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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14195-2025 (O&M)
Date of decision: 20.08.2025

Pawan Kumar and others

... Petitioners

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

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<u>HARPREET SINGH BRAR, J. (ORAL)</u>

1. Present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to accommodate 450 days of earned leaves under Rule 8.116 of Punjab Civil Services Rules, Volume I Part I, Chapter VIII (for short ‘the Rules’), in lieu of unutilized earned leaves lying at their credit on respective dates of superannuation of the petitioners, whereas only 300 days of earned leave are allowed to be encashed and to pay the arrears along with consequential benefits with interest @12% per annum.

2. Learned counsel for the petitioners, *inter alia*, contends that the

petitioners are retired employees from different departments and after their retirement, they were granted extension in service in view of the notification dated 08.10.2012 (Annexure P-2) issued by Department of Finance, Government of Punjab, whereby Rule 3.26 of the Rules was amended and it was decided that services of government employees can be extended beyond the date of retirement for a period not exceeding two years. Thereafter, on 30.10.2015, Rules 3.26 and 8.21 of the amended Rules were amended regarding extension of service and payment of unutilized earned leaves after extension, as discernible from notification (Annexure P-3). However, under the Rules amended vide notification dated 08.10.2012 (Anexure P-2), the employees were entitled to promotion during the extended period of service and benefits of pay revision, however, vide notification dated 30.10.2015 (Annexure P-3), the benefits of promotion, ACP, annual increment and pay revision were withdrawn. Prior to 01.01.1986, only 180 days of earned leaves could be encashed and there was no upper limit for accumulation of earned leaves in the account of an employee and vide letter dated 13.05.1998, limit of leave encashment was raised to 300 days w.e.f. 01.01.1996. Further, Rule 8.21 (b) of Punjab Civil Services Rules was replaced with new rules and no maximum number of leaves, to be encashed, was mentioned. As such, the petitioners are entitled to get the payment of 450 days of earned leaves, in lieu of unutilized earned leaves lying at their credit under Rule 8.116 of Punjab Civil Services Rules, Volume I Part I, Chapter VIII. The petitioners through their counsel served a legal notice dated 06.05.2024 (Annexure P-4) upon the respondent-department, but the same is pending till date. Thereafter, the petitioners filed a CWP-4916-2024 seeking issuance of directions to the respondents to decide the legal notice (Annexure P-4), which was disposed of vide order dated 01.03.2024 (Annexure P-5). Despite that, the benefit of leave encashment for 450 days in lieu of unutilized earned leaves lying at their credit on the dates of their superannuation has not been granted to the petitioners.

3. I have heard learned counsel for the petitioners and perused the case file with his able assistance.

4. The controversy involved in the present petition has already been settled by the Coordinate Bench of this Court in ***Ram Lal Jindal Vs. High Court of Punjab and Haryana and another, CWP-29121-2018,*** on 21.01.2025, wherein the following observations have been made: -

> *"4. The question which arises for determination in the present petitions is whether, the employees who were granted extension in service are entitled for the encashment of total unutilized leave pending in the kitty at the time of superannuation or, the same is also to be restricted to the maximum of 300 days.*
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> *5. Before proceedings further, the rule according to which the leave encashment is admissible needs to be noticed. Rule 8.21 of the Punjab Civil Services Rules Volume 1 part 1, is as under:-*
> *"8.21. (a) Leave at the credit of a Government employee in his*

leave account shall lapse on the date of his retirement:

Provided that the Government employee, –

(A) retiring on superannuation; or

(B) retiring prematurely, voluntarily or on invalidation; or

(C) retiring compulsorily as a measure of punishment and in whose case cut in the amount of pension has not been ordered by the competent authority;

shall, subject to the provisions of sub-rule (c), be entitled to cash payment in lieu of the un-utilised earned leave due as leave preparatory to retirement as under :–

(i) the cash payment shall be equivalent to leave salary limited to a "maximum of 300 days earned leave;

(ii) the cash payment shall become payable on retirement in the above cases in lump sum as a one-time settlement;

(iii) the leave salary for the purpose of this rule shall not include city compensatory allowance or house-rent allowance; and

(iv) no deduction on account of pension and pensionary benefit equivalent to other retirement benefits shall be made from the cash thus paid."

(aa) Notwithstanding anything contained in sub-rule (a), the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee, who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him and on conclusion

of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any.

(b) In case of a Government employee, who is granted extension in Service, on the completion of his extended period of Service, shall be entitled to draw cash equivalent to (Leave encash able under sub-rule (a) of this rule) on the date of his superannuation:

Provided that a Government employee, who continues in Service after his superannuation, shall earn leave at the rate applicable to him on the date of his superannuation:

Provided further that if a Government employee, avails earned leave in excess of leave earned by him during the period of his extension, in that case the excess leave availed by him, shall be deducted from the un-utilized leave at his credit on the date of his superannuation."

