

2024:PHHC:119168



CWP-28567-2019 1

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

202

CWP-28567-2019

Date of Decision : 11.09.2024

PEPSU ROAD TRANSPORT CORPORATION AND ANOTHER

.... PETITIONERS

V/S

JASWANT SINGH AND ANOTHER

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Anupam Singla, Advocate
for the petitioners.

Mr. Vikas Chatrath, Advocate
Mr. Abhishek Singla, Advocate
Mr. BPS Thakur, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 15.02.2019 (Annexure P-1) whereby Labour Court in terms of Section 33-C(2) of Industrial Disputes Act, 1947 (for short 'ID Act') has directed it to pay 178 days leave encashment as well as benefit of proficiency step up of 16/24/32 years.

2. The workman-respondent joined petitioner organization in 1982 and he was regularized in 1983. He was dismissed from service on 23.04.1990 and came to be reinstated w.e.f. 05.09.1994 in terms of award



passed by Labour Court. The workman was reinstated with back wages as well as continuity of service and consequential benefits. The workman was granted step up on the ground of completion of 8 years' service. The workman retired on 31.07.2014. He after his retirement filed an application under Section 33-C (2) of ID Act on 21.08.2015 claiming benefit of proficiency step up of 16/24/32 years' service.

3. The Labour Court by order dated 15.02.2019 allowed application of workman and ordered to petitioner to pay leave encashment for 178 days and extended benefit of proficiency step up of 16, 24 and 32 years subject to departmental calculation.

4. Mr. Anupam Singla, Advocate submits that the workman was having 122 days leave in his credit and he remained out of service for 04 years. At the most, he could be granted 17 days leave for the period he was out of service, thus, the petitioner could be asked to pay maximum 17 days leave encashment. The workman had already availed/utilized his leave, thus, there was no question to pay him leave encashment of 300 days. He was paid 122 days leave encashment and further at the most is entitled to 17 days leave encashment. With respect to ACP, he submits that workman was extended 1st ACP on 01.04.2009 and he retired on 31.07.2014, thus, there was no question of 2nd ACP.

5. Per contra, Mr. Vikas Chatrath, Advocate submits that workman was entitled to leave encashment of 300 days and management before the Labour Court did not advance any evidence disclosing that the petitioner has already utilized leave period, thus, Labour Court has rightly



granted leave encashment of 300 days. ACP Scheme came into force w.e.f. 03.11.2006 and as per said scheme, the workman was entitled to benefit of ACP on completion of service of 4, 9 and 14 years. The said scheme had substituted earlier scheme whereby benefit was granted on completion of 8, 16, 24 and 32 years. The workman was not extended benefit as per applicable scheme and Labour Court has rightly ordered to grant benefit of ACP.

6. I have heard the arguments of counsel for the parties and perused the record.

7. The scope of Section 33-C (2) is confined to execution of entitlement already determined. Labour Court in exercise of power conferred by Section 33-C (2) cannot determine entitlement. The Labour Court has determined entitlement of workman to leave encashment as well as ACP.

8. Without examining the scope and ambit of Section 33-C (2) vis-à-vis impugned order, I find it appropriate to direct the petitioner which is a State Government Undertaking to re-examine case of workman qua leave encashment as well as ACP. If the workman has not utilised leave beyond 122 days, he shall be released leave encashment for the balance period and his case with respect to ACP shall be examined in the light of ACP introduced in 1998 which was substituted by scheme introduced on 03.11.2006.

9. The workman would file his written submissions and thereafter competent authority/petitioner would pass a speaking order



CWP-28567-2019 4

within two months from the date of filing written submissions. The amount if found due to workman shall be released thereafter within one month.

10. Disposed of.

11.09.2024
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(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No