(2018) 11 P&H CK 0153

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17113 Of 2014

Dharamvir Singh APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:
Haryana Education Rules, 2003 — Section 83(1), 91(5)

Citation : (2018) 11 P&H CK 0153

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Kuldeep Sheoran, Ravi Dutt Sharma, Kshitij Sharma

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J.

In the present case, the petitioner has approached this Court challenging the order dated 07.07.2014 (Annexure P-1), by which respondent No.4 has rejected his case for the grant of leave encashment.

As per the averments made in the writ petition, the petitioner joined respondent No.4-T.I.T Senior Secondary School, Bhiwani as a Director Physical Education (DPE) on 06.07.1978 and he kept on working on the said post till he superannuated on 29.02.2012. Therefore, the petitioner had 34 years service to his credit on the date when he retired. It has been further mentioned that the petitioner was working against an aided post and he demanded the leave encashment, but respondent No.4 passed an order on 07.07.2014 declining the same. The request was declined on the ground that as per the Haryana School Education Rules, 2003, the grant of leave encashment, facilities of leave travel concession bonus and medical reimbursement etc. are to be given at the discretion of the Managing Committee and no grant-in-aid on this account is reimbursed by the State. Further, it was mentioned that the Managing Committee has not granted leave encashment to any retired employee. This order is being impugned by the petitioner in the writ petition. Along with the writ petition, the petitioner has attached an order passed by this Court wherein the institutions were directed to grant the leave encashment to the retired employees and the petitioner claimed that he is similarly situated and is covered by the judgment rendered by this Court.

Reply on behalf of the respondents No.1 and 3 has been filed wherein it has been mentioned that the benefit of leave encashment, which the petitioner is claiming in the present petition, is to be given at the discretion of the Managing Committee and hence, the State is not liable to make any payment to the petitioner.

Respondent No.4 has also filed a separate reply to the claim made by the petitioner and has supported their order by which the claim of the petitioner has been rejected for the grant of leave encashment. The reliance has been placed on Rule 91(5) of the Haryana Education Rules 2003, which reads as under: -

"(5) The benefit of leave encashment facilities of leave travel concession, bonus and medical reimbursement etc. shall be at the discretion of the managing committee. No grant-in-aid on this account shall be reimbursed by the Department."

In view of the said rule, it has been contended that the petitioner cannot be granted the benefit of leave encashment.

I have heard learned counsel for the parties and have gone through the record.

This is not the first time an employee has made a prayer for the grant of leave encashment before this Court. After considering Rule 91(5) of the Haryana Education Rules, 2003, this Court has passed orders granting the leave encashment to the employees. In CWP No.3339 of 2000, decided on 15.02.2012, a Co-ordinate Bench of this Court allowed the benefit of leave encashment along with interest. While allowing the benefit, this Court relied upon a judgment rendered by the Hon'ble Supreme Court in State of Rajasthan and another Vs. Senior Higher Secondary School, Lachhmangarh and others, 2005(10) SCC 346.

Keeping in view the said judgment, the benefit of leave encashment was granted along with interest @ 6% and the relevant paragraphs of the said order is as under: -

"As regards the claim for leave encashment, the point is squarely answered by the judgment of the Hon'ble Supreme Court in State of Rajasthan and another Versus Senior Higher Secondary School, Lachhmangarh and others-2005 (10) SCC 346. The point therefore need not detain longer than merely stating that the petitioner's claim is well founded in the light of the judgment of the Hon'ble Supreme Court, referred to above. The leave encashment to the extent to which he had claimed and to which he was entitled shall also be calculated and released to the petitioner with interest at 6% per annum within 8 weeks as referred to above. As regards the selection grade scales, the petitioner has given a calculation of his alleged entitlement in a letter addressed to the Director, Secondary Education, the details of which are not set forth in the writ petition itself and it will not be therefore appropriate for me to make a calculation therefor. The said claim is found in the letter dated 22.04.2001 and filed as Annexure A-2 along with CM No.2729 of 2002. The same shall be considered by the Government and it will take appropriate decision as regards the same within a period of 8 weeks, referred to above.

