

CWP-5622-2024 & connected cases -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205 (06 cases) +
207(03 Cases)

CWP-5622-2024
Date of Decision :20.12.2024

Ramgarhia Polytechnic College and another

...Petitioners

Versus

Educational Tribunal, Punjab and others

...Respondents

CWP-5939-2024

Ramgarhia Polytechnic College and another

...Petitioners

Versus

Educational Tribunal, Punjab and others

...Respondents

CWP-5948-2024

Ramgarhia Polytechnic College and another

...Petitioners

Versus

Educational Tribunal, Punjab and others

...Respondents

CWP-5988-2024

Ramgarhia Polytechnic College and another

...Petitioners

Versus

Educational Tribunal, Punjab and others

...Respondents



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CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rahul Sharma, Advocate for the petitioner-Institute
in all the petitions.

Mr. Swapan Shorey, DAG, Punjab.

Mr. Avtar S. Khinda, Advocate for respondent No.4
in all the petitions.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present bunch of petitions, the challenge is to the order passed by the Educational Tribunal, Punjab dated 08.01.2024 (Annexure P-12) whereby, a direction has been given to the petitioner-Institute to pay the leave encashment as well as gratuity and the arrears of salary admissible to the respondent-employee(s).

Learned counsel for the petitioner-Institute argues that firstly the jurisdiction of the Educational Tribunal to pass an order with regard to the Polytechnic College though aided, is to be ascertained as to whether the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (in short '1974 Act') will be applicable in the facts and circumstances of the present case or not.

Further argument being raised by the learned counsel for the petitioner-Institute is that even if, the jurisdiction exists with the Tribunal to pass order in the present case, no direction could have been given to pay the gratuity as the same was beyond the jurisdiction of the Tribunal, keeping in view the judgment of the Division bench of this Court in **C.R. No.4315-**

2012, titled as, Management of S.D. Model Senior Secondary School and



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another vs. District Judge-cum-Service Tribunal, decided on 20.12.2013.

The last argument which has been raised by the learned counsel for the petitioner-Institute to challenge the order of the Educational Tribunal is that even if the petitioner-Institute are to pay the leave encashment and the arrears of salary admissible to the respondent-employee(s), the respondent-employee(s) were working on an aided post for which 95% grant is made by State hence, 95% of the same are liable to be paid by the State Government and not the Institute.

Learned counsel for the petitioner-Institute further submits that there is no rule under which the leave encashment has to be paid to the employees.

Learned counsel appearing for the respondent-employee(s) submits that once the respondent-employee(s) were working on aided post and the 95% grant is made by the State and the State Government is giving benefit of leave encashment to its employees and the other aided institutions are also giving the said benefit, the respondent-employee(s) are also entitled for the grant of benefit of leave encashment admissible to them by the petitioner-Institute.

Learned counsel for the respondent-employee(s) submits that rather than availing the benefit of leave, the respondent-employee(s) worked for the benefit of the institute and hence, now after the retirement, the benefit of leave encashment cannot be denied to them as the same is admissible qua the other aided institutions where the employees concerned were working on aided post.

Learned counsel for the respondent-State submits that there is no master and servant relationship between the respondent-employee(s) and

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State and hence, leave encashment can only be claimed from the employer i.e. Management and not from the State and hence, the claim of the petitioner-Institute for reimbursing the amount of leave encashment from the State is liable to be rejected.

Learned counsel for the petitioner-Institute submits that keeping in view the judgment of the Honourable Supreme Court of India in **Jagdish Prasad Saini and others vs. State of Rajasthan and others 2022 SCC online SC 1298**, the State has been held liable to pay the leave encashment as leave encashment has been treated the part of the salary for the reason that it is benefit which is to be paid for not availing the leave and working for the said period.

Last argument of the learned counsel for the petitioner-Institute is that as the respondent-employee(s) had already retired much before the date they raised the claim before the Tribunal hence, the belated claim could not have been entertained by the Tribunal under any circumstances and claim should have been dismissed on the ground of delay and laches.

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

The first argument which needs to be dealt with is whether the Tribunal should have entertained the plea for the grant of leave encashment keeping in view the argument raised by the petitioner-Institute qua the delay in approaching the Tribunal.

