



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

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RSA-195-2024 (O&M)

Date of decision: 19.09.2024

State of Haryana and another

...Appellants

Versus

Mohinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms. Vibha Tewari, AAG, Haryana.

Ms. Ritu Pathak, Advocate/Legal Aid Counsel for the respondent.

AMAN CHAUDHARY, J. (Oral)

1. The present regular second appeal is filed challenging the judgment and decree dated 19.05.2023 passed by learned District Judge, Sirsa reversing the finding of fact returned by the trial Court, while dismissing the suit.

2. The claim of the plaintiff-respondent, who, while working as Junior Scientific Assistant, was suspended on 17.04.1996 and dismissed from service on 28.10.1998, consequent to his conviction, appeal against which also dismissed by the Additional District Judge, Sirsa, was for release of leave encashment, while GPF and GIS had been granted.

3. Learned State counsel would state that the relief as granted by the lower appellate Court is in teeth of **Ram Kumar Ranga vs. State of Haryana and others**¹, followed in **Rajesh Bhalla vs. State of Punjab**², which learned counsel appearing for the respondent was unable to controvert or cite any contrary law. The relevant paras of Ram Kumar Ranga (supra) read thus:

“11. Before an employee becomes entitled for the grant of leave encashment, there has to be a provision under the relevant Statute governing the service for extending the said benefits to an employee. An employee will become entitled for grant of leave encashment in

¹ 2019 (4) SCT 99.



case the same is envisaged under the Rules and employee concerned is eligible for the grant of the same.

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32. A bare perusal of the facts and instructions noted above, clearly shows that there is no Rule or instructions, which entitles an employee to leave encashment prior to his retirement. Rules/instructions reproduced herein before clearly envisage that leave encashment benefit is only available at the time of retirement and not as and when the relationship of employee and employer comes to an end.

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36. It is a settled principle of law that the State is competent to supplement Rules by way of issuance of instructions on the same issue. If a rule needs any clarification, the State can clarify the same by issuing instructions. In the present case, the State has clarified the grant of leave encashment and the employees who are entitled to receive the same by issuing instructions starting from the year 1978 onwards. As per the instructions which have been issued by Government of Haryana, as reproduced hereinbefore, an employee only becomes entitled for the grant of leave encashment at the time of his/her retirement. The leave encashment has been made synonymous to the grant of pensionary benefits. No employee, except in the case of an employee who dies while in service, who might not be entitled for the pension, has been made entitled for the grant of leave encashment. Therefore, in order to find as to whether, an employee will be entitled for the grant of leave encashment or not, the same has to be seen in accordance with the Rule 8.21 of Punjab Civil Services Rules as applicable to State of Haryana read with instructions, which have been issued by the Government of Haryana from time to time. Once, ten categories were laid down by the respondents-State in the instructions, which were issued on 12.08.1998, no employee, who is not included in those categories, can claim the benefit of leave encashment. The said instructions are not under challenge. Therefore, the State is well within its right to decide the claim of an employee for the grant of leave encashment keeping in view the said instructions dated 12.08.1998. Under the Rule 8.21 of Punjab Civil Services Rules as applicable to Haryana read with instructions issued from time to time, a dismissed employee is not entitled for the grant of leave encashment.

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41. In the present case, no rule has been shown to this Court which provides the grant of leave encashment to a dismissed employee rather the instructions, which have been reproduced hereinbefore, clearly envisage that the leave encashment is to be granted only at the time of superannuation and not at any given point of time when the services of an employee comes to an end.

42. In view of the settled principle of law cited above, the instructions which have been issued by the Government of Haryana wherein, the grant of leave encashment has been regulated, have force of law and the employees can only claim the said benefit if they are entitled to the same under the said instructions and not otherwise.

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44. Next arguments raised by the learned counsel for the petitioner for the grant of leave encashment is by relying upon the judgment in Dhir Chand's case (supra). In Dhir Chand's case (supra), Coordinate Bench relied upon Full Bench in LPA No.113 of 2012 titled as Punjab State Civil Supplies Corporation Ltd and others v. Pyare Lal, decided on 09.11.2012 to hold that as the leave encashment is a right in property and the same cannot be withheld notwithstanding pendency of a departmental enquiry or criminal proceedings and therefore, an employee who has been dismissed from service is entitled for the grant of leave encashment. The relevant portion of the order passed by the Coordinate Bench while deciding Dhir Chand's case (supra) is as under:-

"4. The legal position regarding leave encashment has been subject matter of attention of the Full Bench decision of this Court in case titled Punjab State Civil Supplies Corporation Ltd. & others v. Pyare Lal, 2014(4) SCT 711. The Court specifically dealt with the issue of leave encashment in the background of criminal and disciplinary proceedings. Agreeing with the opinions expressed by the Allahabad and Jharkhand High Courts in their Full Bench decisions in cause titled Bengali Babu Misra v. State of U.P. & others reported as 2003 (3) AWC 1760 and decided on 05.12.2002 and Dr. Dudh Nath Pandey v. The State of Jharkhand & others, 2008(2) S.C.T. 517 : 2009 (2) SLJ 105 both the Courts were of one mind in holding that leave encashment is a right in property, withholding of which, in the absence of statutory rule would mean depriving a person from his property without the procedure established by law. The action would be rendered in violation of Article 300A of the Constitution of India. The result of dismissal would be only deprivation of pension and gratuity. But this is not true of leave encashment as it is part and parcel of salary.

