-plaintiff, on the other hand, submits that as there is no rule, which prohibits the grant of leave encashment before retirement, the grant of the said benefit by the courts below is liable to be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

As to at what stage, the leave encashment is admissible, has been considered by this Court while passing order in CWP No. 20751 of 2019 titled as ***Gurdeep Singh Vs. State of Punjab and others,*** decided on 28.08.2019. By interpreting the Punjab Civil Services Rules, it was held that the leave encashment is only admissible at the time of retirement of an employee and not prior to the same.

In the present case, the appellant-corporation is relying upon the Rule 8.22 of the Punjab State Electricity Board Regulations, to contend that the leave encashment is only admissible at the time of retirement. Rule 8.22 of the Punjab State Electricity Board Regulations clearly envisages that the same is admissible only at the time of retirement.

Learned counsel for the respondent-plaintiff has not been able to dispute the said Rule can only to be made applicable at the time of retirement. That being so, the judgments and decrees of the courts below granting the benefit of leave encashment even after the dismissal of an employee from service is not only contrary to the rules governing the service as well as the settled principle of law in ***Gurdeep Singh's case (supra).***

The judgments and decrees of the courts below are perverse to the facts as the relevant rule and the law has not been taken into account while granting the benefit in favour of the respondent-plaintiff qua the leave encashment despite dismissal from service.

Keeping in view the above, the judgments and decrees of the courts below are set-aside being perverse to the rules governing the service as well as the settled principle of law and the suit filed by the respondent-plaintiff is accordingly dismissed.

Appeal is accordingly allowed. Decree sheet be prepared.

March 24, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No