IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

902 **RSA-3224-2003 (O&M)**
Date of Decision: December 04, 2024

The Gurdaspur Cooperative Sugar Mills Ltd.
And another **......Appellants**

Vs.

Sh. K.S. Sodhi **......Respondent**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Rahul Sharma, Advocate
for the appellants.

Mr. Veneet Sharma, Advocate
for the respondent

SUDEEPTI SHARMA J. (ORAL)

The present appeal is preferred against the judgment and decree dated 09.05.1998 passed by the Learned Additional Civil Judge (Sr. Division) Gurdaspur and judgment and decree dated 29.04.2003 passed by learned Additional District Judge (Adhoc), Fast Track Court, Gurdaspur, whereby the suit for declaration filed by the respondent was decreed in his favour and the appeal filed by the appellants, was dismissed, respectively.

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that respondent was appointed as Administrative Officer in Punjab Khand Udyhog Ltd, the respondent joined his service w.e.f. 01-11-1983 at Gurdaspur Unit. After co-operatisation of Punjab Khand Udyog Ltd. the post of respondent was personalised and he had no progressive future in the service of the appellants. The respondent submitted his resignation, which was accepted by appellants vide order dated 13-11-1992 and he was also allowed earned leave encashment of 180 days for earned leave

due to him. Then vide another order, the respondent was allowed earned leave encashment of 120 days instead of 180 days. Vide subsequent order, appellants totally disallowed the respondent of any such leave encashment. Therefore, the respondent filed civil suit for declaration to the effect that he is entitled to earned leave encashment of 180 days and gratuity as per Rule 18 of Punjab State Cooperative Sugar Mills Service (common Cadre) Rule 1981 with interest @ 18% p.a.

3. The suit was decreed in his favour vide judgment and decree dated 09.05.1998. The appeal filed by the appellants against judgment and decree dated 09.05.1998 was dismissed by the Ld. First appellate Court vide its judgment and decree dated 29.04.2003. Hence, the present Regular Second Appeal.

SUBMISSION OF LD. COUNSELS FOR THE PARTIES

4. Learned counsel for the appellants contends that both the Courts did not take into consideration the Rules while deciding the civil suit as well as appeal in favour of the respondent.

5. Per contra, learned counsel for the respondent contends that there are concurrent findings in his favour, therefore, the present appeal be dismissed.

6. I have heard learned counsel for the appellant and perused the whole record of the case.

7. The undisputed fact is that the respondent was working in Punjab Khand Udyog Ltd. and after cooperatisation of Punjab Khand Udyog Ltd, he was absorbed by the appellants i.e. Gurdaspur Cooperative Sugar Mills Ltd. Further, he furnished his resignation which was accepted by the appellants on

13.11.1992 and as per the record at the time of his resignation, he was entitled to earned leave for 183 ½ days as per the statement of PW3-Roop Singh.

8. The Rules applicable to the respondent are Punjab State Cooperative Sugar Mills Service (Common Cadre) Rules, 1981. The relevant Rule is reproduced as under:-

> *"22.1. Every employee shall be entitled to earned leave at the rate of 1 day for every 11 days of duty subject to the maximum of thirty days during a Calendar year. Such leave shall not accumulate for more than 120 days. Salary during earned leave shall be paid at the rate last drawn."*

9. A perusal of the above Rule shows that the respondent is entitled to leave encashment of 120 days.

10. Relevant portion of judgment of Ld. Additional Civil Judge (Sr. Division) Gurdaspur, is reproduced as under:-

> *"8. PW-1 Makhan Singh has proved the appointment letter Ex. P-1 of the plaintiff and his joining report Ex. P-2 dt. 01-11-03. Further he has proved the staff regulations of Punjab Khand Udyog Ltd. Ex. P-3, the copy of order of the Hon'ble High Court Ex. P-4 and copy of order Ex. P-5 dt. 13-11-92 vide which the resignation of the plaintiff was accepted. Further he has proved another letter Ex. P-6 dt. 13-11-92, a telegram Ex.P-7 and the letter dt. 19-11-92, P-8. Further he has stated that the plaintiff had made an appeal to the defendants and this appeal was disposed of vide order Ex. P-10. Further this witness has proved the representation of plaintiff Ex. P-12, the letter Ex. P-13, common cadre rules of Sugar Fed. Ex. P-14 and a clearance certificate of the plaintiff Ex. P-15.*
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> *9. PW-2 R.S. Pathania has proved two letters Ex. PW-2/1 and Ex. PW-2/2 pertaining to the payment of gratuity of one Arvind Kumar Sood.*

10. PW-3 Roop Singh has deposed that as per the record, plaintiff is entitled to the Earned Leave of 183 ½ days which was not availed. Further he has deposed that copy of the relevant record in this connection is Ex. PW-3/1. PW-4 Kesar Singh has proved an order Ex. PW- 4/1 vide which employees of the Punjab Khand Udyog Ltd. were given benefit of leave encashment of 180 days.