5. The Full Bench in Pyare Lal case ruled that leave encashment is payable to a retiring employee notwithstanding pendency of departmental inquiry or criminal proceedings. The only distinction in this case is that it is not one of a retiring employee as this is a case of dismissal from service. However, this difference, to my mind, will not tilt the balance in favour of the State as still the settled legal position remains that leave encashment is part of salary and salary, like credit in General Provident Fund account of an employee, cannot be withheld in the event of dismissal because it represents money saved/earned for unutilized leave as a matter of right for work performed and duties discharged while in service."

45. No doubt while deciding LPA No.113 of 2012 decided on 09.11.2012, the Full Bench of this Court held that the amount of leave encashment which is payable to a retiring employee, cannot be withheld notwithstanding pendency of departmental enquiry or criminal proceedings against an employee. Coordinate Bench, while deciding Dhir Chand's case (supra) was not informed that against the order dated 09.11.2012 passed by the Full Bench in LPA No.113 of 2012, a review petition was preferred pointing out the provisions under Rule 8.21 (aa), the Government has right to withhold the



benefit of leave encashment to an employee during the pendency of the departmental enquiry or the criminal proceedings. Review petition came to be decided by the Full Bench on 11.08.2014 and by accepting the arguments of the State that the State is well within its right to withhold the grant of leave encashment during the pendency of departmental enquiry and criminal proceedings, the Full Bench held that the benefit of leave encashment cannot be extended under the Punjab Civil Services Rules if the proceedings are pending against an employee and only the 100% provisional pension at the time of retirement is to be paid alongwith commutation of the pension. The relevant paragraph of the Full Bench judgment passed in review dated 11.08.2014 is as under:-

"Earlier, the Full Bench of this Court in the judgment dated 9.11.2012, agreed with the view taken by the Division Bench in B.S. Gupta's case (supra), holding that the amount of leave encashment is payable to the retiring employees and cannot be withheld notwithstanding the departmental inquiry or criminal proceedings pending against an employee. However, a review application was filed by the appellant pointing out that Rule 8.21(aa) of the Punjab Civil Service Rules, Volume-I, Part-I, Chapter- VIII, adopted by the appellant, provides for withholding of leave encashment, but such Rule was not brought to the notice of the Court. Considering the aforesaid fact, the order dated 9.11.2012 was recalled on 1.8.2014 and the matter was ordered to be placed for hearing before the Full Bench and that is how we are seized of the present matter.

In Dr. Ishar Singh's case, the entire controversy was in respect of withholding or postponing of payment of pension and gratuity amount, during the pendency of the departmental inquiry. The Court considered Rule 2.2 and 9.9 of the Punjab Civil Service Rules Volume-II to hold that the gratuity can be withheld but State cannot withhold or postpone the payment of pension in anticipation of an enquiry nor can refuse to commute the pension, permissible under law. It concluded as under:-

"68. In view of the observations made above, I am of the considered view that though the State has preserved its right of withholding or withdrawing compensation of affecting it as a whole partly, permanently or temporarily, yet the State cannot withhold or postpone the payment of pension in anticipation of an enquiry nor can refuse to commute the pension permissible under the law, of course, gratuity can be withheld."

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81. As a result of the above discussion, I would conclude as under:-

(i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.

(ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.



(iii) Pension cannot be adversely affected before a finding of guilt is returned.

(iv) The Government can initiate departmental enquiry after long lapse before retirement, rather there is no limitation for initiating departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonable be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.

(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.

(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.

(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only."

The conclusions (ii) and (vii), was the subject matter of interpretation in the earlier judgments. In some of the judgments, it is held that the amount of leave encashment cannot be withheld whereas, in another judgment, it has been held that the amount of leave encashment can be withheld during the pendency of departmental or criminal proceedings. The question to be examined is whether the leave encashment is the retiral benefits from which recovery can be effected in terms of the applicable Rules such as Rule 8.21(aa) inserted on 11.2.1987 in Punjab. The said Rule reads as under:-

"8.21(a) Leave at the credit of a Government employee in his leave account shall lapse on the date of his retirement:

Provided that the Government employee;-

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(aa) Notwithstanding anything contained in sub-rule (a) the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him and on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

Since Rule 8.21(aa) provides withholding the amount of leave encashment when disciplinary and/or criminal proceedings are pending against an employee, therefore, the amount of leave encashment can be withheld to meet out the possibility of recovery from such amount.