6. The said rule was amended vide amendment dated 30.10.2015, copy of which has been appended as Annexure P-4 and the said amendment is as under:-

"3.In the said rules, in rule 8.21,

(i) for sub-rule(b), the following sub-rules shall be substituted, namely:-

"(b) In case of a Government employee, who is granted extension in Service, on the completion of his extended period of Service, shall be entitled to draw equivalent to un-utilized earned leave at his credit on the date of his superannuation:

Provided that Government employee, who continue in Service after his superannuation shall earn leave at the *rate applicable to him on the date of his superannuation:*

Provided further that if a Government employee, avails earned leave in excess of leave earned by him during the period of his extension, in that case the excess leave availed by him, shall be deducted from the un-utilized leave at his credit on the date of his superannuation." and

(iii) sub-rule (d), except the Notes given thereunder, shall be omitted."

7. The petitioners are claiming total unutilized leave encashment as per the amendment dated 30.10.2015 to submit that after the amendment of Rule 8.21(b) of Punjab Civil Services Rules, the grant of encashment of leave qua the employees who were granted extension is not subject to the maximum limit of 300 days as envisaged under Rule 8.21 (a) hence, the petitioners are entitled for the grant of the benefit of total leave encashment without there being any restriction of 300 days as the petitioners retired from service when the notification dated 30.10.2015 was applicable.

8. While raising the said argument, the petitioners are ignoring the amendment dated 10.07.2017. The said amendment to Rule 8.21 (b) has been made with retrospective effect i.e. from 30.10.2015 which is reproduced as under:-

"1. (1) These rules may be called the Punjab Civil Services (Amendment), Rules, Volume-1, Part-1, 2017.

(2) They shall be deemed to have come into force on and with effect from the 30th October, 2015.

2. In the Punjab Civil Services Rules Volume-1, Part-1, in rule 8.21, in sub-rule (b),-

> *(i) for the words "un-utilized earned leave at his credit", the words "leave encashable under sub-rule (a) of this rule" shall be substituted ; and*
> *(ii) in the second proviso, for the words "un-utilized leave at his credit", the words "leave encashable under sub-rule (a) of this rule" shall be substituted."*

9. A bare perusal of the above amendment shows that the amendment done to Rule 8.21(b) vide notification dated 30.10.2015, has already been done away with and that too from the same date i.e. 30.10.2015 while passing the amendment dated 10.07.2017 qua Rule 8.21 (b) of the Punjab Civil Services Rules Volume 1 part 1.

10. Learned counsel for the petitioners concedes that as per the amendment dated 10.07.2017 to Rule 8.21 (b), the same is subject to the maximum of 300 days as envisaged under Rule 8.21 (a). That being so, the prayer of the petitioners as raised in the present petitions, which were filed after the amendment dated 10.07.2017 are liable to be dismissed.

11. Further, an argument has been raised by the learned counsel for the petitioners that any employee who has retired prior to the amendment dated 10.07.2017, but after 31.10.2015 is to be governed by the notification dated 30.10.2015 and will be entitled for encashment of total unutilized leave pending in the kitty of the such employee.

12. It may be noticed that once the amendment dated 30.10.2015 *to Rule 8.21 (b) has already been taken away w.e.f. the same date keeping in view the amendment dated 10.07.2017, by a legal fiction, the Rule 8.21 (b) is to be read as per the amendment dated 10.07.2017 only. Once, the amendment has been made applicable retrospectively w.e.f. 30.10.2015 and the said amendment is not under challenge, the petitioners, who retired between 31.10.2015 till 10.07.2017 cannot claim that the notification dated 10.07.2017 cannot be made applicable upon them as the operation of the amendment dated 10.07.2017 retrospectively takes away the such arguments. Hence, for all intents and purposes, the amendment dated 30.10.2015 to Rule 8.21 (b) is to be treated as non-existent so as to grant any benefit to any employee qua the encashment of the unutilized leave.*

13. Further, it has been brought to the notice of this Court that certain employees retired after the amendment dated 10.07.2017 and on the date when they retired, the said amendment was even otherwise enforceable which takes away their claim so as to apply Rule 8.21 (b) as amended on 30.10.2015.

14. Keeping in view the totality of the facts and circumstances, the claim of the petitioners for the grant of total unutilized leave pending in their kitty qua the employees who were granted extension in service and are governed by Rule 8.21 (b), based upon amendment to the rule dated 30.10.2015 cannot be accepted and the same is accordingly rejected."

5. As such, claim of the petitioners for encashment of total unutilized earned leaves lying at their credit qua the employees, who were

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granted extension in service and are governed by Rule 8.21 (b) of the Rules, based upon notification dated 30.10.2015, cannot be accepted.

6. No other argument has been raised.

7. Keeping view the facts and circumstances of the case, this Court finds no ground to issue any such directions. As such, finding no merits in the present petition, the same is dismissed.

[HARPREET SINGH BRAR]
JUDGE

20.08.2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No