8. The writ petition is ordered on the above terms and the arrears so calculated shall be released within 4 weeks from the date when the calculation is made and the decision is taken within the time stipulated in the earlier para."

Thereafter, the matter was taken before the Division Bench by the State by filing Letters Patent Appeal No.908 of 2012, which came to be decided on 30.01.2013. While dismissing the said LPA, the Division Bench noticed that the School Managing Committee are liable to make the payment to the employees on account of leave encashment. After noticing Rule 91(5), as well as the memo bearing No.F.D. Hr.No.11/30/87-IFR-II dated 09.04.1997, which pertains to the grant of earned leave to the teachers of the private aided/unaided institutions, the Division Bench held that the employees of the aided/unaided institutions are entitled for the leave encashment. The relevant paragraphs of the Division Bench is as under: -

"The submission of the learned counsel for the State of Haryana is that the aforesaid judgment rendered in the context of the statute, would have no application insofar as the State of Haryana is concerned as the State of Haryana has its own rules. Our attention is drawn to the Haryana School Education Rules, 2003. Rule 83 (1) and Rule 91 (5) whereof are reproduced for our purpose:-

i. Rule 83: (1) The scale of pay of all the employees shall be such as specified in column 4 of Appendix A to these rules and modified/ revised by the Government from time to time.

ii. Rule 91 (5): The benefit of leave encashment, facilities of leave travel concession, bonus and medical reimbursement etc. shall be at the discretion of the management committee. No grant in aid on this account shall be reimbursed by the Department".

It is specifically provided in Rule 91 (5) that insofar as benefits of leave encashment is concerned, no grant-in-aid on this count would be reimbursed by the department. It is left to the discretion of the Managing Committee to provide such benefits as well as benefits on account of leave travel concession and bonus etc.

The respondent herein, in the writ petition filed by him had impleaded the State of Haryana (appellant herein as respondent No.1.) and S.D.High School, Jind as respondent No.4. Thus, insofar as respondent No.1 is concerned, it is not supposed to make any reimbursement on account of claim of leave encashment.

Liability in that behalf shall be of the school.

Insofar as the School/Managing Committee is concerned, it is liable to make payment to the respondents. The case in this behalf would be governed by the orders contained in Memo bearing F.D. Hr.NO.11/30/87-IFR-II dated 09.4.1987, which pertains to grant of earned leave to the teachers of the private aided/ unaided institutions. It, inter-alia, provides that the teachers of these schools also shall be permitted 10 days earned leave on full pay during the year in lieu of 20 days half pay leave which was prevalent prior to the issuance of these instructions. It also provides that encashment would be admissible to teachers suo motu as to other government servants subject to the fulfilments of the prescribed conditions.

Insofar as the appeal of the State is concerned, same is allowed holding that government is not liable to pay any amount on account of encashment of leave to the respondent-teachers. However, the payment would be made by the S.D.High School, Jind where the respondent was employed.

Appeal disposed of in the aforesaid terms."

Not only this, the matter again came up for consideration before the Division Bench of this Court in LPA No.1037 of 2015, which came to be decided on 21.03.2017. Again after noticing Rule 91(5), as well as keeping in view the law laid down by the Hon'ble Supreme Court in State of Rajasthan and another Vs. Senior Higher Secondary School, Lachhmangarh and others, 2005(10) SCC 346, the Division Bench again held that the employees of unaided/aided institutions are to be granted leave encashment. While allowing the LPA, the judgment of the learned Single Judge, declining the claim of leave encashment on relying upon Rule 91(5) of 2003 Rules, was set aside.

In view of above, it is clear that the employees of the aided/unaided institutions are entitled for the leave encashment and the interpretation given by the Division Bench is clear that the payment of leave encashment is not at the discretion of the Management. Consequently, the present writ petition is allowed. The impugned order dated 07.07.2014 (Annexure P-1) is set aside and a direction is given to respondent No.4 to calculate the amount in respect of the leave encashment for which the petitioner is entitled for. This exercise shall be done within a period of three months from the date of receipt of certified copy of this order. The amount shall also carry an interest @ 6% per annum.