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

271 **CWP-29121-2018**
Date of decision : 21.01.2025

RAM LAL JINDAL

...... Petitioner

VERSUS

HIGH COURT OF PUNJAB AND HARYANA AND ANOTHER

...... Respondents

1 **CWP-7971-2021**

BHOJ RAJ AND OTHERS

...... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

...... Respondents

2 **CWP-8100-2021**

DALJIT KUMAR AND OTHERS

...... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

...... Respondents

3 **CWP-8996-2021**

TARA SINGH AND OTHERS

...... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

...... Respondents

4 **CWP-9131-2021**

BALWINDER SINGH AND OTHERS

...... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

...... Respondents

5 **CWP-9284-2021**

GURCHARAN SINGH AND OTHERS

...... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

...... Respondents

6. **CWP-1827-2024**

KOSH RAJ

...... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...... Respondents

7. **CWP-11829-2024**

BHAJAN SINGH BRAR AND OTHERS

...... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Navneet Jindal, Advocate
for petitioner in CWP-29121-2018.

Mr. Nitesh Singla, Advocate
for the petitioners in CWP Nos.7971,
8100, 8996. 9131 and 9284 of 2021.

Mr. Baljeet Singh Sidhu, Advocate
for petitioners in CWP-1827-2024.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Kanwal Goyal, Advocate;
Mr. Prince Singh, Advocate and
Ms. Sheena Dahiya, Advocate
for the respondent- High Court.

***

Harsimran Singh Sethi, J. (Oral)

1. In the present bunch of petitions, the grievance is being raised by the petitioners is that employees who have been granted extension in service beyond the age of superannuation, keeping in view the amendment of the Rules 8.21 (b) of the Punjab Civil Services Rules Volume I part 1 dated 30.10.2015, such employees are entitled for full encashment of the unutilised leave and the same cannot be restricted to 300 days hence, the respondents be directed to encash the total unutilised earned leave which were pending in the kitty of the petitioners at the time of their retirement.

2. Upon notice of motion, the respondents have filed the reply wherein the respondents have stated that the Rule 8.21 (a) of the Punjab Civil Services Rules Volume I part 1 only envisages a maximum encashment of 300 days of the leave encashment at the time of superannuation hence, the claim of the petitioners that they are entitled for the total unutilised leave encashment without there being restriction of 300 days as per the notification dated 30.10.2015 is incorrect. As per the respondents, the notification dated 30.10.2015 has been amended by an amendment dated 10.07.2017, which amendment has been made applicable w.e.f. 30.10.2015 so as to amend Rule 8.21 (b), according to which, even the employees who have been granted extension in service are only entitled for encashment of maximum of 300 days of leave encashment.

3. I have heard learned counsel for the parties and have gone through the record with their able assistance.

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 suprennuation or, the same is also to be restricted to the maximum of 300 days.

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 (Leave encash able under sub-rule (a) of this rule) 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.

15. No other argument raised.

16. Keeping in view the above, no ground is made out for any interference by this Court and the present petitions are dismissed.

17. Pending miscellaneous applications, if any, also stand disposed of accordingly.

18. A photocopy of this order be placed on the connected case files numbered above.

(HARSIMRAN SINGH SETHI)
JUDGE

21.01.2025
Rimpal

Whether speaking/reasoned Yes
Whether Reportable : No