IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-17569-1997 (O&M)
Date of decision: 01.05.2025

Dr. J.P. Singh ...Petitioner

VERSUS

Vice-Chancellor, CCS HAU, Hisar and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Ms. Bhagyashree Setia, Advocate for the petitioner(s).

Mr. Surinder Singh Walia, Advocate
for the respondent(s)-University.

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VINOD S. BHARDWAJ, J. (Oral)

CM-27111-1997

Application is allowed as prayed for.

CM-18054-CWP-2024

Application is allowed as prayed for subject to all just exceptions. Copy of Statute of the University as Annexure R-4 is taken on record. Registry is directed to do the needful.

Main case:

1. The instant petition has been filed for issuance of directions to the respondents to release the outstanding amount of Contributory Provident Fund, Gratuity, and Leave Encashment, which the petitioner claims to have become due to him upon his resignation from the respondent-University.

2. Learned counsel appearing on behalf of the petitioner contends that in so far as the benefit of the Contributory Provident Fund is concerned, the same already stands released, hence, the instant petition survives only

with respect to the non-payment of Gratuity and Leave Encashment.

3. The undisputed facts which emerge from the present petition are that the petitioner had joined the respondents-Chaudhary Charan Singh Haryana Agricultural University, Regional Research Station at Bawal, District Rewari (Haryana)-as an Assistant Scientist (Agronomy) on 25.01.1983, and he continued to serve the University. He, later, proceeded to serve on deputation with the National Water Development Agency (Ministry of Water Resources, Government of India) vide office order No.1266 dated 11.03.1991. During his deputation with the National Water Development Agency, the petitioner applied for the post of Agronomist (Sugar Cane Expert) in the National Federation of Cooperative Sugar Factories Limited, New Delhi, which was forwarded through proper channel, vide letter dated 23.01.1992. On being selected for the above post, he informed the Vice-Chancellor of the respondent-University of his intention to join the above post in the National Federation of Cooperative Sugar Factories Limited, New Delhi, and prayed for retention of his lien with the University for a period of 03 years. The said request was partly accepted, and lien was approved only for a period of 01 year, i.e., from 12.03.1993 to 12.03.1994. The said lien having not been extended beyond the period of 01 year, the lien of the petitioner stood relinquished on account of a technical resignation, which stood accepted with effect from 13.09.1994. The above benefits having not been released, the petitioner hence approached this Court seeking now the release of Gratuity and Leave Encashment.

4. Learned counsel appearing on behalf of the petitioner contends

that the respondents have wrongly withheld the benefit of gratuity and leave encashment by relying on the University Calendar, wherein it is prescribed that, in order to be eligible for the Gratuity, a person should have either retired from the respondent-University after rendering a minimum service of 10 years or unfortunately died after rendering a minimum of 05 years of service.

5. It is argued that the aforesaid Clause of the University Rules is contrary to the statutory provisions under Section 04 of the Payment of Gratuity Act, 1972, which prescribes only 05 years' length of service as sufficient before cessation of relationship, to be eligible. It is thus argued that the respondents cannot deny the payment of gratuity on the ground that the cessation of the petitioner's relationship with the respondent-University was on account of a technical resignation and not owing to either superannuation or death.

6. She further contends that the petitioner is also entitled to the amount of leave encashment that fell to his share.

7. Learned counsel appearing on behalf of the respondent(s) re-iterates his reliance on Clause 10 of conditions of service as per the Acts & Statutes applicable to the respondent-University, which is extracted as under:-

> *"10. (1) The Vice-Chancellor <u>shall authorise the grant of gratuity to an employee at the time of his retirement or to the members of his family after his death at the same rates</u> <u>and on the same pattern as are applicable to Haryana Government employees of corresponding rank,</u>*

provided the employees has rendered not less than 10 years of service in case of retirement and 5 years service in case of death, in the University.

(2) In case a University employee dies while in service, the cash equivalent of leave salary that the deceased employee would have got, had he gone on earned leave, but for his death, due and admissible on the date immediately following the date of death, subject to a maximum of leave salary for 180 days, shall be paid to his family. The cash equivalent of leave salary admissible under this rule shall also carry the appropriate amount of dearness allowance and it will not be subject to reduction on account of pension equivalent of death-cum-retirement gratuity."

