



CWP-16931-2024 & connected cases

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

126 to 132 (7 cases)

CWP-16931-2024

Date of Decision: 22.07.2024

**Home Secretary-cum-Secretary Transport, U.T., Chandigarh and
another** **...Petitioners**

Versus

**Presiding Officer, Industrial Tribunal and Labour Court, U.T.,
Chandigarh and another** **...Respondents**

With

CWP-16934-2024

**Home Secretary-cum-Secretary Transport, U.T., Chandigarh and
another** **...Petitioners**

Versus

**Presiding Officer, Industrial Tribunal and Labour Court, U.T.,
Chandigarh and another** **...Respondents**

With

CWP-16942-2024

**Home Secretary-cum-Secretary Transport, U.T., Chandigarh and
another** **...Petitioners**

Versus

**Presiding Officer, Industrial Tribunal and Labour Court, U.T.,
Chandigarh and another** **...Respondents**



CWP-16931-2024 & connected cases

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With

CWP-16943-2024

**Home Secretary-cum-Secretary Transport, U.T., Chandigarh and
another ...Petitioners**

Versus

**Presiding Officer, Industrial Tribunal and Labour Court, U.T.,
Chandigarh and another ...Respondents**

With

CWP-16946-2024

**Home Secretary-cum-Secretary Transport, U.T., Chandigarh and
another ...Petitioners**

Versus

**Presiding Officer, Industrial Tribunal and Labour Court, U.T.,
Chandigarh and another ...Respondents**

With

CWP-16950-2024

**Home Secretary-cum-Secretary Transport, U.T., Chandigarh and
another ...Petitioners**

Versus

**Presiding Officer, Industrial Tribunal and Labour Court, U.T.,
Chandigarh and another ...Respondents**

And



CWP-16931-2024 & connected cases

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CWP-16953-2024

Home Secretary-cum-Secretary Transport, U.T., Chandigarh and
another ...Petitioners

Versus

Presiding Officer, Industrial Tribunal and Labour Court, U.T.,
Chandigarh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Sumeet Jain, Advocate and
Ms. Shubreet Kaur, Advocate for the petitioners
(*in all the petitions*)

JAGMOHAN BANSAL, J. (Oral)

1. As issues involved and prayer sought are common, by this common order all the captioned petitions are hereby adjudicated. For the sake of brevity and convenience, facts are borrowed from *CWP No.16931 of 2024*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 23.02.2024 (Annexure P-2) whereby Industrial Tribunal and Labour Court, U.T., Chandigarh (for short '**Tribunal**') has extended benefit of leave encashment to respondent No.2.

3. Succinctly, the facts which are necessary for adjudication of the present case are that the petitioner-U.T., Chandigarh engaged respondent No.2 and many other persons for a period of 89 days. Respondent No.2 herein was appointed on 11.12.1998. His contract period was extended from time to time.

As soon as the petitioner attempted to determine contract of respondent No.2,



he approached Central Administrative Tribunal which vide order dated 30.01.2002 directed the petitioner to continue service of respondent No.2 till appointment of regular employees. The petitioner again vide order dated 29.05.2007 attempted to determine contract of respondent No.2 as well as other employees. They approached Industrial Tribunal which vide award dated 27.02.2013 ordered to reinstate them along with 50% back wages. They were also granted continuity of service. The petitioner unsuccessfully preferred multiple writ petitions before this Court assailing orders of Tribunal. The petitioner has preferred intra-court appeals which are still pending. Respondent No.2, on attaining the age of superannuation, has retired. He preferred a claim qua gratuity before the competent authority constituted under the Payment of Gratuity Act, 1972 (for short '**Gratuity Act**') which came to be allowed. The petitioner filed appeal before first appellate authority. Respondent No.2 further preferred an application before the Tribunal seeking leave encashment. The matter came up for consideration before the Tribunal which considered different provisions of Punjab Civil Services Rules and concluded that respondent No.2 is entitled to earned leave. Hence, this petition.

4. Mr. Sumeet Jain, learned counsel for petitioner submits that appeal of the petitioner against order of competent authority qua gratuity is pending before the appellate authority and intra-court appeal against judgment of learned Single Judge of this Court qua reinstatement of respondent No.2 along with back wages is pending before a Division Bench of this Court. The Tribunal has wrongly extended benefit of leave encashment to respondent



No.2. It is going to create bad precedent and undesired burden on public exchequer.

5. I have heard the arguments of learned counsel for the petitioner and perused the record with his able assistance.

6. The petitioner through instant petition is seeking setting aside of order passed by the Tribunal. The petitioner is seeking issuance of writ of certiorari. Different Benches of Supreme Court including a Constitution Bench in *Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477* and a two Judge Bench recently in *Central Council for Research in Ayurvedic Sciences and another v. Bikartan Das and others, 2023 SCC Online SC 996* have reminded us that there are two cardinal principles of law governing issuance of writ of certiorari under Article 226 of the Constitution of India i.e. (i) High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record; (ii) In a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects.