It may be noticed that the leave encashment is part of the pensionary benefits as per the settled principle of law settled by the Hon'ble Supreme Court of India, the delay cannot be made a ground to deny the

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benefit which are admissible to an employee as part of pensionary benefits.

Reliance can be placed upon the judgment of the Hon'ble Supreme Court of India in *Civil Appeal No.4100-2022 titled as, Shri M.L. Patil (Dead) through LRs vs. State of Goa and another, decided on 20.05.2022.*

Relevant paragraph of the judgment is as under:-

“3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent – State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original 2 petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1 st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.”

Keeping in view the said fact that the leave encashment also becomes admissible to the employees after retirement and is also to be treated as pensionary benefit though, relating to the payment of unutilized leave. Hence, the argument being raised by the petitioner-Institute that claim

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of leave encashment should have been rejected on the ground of delay in filing the claim cannot be accepted.

The other argument which has been raised by the learned counsel for the petitioner-Institute is that Tribunal had no jurisdiction to entertain the claim keeping in view the fact that 1974 Rules are not applicable upon the polytechnic Institute.

It may be noticed that Tribunal had already passed the order and in case, the jurisdiction could not have been with the Tribunal, the employees would have come to the High Court and now as the matter is being decided by this Court for the grant of leave encashment, the argument that Tribunal has no jurisdiction becomes inconsequential and accordingly the same is not being adjudicated.

Learned counsel for the petitioner-Institute submits that there is no rule which has been brought before the Tribunal by the respondent-employee(s) entitling them for the grant of benefit of leave encashment.

It may be noticed that the petitioner-Institute is an aided institution and is receiving grant-in-aid and 95% of salary of the respondent-employee(s) was being paid by the State. The aided institutions, once are getting aid from the State, the benefit of leave encashment which is admissible to the employees of other aided institutions, is to be adhered too even by the petitioner-Institute qua the employees working with them. Once, the aided institutions are to extend the benefit of leave encashment to the employees concerned, the denial of the same to the respondent-employee(s) merely on the ground that rules of the polytechnic institute does not envisages the same, cannot be a ground to deny the legitimate benefit of the employees, who have worked wholeheartedly for the petitioner-Institute

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even during he leave period and now denying the benefit of encashment of leave after retirement will be too harsh especially, when the employees have worked without availing the leave admissible to them.

Last argument raised by the learned counsel for the petitioner-Institute is that though, even if, leave encashment is to be paid by the petitioner-Institute but the same has to be reimbursed by the State. The said argument has been raised on the ground that 95% of the grant has been received qua the post in question against which the respondent-employee(s) were working, being paid by the State.

Learned counsel for the petitioner-Institute has argued that leave encashment has to be treated as part of the salary, keeping in view the judgment in **Jagdish Prasad (supra)** hence, the State is liable to pay the said benefit.

Once, the liability of the polytechnic Institute cannot be taken out as the master and servant relationship is between the petitioner-Institute and respondent-employee(s) and not of the State and respondent-employee, the duty to release the leave encashment is of the employer i.e. the petitioner-Institute.

In case, the petitioner-Institute has any claim to get the amount reimbursed from the State, keeping in view the judgment in **Jagdish Prasad (supra)**, the same can be raised by the petitioner-Institute before the State and the State will consider their liability keeping in view the judgment in **Jagdish Prasad (supra)** so as to reimburse the amount of leave encashment paid by the petitioner-Institute to the respondent-employee(s). The said claim raised, will be decided by the respondent-State within a period of 08

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petitioner-Institute.

It may be noticed that the leave encashment will be paid by the petitioner-Institute to the respondent-employee(s) within a period of 04 weeks from the date of receipt of copy of this order without waiting for reimbursement of the same at the hands of the State if possible.

Learned counsel for the parties submits that gratuity has already been paid by the petitioner-Institute hence, the said argument raised qua the grant gratuity by the petitioner-Institute needs no adjudication by this Court in the present petitions.

Present petitions are disposed of in above terms.

Civil miscellaneous application pending, if any, is also disposed of.

A photocopy of this order be placed on the file of connected cases.

December 20, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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