

2025.PHHC:083755-DB



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

LPA-1894-2025 (O&M)

Date of decision: 08.07.2025

SARABJIT SINGH

...Appellant

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL & LABOUR
COURT, UNION TERRITORY CHANDIGARH & ORS.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE ALOK JAIN**

Present:- Mr. Prince Goyal, Advocate for the appellant.

SUDHIR SINGH, J.

CM-4690-LPA-2025

For the reasons given in the application, same is allowed.

Delay of 81 days in filing the appeal is condoned.

LPA-1894-2025

Challenge in the present intra Court appeal is to the order dated 05.02.2025 passed by the learned Single Judge, whereby the writ petition filed by the appellant was dismissed.

2. Before the learned Single Judge, the appellant had laid challenge to the award dated 24.07.2024 passed by the Industrial Tribunal Union Territory, Chandigarh (for short 'the Labour Court'),

whereby, while allowing the reference in part, the appellant was held entitled to an amount of Rs.16,920/- towards the leave encashment.

3. Learned counsel appearing for the appellant has vehemently contended that while passing the impugned order, the learned Single Judge, has failed to take into consideration that leave encashment is a legal right of an employee. It is further argued that the respondent-Management had wrongly withheld the payment on account of the leave encashment, whereas as per the evidence on record, it was admitted by the witness of the respondent-Management that the appellant had availed only 15 days' earned leave during his entire service tenure. It is further argued that in 2008, when the services of all the employees of respondent No.3 were transferred to respondent No.2 with continuity of service, all accrued benefits, including the leave encashment entitlement, also stood transferred. Thus, having discharged the duties on 24.04.1995 till 31.03.2019, the appellant was entitled to the full benefit of the leave encashment. It is further argued that though the Labour Court had extracted the provisions of Section 79 of the Factories Act, yet the said provisions were wrongly interpreted. It is, thus, argued that even the learned Single Judge, has not taken into consideration the said aspect of the matter.

4. We have heard learned counsel for the appellant and have also gone through the case file, including the impugned order.

5. The only question that arises for consideration by this Court is whether the impugned order passed by the learned Single Judge, requires any interference.

6. A perusal of the order passed by the learned Single Judge, would show that a specific query had been put by the learned Single Judge to the counsel for the appellant as to under which Rules, the encashment of the whole number of unutilized leave was being claimed, no satisfactory reply could be given. Even during the hearing of the present appeal, a similar query has been put to the learned counsel for the appellant, but the situation remains the same. The argument of the learned counsel for the appellant that Section 79 of the Factories Act has not been appreciated in its entirety is of no help to the appellant.

7. A perusal of Section 79 of the Act would show that total number of days of leave to be carried forward to a succeeding year shall not exceed 30 in the case of an adult or 40 in the case of a child. While dealing with the claim of the appellant, the learned Labour Court after referring to the provisions of Section 79 of the Act and Section 14 of the Punjab Shops and Commercial Establishment Act, 1958, has observed as under:-

“ 18. The applicant is seeking the leave encashment and medical reimbursement from 24.04.1995 up to 31.03.2008 but did not bifurcate the due amount separately from respondents No.1 & 2. AW1 in his cross examination admitted as correct that in the present claim application he is seeking claim w.e.f. 24.04.1995. AW1 admitted as correct that in the present claim application he was not bifurcated the period and amount of liability of the respondents qua his claim. To my opinion, in the absence of bifurcation of the period and the amount of liability of the respondents qua the

claim, accompanied with the fact that respondent No.2 was already closed in the year 2008, the entitlement of the applicant towards the leave encashment for the period 01.04.2008 to 30.03.2019 shall be governed by the provisions of the Factories Act, 1948 and the Punjab Shops and Commercial Establishment Act, 1958 which is also adopted by the Chandigarh Administration. The proviso to Sub-Section 5 of Section 79 of The Factories Act provides as below:-

“79. Annual leave with wages:-

(5) If a worker does not in any one calendar year take the whole of the leave allowed to him under Sub-Section (1) or sub-Section (2), as the case may be, any leave not taken by him shall be added to leave to be allowed to him in the succeeding calendar year:

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of child.”

19. Section 14 of the Punjab Shops and Commercial Establishment Act, 1958 reads as below:-

“14. Leave:- (a) Every employee who has been in employment for not less than twenty days in a year shall be entitled to one day's earned leave for every such twenty days:

Provided that a young person shall be entitled to one day's earned leave for every fifteen days of employment during the year.

(b) If an employee is discharged or dismissed from or leaves service during the course of the year he shall be entitled to leave with wages or wage in lieu of un-availed leave at the rates laid down in clause(a).

(c) In calculating leave under this section, fraction of half a day or more shall be treated as one day's leave and fraction of less than half a day shall be ignored.

(d) If an employee does not in any one year take the whole of the leave allowed to him under clause (a), any leave not taken by him shall be added to the leave to be allowed to him in the succeeding year:

Provided that-----

(i) Subject to any specific agreement between the employer and the employee, the total number of days of leave that may be carried forward to a succeeding year shall not exceed forty in the case of a young person or thirty in any other case;

(ii) The provisions of this section shall not operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award, agreement or contract of service;

(iii) Where such award, agreement or contract of service provides for a longer leave with wages or weekly holidays than those provided under this section the employee shall be entitled to only such longer leave or weekly holidays as the case may be.”

20. In view of the provisions of law referred above, an employee can accumulate maximum 30 days earned leave. Consequently, an employee gets reimbursement has been claimed by him. Apart from that applicant /AW1 when put to cross-examination in this case stated that he had filed a complaint before the Competent Authority under the ESI Act. In the said complaint, Competent Authority under the ESI effected recovery from respondent No.1. AW1 further stated that the competent authority under the ESI Act has not released the amount recovered from respondent No.1 to him. AW1 further stated that he has not filed any application or appeal alleging that Competent Authority under the ESI Act is not releasing the recovered amount to him. The aforesaid version of the applicant / AW1 would suggest that the applicant has already availed the remedy qua claim of medical reimbursement before the Competent Authority under the ESI Act. In view of the discussion made above, in the absence of any written policy of M/s Him Overseas accompanied with the fact that the applicant has already availed remedy before competent authority under the ESI Act and further in the absence of medical bills, this Court cannot commute medical reimbursement under Section 33C(2) of the ID Act.

7. We find that in the absence of any specific Rules/policy as regards the reimbursement of the earned leave beyond 30 days, the findings recorded by the Labour Court and upheld by the learned Single Judge, cannot be said to be suffering from any illegality or perversity.

8. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.
9. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[ALOK JAIN]
JUDGE

08.07.2025
himanshu

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