

4. The petitioner's claim is on the basis of the fact that he had a right to obtain the leave encashment, which had been unlawfully denied by the authorities.

5. To ventilate his grievances, the petitioner had approached this Hon'ble Court by way of a writ petition being WPA 2599 of 2024. After hearing the parties, this Hon'ble Court by its order of March 6, 2024 directed the respondent No.2 to consider the claim of the petitioner and dispose of it in accordance with law.

6. In pursuance thereof, a hearing was conducted and the respondent No.2 passed an order of August 27, 2024 rejecting the claim of the petitioner.

7. It is this order of the respondent No.2 dated August 27, 2024 which has been assailed in this writ petition.

8. Mr. Basu, learned Advocate appearing for the petitioner has made the following points;

- a) The petitioner being in a substantive post, that of Accounts of Officer in the respondent No.1, is entitled to the leave encashment and hence, the order of August 27, 2024 was passed erroneously;
- b) The order wrongly interprets the provision of the Regulations made under Regulation framed under the West Bengal National University of Juridical Sciences Act, 1999 (hereinafter referred to as the 'Regulation'), inasmuch as, Regulations 17 and 19, which are the tombstones of refusal by the respondent No.2 of the leave encashment are sought for by the petitioner, are not applicable to him in view of the Regulation 17 which stipulates the applicability to

persons who are not or have not been employees of the University. The petitioner was not an employee of respondent No.1 and joined the University post retirement from the Office of the Principal Directorate of Audit. Hence, the Regulations framed under the Act, so far as leave encashment is concerned, would not guide the petitioner's case;

- c) On an earlier stint with the same University, the petitioner had been duly granted leave encashment, by the same University without any protest and/or demur. Hence, the University is bound by its own acts of commission and/or omission which have indeed created a legitimate expectation of the petitioner that he is entitled to receive leave encashment in this stint as well;
- d) There is an imminent contradiction between the order of August 27, 2024 and the report filed by the authorities pursuant to the order dated April 16, 2025;

9. Mr. Dhar, learned Senior Advocate appearing for the respondents has raised the following issues in defence;

- i) The petitioner is squarely covered by the said Regulations as he is admittedly an ad-hoc employee of the respondent No.1 and is, as such, defined as an employee under Regulation 2(29), which defines an ad-hoc employee to be an employee as well. Being so covered, the petitioner cannot escape the ramification of the Regulations in any manner whatsoever;
- ii) Once the petitioner is covered, as an employee, Rule 21, which guides a temporary employee, which is admittedly a

position above that of the petitioner (ad-hoc) is ineligible for any leave encashment, there is no reason as to why an ad-hoc employee would be entitled to such leave encashment. In fact, the note under the heading 'General' under Regulation 21 stipulates at serial No.2 that "no encashment of leave is permitted for any accumulated earned leave".

iii) The petitioner having worked in an organization previously has also not disclosed, if at all, he had any accumulated leave, as it is an accepted proposition that no employee can have accumulation beyond the 300 days for leave encashment. The petitioner has not produced any record or any evidence to show that he had any accumulated leave which could be encashed within the stipulation of 300 days. Any period beyond the period of 300 days is ineligible for encashment or any period which has already been encashed till that 300 days is equally ineligible. Only if an employee has any balance left within the 300 days, can such an employee encash that balance period;

iv) In view of the aforesaid, the petitioner is grossly ineligible to be considered for leave encashment and his prayer, after due consideration has been rightly rejected by the respondent No.2 in his order of August 27, 2024.

10. Mr. Dhar has placed reliance on the following decisions of the Hon'ble Supreme Court of India on various propositions which will be discussed hereinafter;

1. ***State of Sikkim & Ors. Vs. Dr. Mool Raj Kotwal, reported in (2025) 10 SCC 584***, for the proposition that the petitioner would be entitled for leave encashment maximum for 300 days and if he is entitled after 58 years of age and continued for a long time and get leaves accumulated during the period of re-employment, he cannot get benefit of leave encashment for a second time merely because he is having leave in his credit during the period of re-employment.

2. ***Union of India & Anr. Vs. Narendra Singh, reported in (2008) 2 SCC 750*** at para 32 for the proposition that the mistakes are mistakes and they can always be corrected by following due process of law in ***ICAR Vs. T. K. Suryanarayan***, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the Rules rightly and in correcting the mistake. It may cause hardship to the employees but a Court of Law cannot ignore statutory Rules.

3. ***Jyostnamayee Mishra Vs. State of Odisha & Ors. reported in 2025 SCC OnLine SC 117*** at para 31 for the proposition that a litigant coming to the Court cannot claim negative discrimination seeking direction from the Court to the department to act in violation of the law or statutory Rules;

4. ***Saroj Kumari & Ors. Vs. The State of Punjab & Ors., reported in 1998 SCC OnLine P & H 612*** at para 15 for the proposition that in the gamut of service law, an ad-hoc employee

virtually stands at the lowest rung as against a permanent, quasi permanent and temporary employee.