The High Court would be failing in its duty if it does not notice equitable



consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

7. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. Error of jurisdiction includes order by inferior court or tribunal without jurisdiction or in excess of it or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always



bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. The findings of the Tribunal, for the sake of convenience, are reproduced as below:-

“18. The controversy before this Court is confined to entitlement of applicant to the payment of leave encashment. It is un-deniable fact that the Punjab Civil Services Rules were applicable to the employees of the CTU up to March, 2022. The claim of the applicant is for the period prior to March 2022, the applicant being retired on 31.11.2021. Thus, for the purpose of deciding the entitlement of the applicant to leave encashment, the applicant is governed by the Punjab Civil Services Rules. The copy of the Civil Services Rules / Exhibit ‘M2’ pertains to State of Haryana, thus not applicable to the employees of CTU including applicant. The Punjab Civil Services Rules / Exhibit ‘M3’ pertains to State of Punjab which are applicable to the applicant. The applicant is seeking leave encashment under Chapter 8 Rule 8.123 read with Rules 8.116 to 8.119 of Punjab Civil Services Rules, Volume-1, Part -1. On the other hand, Learned Law Officer for the respondents argued that as proved from Punjab Civil Services Rules / Exhibit ‘M3’, Rule 8.123 of Chapter has already been omitted. Thus, the applicant is not entitled to any benefit under Rule



8.123. It is further argued by Learned Law Officer for the respondent that as per Rule 1.4 Volume 1, Part 1 of the Punjab Civil Services Rules, the applicant is not entitled to the benefit of leave encashment as appointment of the applicant was on contractual basis. Moreover, under Rule 1.5 Volume 1, Part 1 of the Punjab Civil Services Rules, if any doubt arises as to whether these Rules apply to any person or not, the decision shall lie with the competent authority. In the present case, the competent authority of the respondents has denied leave encashment to the applicant and other Drivers appointed on contractual basis. To my opinion, in order to ascertain the entitlement of the applicant to the payment of leave encashment, Rules 8.116 to 8.119 of Punjab Civil Services Rules are required to be read along with Rule 8.133 instead of Rule 8.123 of Punjab Civil Services Rules. Rule 8.116 and Rule 8.117 deals with the earned leave admissible to a Government Employees in permanent employment. Rule 8.118 has been omitted. Rule 8.119 deals with half pay leave, commuted leave and leave not due relating to permanent employees. As per Rule 8.133, Part- C Volume 1, Part 1 of Punjab Civil Services Rules, the provisions of Rules 8.116 to 8.119 apply also to a Government employee not in permanent employ. Rule 8.116 is reproduced as below:-

“8.116(i) The earned leave admissible to a Government employee in permanent employ is:-

(a) 1/24th of the period spent on duty, during first 10 years of his service.

(b) 1/18th of the period spent on duty during the next 10 years of his service; and 1/12th of the period spent on duty, thereafter

[(ii) Accumulation of earned leave shall be permissible to any extent but in the case of a Government employee who had opted for the revised orders contained in the instructions issued by the Government of Punjab,



Department of Finance- vide circular letter No.10/77/88/FPI/10304, dated the 24th November, 1988 (hereinafter called the said instructions) and also in the case of those Government employees who joined service on or after the 24th November, 1988, the accumulation of earned leave shall be restricted to 360 days [from 1-1-1996 450 days] and there will be no restriction on availing of earned leave at a time.]

Provided further that, except as explained in the Study Leave Rules contained in Appendi 20 to the Punjab Civil Services Rules, Volume- I, Part-II, if a Government employee goes on a course of study or research or work which in the Government's view increase his competence knowledge or efficiency or adds to the technical knowledge, he may be granted earned leave to the extent it is due to him and not limited to 120 or 240 days.

[(iii) Leave-preparatory to retirement may be allowed up to 180 days on full pay, and in the case of a Government employee who had opted for the revised orders contained in the said instructions and also in the case of those Government employees who joined service on or after the 24th November, 1988 such a leave may be allowed up to 240 days on full pay, provided it is due]”

19. *By virtue of Rule 8.133 of Punjab Civil Services Rules, the non-permanent employees are also entitled to the benefits of leave under Rule 8.116 to Rule 8.119. In the appointment letter Exhibit ‘W1’ it is mentioned that the appointment of the applicant in the CTU is for a period of 89 days on contractual basis but the fact remained undisputed between the parties that the service period of the applicant was extended from time to time and the applicant remained in continuous employment of the respondents from the initial date of appointment i.e. 11.12.1998 till his retirement on 31.11.2021. Besides, the appointment letter Exhibit ‘W1’ is does not incorporate any*



term or condition relating to entitlement of leave. MW1 in her cross-examination stated that no separate letter except appointment letter was issued to the applicant for joining duty. MW1 admitted as correct that from the date of joining till retirement, the applicant was in continuous employment of the respondent-CTU and the service of the applicant was never through any other agency or contractor. The applicant had been performing full time duty. MW1 further stated that the nature of work / duty of the applicant and the regular employee were similar. MW1 further stated that the regular employees are entitled to casual leave, earned leave, medical leave and other leaves as per Punjab Civil Services Rules. In view of the above referred version of MW1 coupled with the fact that there is no condition in the appointment letter governing the entitlement of leave of the applicant, Rules 1.4 and 1.5 of the Punjab Civil Services Rules are not attracted in the present case. Consequently, the applicants by virtue of Rules 8.116, 8.117 and 8.119 read with Rule 8.133 of the Punjab Civil Services Rules are entitled to leave encashment. The respondents failed to controvert the fact that at the time of retirement 300 un-utilised earned leaves were in the credit of the applicant.”

9. From the perusal of findings recorded by the Tribunal, it is evident that there is no jurisdictional error in the impugned order. The Labour Court has found that respondent No.2 worked with the petitioner from 1998 to 2021 which was a long period of service. The Tribunal has found that there is nothing in the appointment letter which deprives respondent No.2 from benefit of leave encashment. The officials of the petitioner during cross-examination could not support case of the petitioner. The findings recorded by Tribunal are more or less findings of facts. Respondent No.2 indubitably has worked for more than 20 years, thus, denial of benefit of leave encashment



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would be travesty of justice and against the intent and purport of scheme of leave encashment.

10. In view of above facts and findings, this Court is of the considered opinion that instant petitions being bereft of merit deserve to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

22.07.2024
Mohit Kumar

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