11. On the other hand, Kesar Singh DW-1 has deposed that plaintiff has remained in service continuously without any break and hence he is not entitled to leave encashment etc. Further he has deposed that as per rule of the Sugar Fed, only those employees are entitled to the benefit of leave encashment who retired from the service as per rule. Further he has deposed that since the plaintiff had submitted his resignation from the service of the defendants and on this ground also, he is not entitled to the benefit of any leave-encashment. He has also deposed facts as submitted in the written statement.

12. The Id. counsel for the plaintiff submitted that when the plaintiff had joined his service, at that time he was governed under the Punjab Khand Udyog Ltd Staff regulations Ex. P-3. In this connection he has further submitted that as per provisions of Chapter 11 of these regulations, the plaintiff is entitled to the benefit of leave encashment. Then in the appointment letter Ex. P-1 of the plaintiff, it has been mentioned that earned leave encashment is admissible as per rule. Then it is also in the statement of PW-3 Roop Singh that the plaintiff was entitled to earned leave of 183 ½ days, which he had not availed at the time of his retirement. Then it is also on the file that 26 employees of the Punjab Khand Udyog Ltd. were given the benefit of earned leave encashment to the extent of 180 days vide order Ex. P- 4/1. The mere fact that there remained continuity in the service of the plaintiff is no ground to *debar the plaintiff from granting the benefit of encashment and gratuity, when the earned leave of 183 ½ days is already standing to his credit. Then it is also on the file that vide order Ex. P-5 the plaintiff was granted the benefit of leave encashment of 180 days and benefit reduced to 120 days vide order P-6 and then lateron this benefit was totally dis-allowed to the plaintiff vide telegram Ex. P-7 without assigning any reason.*

13. Even in Clause 15 of the Rule, Ex. P-14 it has been mentioned that the Federation or the Mil1 concerned shall be competent to deduct these amount from the un-paid dues of the employees including salary, allowances and gratuity. Head note 15 of these rules is dealing with the resignation. So it also depicts that if any employee of the Mill resigns, then he will be entitled to the benefit of gratuity etc. This fact is further covered under Clause 18 of these rules.

14. Then the letter Ex. PW-2/1 and Ex. PW-2/2 also shows that benefit of gratuity has been given to one Arvind Kumar Sood. The said Arvind Kumar Sood was the Chief Chemists in the defendant's mill and he had also submitted his resignation. So there is no reason to debar the benefit of gratuity to the present plaintiff.

15. In the light of above discussion it is concluded that the plaintiff is entitled to the declaration prayed for. So this issue is accordingly decided in favour of the plaintiff and against the defendants.

x x x x x

18. In the light of my above findings under above framed issues, it is held that the plaintiff succeeded to prove his suit. So the suit of the plaintiff for declaration to the effect that the plaintiff is entitled to Earned Leave Encashment of 180 days and gratuity as per Rule 18 of the Punjab State Cooperative Sugar Mills Service (Common Cadre) Rule

1981 with interest at the rate of 18% p.a, is decreed with costs. Decree sheet be drawn, accordingly and file be consigned to the Judicial Record Room, Gurdaspur.

11. So far as the question of entitlement of gratuity is concerned, the judgment and decree passed by Ld. Additional Civil Judge (Sr. Division), Gurdaspur in this regard, is upheld, whereas, a perusal of the above shows that Ld. Trial Court did not take into consideration the Rules as referred to above, which are applicable in the case of the respondent. In view of the above, the present appeal is partially ***allowed*** and judgment and decree dated 09.05.1998 passed by Ld. Additional Civil Judge (Sr. Division) is modified accordingly Therefore, the relief is modified to the extent that the respondent is entitled to earned leave encashment of 120 days as per Rule 22.1 and gratuity as per Rule 16 of Punjab State Cooperative Sugar Mills Service (Common Cadre) Rules, 1981 alongwith interest @ 15% per annum.

12. . Since this matter pertains to the year 2003 and the respondent is fighting for his right since the year 1995, therefore the appellants are directed to release the amount of gratuity as well as leave encashment to the respondent within a period of 02 months from the date of receipt of copy of the judgment. Parties are left to bear their own costs.

13. Decree sheet be drawn accordingly.

14. All the pending applications also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

December 04, 2024
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Whether speaking/reasoned: Speaking
Whether reportable Yes