11. I have considered the submissions made by the learned Advocates appearing for the parties and considered the records of the case.

12. Few of the facts are not in dispute. The petitioner joined the service of the respondent No.1 as an Accounts Officer, post retirement from his earlier engagement is admitted.

13. Likewise, it is admitted that the petitioner's posting as Accounts Officer in the respondent No.2, was on an ad-hoc basis, though the post was substantive, the appointment was not. The petitioner was posted on an ad-hoc basis in a substantive post.

14. It is also indisputable that the petitioner did not provide the particulars of any balance accumulated leave from his earlier place of employment, which could have been encashed or considered if the leave encashment in the present place of posting was to be considered for disbursement at all.

15. The only issue which is required to be considered is whether the petitioner can be called an employee under the Regulations? Whether he is bound by the Regulations? If so, to what extent?

16. Regulation 2, the definitions of the Regulations provides in sub-regulation 29 as under;

“(29) “Employee” means a person employed in connection with the work of the University on temporary, ad-hoc, or permanent basis or non-academic purposes. Provided that persons who are appointed on ad-hoc

basis for implementing approved research project shall not be deemed to be employees of the University”.

17. The petitioner squarely falls within the parameters of 2(29) and is definitely an ad-hoc appointee to a substantive post. This ad-hoc appointment is not to be misconstrued with the ad-hoc appointment as provided in the proviso to 2(29) of the Regulations which relates to ad-hoc appointment of a person for the limited purpose of implementing the approved research project.

18. Once the petitioner has been classified as an employee under the Regulation, there is absolutely no reason to hold that the Regulation 17 would create an escape root for persons who are ad-hoc and/or temporary appointees under 2(29) of the Regulations. The proposition of 2(29) is furthered by Regulation 13 which stipulated “all employees” are entitled and governed by the leave regulations. Thus, being brought within the fold of these regulations, the petitioner falls within the “mischief”, if one were to call them so, of Regulations 17, 19 and 21.

19. Mr. Bose’s argument that reference of the term “person” in Regulation 17 creates an escape root for the people who are not employed and/or re-employed with the respondent No.2 is belied by the use of the phrase ‘re-employment’ after retirement. Thus, all persons re-employed after retirement are construed as employees within the parameters set forth in the definition clause.

20. In view of the above, interpretation of Regulation 17, I cannot help but hold that the petitioner is also bound by the parameters set forth in Regulations 19 and 21 of the said Regulations. Regulation 21 is clear and

unequivocal, that there is no question of any employee being permitted to encashment of leave in any manner. Thus, Regulation 21 on a strict construction applies to temporary employees, it is beyond comprehension that an ad-hoc employee, which is below the temporary employee on a scale of employees in any institution, would be treated differently or in a manner better than the temporary employees as stipulated in Regulation 2

21. The decisions of the Hon'ble Supreme Court of India as relied upon by Mr. Dhar are clear and unequivocal, inasmuch as the ad-hoc employee has been held to be in the lowest rung amongst the employees, the rank starting with the permanent, quasi permanent, temporary and ad-hoc.

22. The decision of the Hon'ble Supreme Court of India in the case of ***Dr. Mool Raj Kotwal*** (Supra) is clear that if a person is employed after superannuation and gets leave accumulated during the period of re-employment, that person cannot get the benefit of leave encashment on a second round merely because that person has a number of leave to his credit during the period of re-employment.

23. The only other question which remains is whether the respondents should be bound by the fact that in his earlier stint, the very same petitioner, on the very same post had been given leave encashment, thus constituting an element of estoppel on the respondents.

24. First and foremost, there cannot be an estoppel against statute. In addition thereto, it is also not in dispute that a mistake or an error of a person (the University), cannot create a right unless that right is otherwise present. Thus, the petitioner not having any right to get the leave encashment cannot claim that merely because on an earlier occasion, the

respondent had given the leave encashment, it should be directed to do the same again. Issuance of a writ is not to perpetrate a mistake or an error but principally to ensure that there is no infraction of any right of the petitioner and also to ensure that a State body performs its statutory duties and obligation as mandated by any law. In this present case, there is no right of the petitioner which has been violated.

25. I respectfully agree with the decision reported in the case of ***Chandigarh Administration & Anr. Vs. Jagjit Singh & Anr., reported in 1995 (1) SCC 745*** that once an order in favour of a person is found to be contrary to law or any unwarranted in the facts and circumstances of the case, such an illegal and unwarranted order cannot be made the basis of a writ compelling the authorities to repeat the illegality or to pass another unwarranted order.

26. In view of the aforestated discussions, I do not find any reasons to modify or alter the order of August 27, 2024, let alone to set aside the same.

27. In view of the aforestated, the writ petition fails and is accordingly dismissed.

28. There shall be no order as to costs.

29. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Reetobroto Kumar Mitra, J.)