In B.S. Gupta's case (supra), the petitioner was paid 75% of the pension pending criminal proceedings and was denied the benefit of leave encashment. While relying upon the Full Bench judgment in Dr. Ishar Singh's case, it was held as under:-

"3. For the reasons mentioned above, this petition succeeds. The respondents are directed to release 100% provisional pension to the petitioner and also the amount of leave



encashment in accordance with law within a period of three months from the date a certified copy of this order is provided before them. The petitioner shall also be entitled to interest at the rate of 8% per annum on the arrears of pension with effect from the date it was payable till the time of its payment. Copy of the order be furnished dasti on payment of usual charges."

It is the said judgment, which was followed later in Gurdial Singh's case (supra) and by a Single Bench in Dayal Singh's case (supra). However, in Harbhajan Singh Riar's case (supra), the learned Single Bench examined Rule 8.21(aa) of the Punjab Civil Services Rule, Volume-I, Part-I, Chapter- VIII and held as under:-

"11. So far as the claim of the petitioner for payment of leave encashment is concerned, Rule 8.21(aa) of Punjab Civil Services Rules, Volume-I, Part-I, Chapter VIII provides that the same may be withheld wholly or in part while disciplinary proceedings are pending against an employee. If in the opinion of the authority, there is a possibility of some money becoming recoverable from the employee on the conclusion of the proceedings against him, the respondents have a right to withhold the payment of leave encashment. Under the circumstances, at this stage, the petitioner as a matter of right cannot claim payment of leave encashment.

Prayer in this regard is therefore rejected."

In B.S. Gupta's case (supra) and Dayal Singh's case (supra), the employee was of an undertaking, an instrumentality of State of Haryana, governed by separate set of Rules. No Rule analogous to Rule 8.21 (aa) was brought to the notice of the Court in those cases. Similarly, in Gurdial Singh's case (supra), the Rule 8.21(aa) was not brought to the notice of the Court.

In view of thereof, we find that the ratio laid down in the said judgments cannot be extended in respect of the claim of leave encashment governed by the Punjab Civil Service Rules or the analogous Rules. In fact, in terms of the conclusion (i) in para No.81 of the judgment in Dr. Ishar Singh's case (supra), the State Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100% pension at the time of superannuation. It is conclusion No. (ii) which permits the Government to withhold gratuity or other rerital benefits. The pension is to be paid, may be provisionally, during the pendency of the enquiry. Similarly, conclusion (vii) provides recovery of Government dues from gratuity and other retiral dues. Therefore, the judgment in Dr. Ishar Singh's case (supra), is applicable only in respect of payment of provisional pension pending disciplinary or criminal proceedings and has no applicability in respect of withholding of other retrial benefits. The payment or withholding of other retrial benefits is subject matter of applicable Rules, if any. Since in the present case, Rule 8.21(aa) provides for withholding of leave encashment, the same cannot be released to an employee, as the amount, if any, could be recovered from such benefits."



46. A bare perusal of the above reproduction would show that the Full Bench vide order passed in review petition on 11.08.2014 held that an employee who though is entitled for the leave encashment at the time of his retirement, will not get the same in case there are proceedings pending against him/her till the decision of those proceedings and employer is well within his right to withhold the same. The earlier judgment of the Full Bench dated 09.11.2012 holding that the leave encashment cannot be withheld, was reviewed and therefore, as per the settled principle of law, the leave encashment of an employee, who is facing departmental proceedings or criminal proceedings, at the time of his/her retirement, can be withheld and the employee has not been held entitled for the release of the same till the conclusion of those proceedings.

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50. A bare perusal of the facts recorded above clearly go to show that while deciding Dhir Chand's case (supra), the instructions regarding grant of leave encashment as well as review order dated 11.08.2014 passed by the Full Bench in Pyare Lal's case (supra) were not brought to the notice of the Court. Rather it can be said that this Court was misled in passing the order in Dhir Chand's case (supra) by not providing due assistance and concealing the instructions on the grant of leave encashment issued by the Government of Haryana from time to time as well as the review order passed in Pyare Lal's case (supra) by the Full Bench and therefore, no reliance can be placed by the petitioner on the said judgment to claim the benefit of leave encashment, though not eligible under the rules governing the service as well as instructions issued by the Government of Haryana from time to time in this regard.

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56. If the resignation entails forfeiture of past service, the same is in case of dismissal from service as well. Once, the past service stand forfeited, no benefit of the said service, which stood forfeited, can be extended to an employee in any manner unless any exception is made out by the Government in this regard in the rule/instructions. Therefore, the claim of the petitioner for the grant of leave encashment in respect of the service, which stood forfeited upon his dismissal from service, is even otherwise not maintainable and is liable to be rejected.”

4. In view of the above, the present appeal succeeds. The judgment and decree of the lower appellate Court dated 19.05.2023, are accordingly set aside.

19.09.2024
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(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No