(emphasis supplied)

8. Learned counsel appearing on behalf of the respondent also placed reliance on Clause 20 Sub-Clause 17 of the Acts & Statutes applicable to the respondent-University, which is extracted as under:-

"(17) The employees will be entitled to cash payment in lieu of un-utilised earned leave at their credit at the time of retirement on superannuation subject to the following conditions:-

(a) The payment of cash equivalent of leave salary shall be limited to a maximum of 240 days in the case of employees retiring on or after 1.7.86.

(b) The cash equivalent of leave salary thus admissible will become payable on retirement (both on retirement on superannuation as well as voluntary) and will be paid in lump-sum as a one time settlement.

(c) Cash payment will be equal to leave salary as

admissible for earned leave and dearness allowance admissible on that leave salary at the rates in force on the date of such retirement. No city compensatory allowance and/or house rent allowance shall be payable.

(d) *The authority competent to grant leave shall suo-moto, issue order granting cash equivalent of earned leave at credit on the date of such retirement.*"

(emphasis supplied)

9. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition with their able assistance.

10. So far as the stand of the respondents for denial of the benefit of gratuity to the petitioner on the ground of the relationship having come to an end due to technical resignation is concerned, the position in law is settled to the effect that gratuity is not a charity but a statutory right granted to an employee, as held in the judgment of ***Balbir Kaur vs. Steel Authority of India***, reported as ***2000 (6) SCC 493***. The same being a benevolent provision under the special statute, the conditions imposed by the respondent-employer, which run contrary to Section 4 of the Payment of Gratuity Act, 1972, cannot over-ride the special statute or be accepted as a valid ground to deny the benefit that has lawfully accrued in favour of an employee. It was held by the Delhi High Court in the matter of ***Texmaco Ltd. vs. Ram Dhan and Another***, reported as ***1992 SCC OnLine Delhi 134***, that gratuity cannot be denied to an employee merely on the ground that the

employee voluntarily resigned from service. The right of an employee to receive gratuity under the provisions of the aforesaid Act cannot be defeated by any other instrument or contract. Thus, the reliance of the respondents on Clause 10 of the University Acts and Statutes has to be read in conformity with the provisions enshrined under Section 4 of the Payment of Gratuity Act, 1972. The employee thus becomes entitled to gratuity upon rendering continuous service for not less than 05 years, irrespective of whether the cessation of relationship is on account of superannuation, retirement, resignation, death, or disablement.

11. **The prayer of the petitioner for the grant of the benefit of release of gratuity is accordingly allowed.**

12. So far as the component of leave encashment is concerned, counsel for the respondents has placed reliance on Clause 20; Sub-Clause 17, of the conditions of service, as incorporated in the Statute and extracted above, to contend that the benefit of leave encashment would be available only in the event of retirement or superannuation of an employee.

13. Learned counsel appearing on behalf of the petitioner has not been able to refer to any provision or instruction to the contrary and also does not dispute that the aforesaid Clause is neither the subject matter of challenge in the present petition nor has any prayer been made for striking down the said Clause in view of any subsequent rules, regulation, instructions or circulars etc.

14. Learned counsel appearing on behalf of the petitioner has also not been able to refer to any prevailing instructions that would be applicable

to a case where a person resigns from service, in relation to his right to leave encashment.

15. Under the given circumstances, the prayer for grant of proportionate leave encashment cannot be accepted for want of any reference to a legal provision to support the claim of the petitioner.

16. The present writ petition is accordingly **partly allowed**. The respondents are directed to ascertain the benefit of gratuity admissible to the petitioner for the period of service rendered by him and the same to be released to the petitioner within a period of 03 months from the date of receipt of a certified copy of this order, along with interest @ 6% per annum from the date of institution of the present writ petition, failing which the petitioner would be entitled to claim interest @8% per annum for the period beyond the time specified above.

(VINOD S. BHARDWAJ)
JUDGE

01.05.2025
Mangal Singh

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