

(2023) 12 SHI CK 0032

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 10189 Of 2023

Ishwar Singh

APPELLANT

Vs

Himachal Pradesh Tourism Development Corporation Ltd. &
Anr

RESPONDENT

Date of Decision : 13-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 12 SHI CK 0032

Hon'ble Judges : Ranjan Sharma, J

Bench : Single Bench

Advocate : Vinay Mehta, Devi Singh Verma, Shivank Singh Panta

Judgement

Ranjan Sharma, J

1. Notice. Mr. Shivank Singh Panta, Learned Standing Counsel appears and waives service of notice on behalf of the respondents.

2. With the consent of the parties, the instant writ petition is taken up for disposal, at this stage, in view of the orders intended to be passed herein.

3. The petitioner has filed the instant writ petition with the following prayers:-

“(a) That a writ of mandamus may please be issued and the respondents may kindly be directed to

release the retiral benefits i.e. Gratuity alongwith interest on the entire amount of gratuity and leave encashment, which is still due and payable to the petitioner from due date i.e. 01.07.2022 till the date of its realization, on account of delayed period of payments, in view of judgment dated 11.08.2020 passed by this Hon’ble Court in CWP No.2783/2020 titled as Rulia Ram Vs. HPTDC & Anr. (Annexure P-2) & judgment dated 24.2.2022 passed by this Hon’ble Court in CWP No.5896/2021 titled as Nand Lal Vs. HPTDC & Anr. (Annexure P-3) and even otherwise on facts and law as stated in the petition as above, the petition may

kindly be allowed with costs, in the interest of justice.

ii) That the action of the respondents in withholding or not releasing the retiral benefits of the petitioner from due date 01.07.2022 till date, may kindly be held as illegal, arbitrary, discriminatory and violative of Articles 14 & 16 of Constitution of India.”

4. Case of the petitioner, as presented by Mr. Vinay Mehta, learned counsel, is that he was appointed in the Himachal Pradesh Tourism Development Corporation Limited and he retired from the service of the Corporation as Waiter, HPTDC, Hotel Palace, Chail.

5. The only grievance of the petitioner is that the respondent has not released the balance retiral benefit of Gratuity and Leave Encashment alongwith interest to the petitioner till day. The learned counsel relies upon the judgment passed by this Court in CWP No.4129 of 2023, titled as Dile Ram Versus The HPTDC Ltd. Anr., decided on 11.08.2023 [taken on record] and also relies on the judgment passed by the Division Bench of this Court in CWP No.5896 of 2021, titled as Sh. Nand Lal Versus The Himachal Pradesh Tourism Development Corporation Ltd. and another alongwith connected matters, decided on 24.02.2022 [Taken on Record] whereby this Court had directed the respondents to release the benefit of Gratuity and Leave Encashment to the incumbents therein, with statutory interests within a period of six months from today in accordance with law.

6. The Co-ordinate Bench of this Court in the matter of Dile Ram, supra, further mandated that in case the amount due is not paid within a period of six months, the same shall carry interest at the rate of 9% per annum from the due date actual payment. The operative part of the judgment in case of Dile Ram, supra, reads as under:-

“2. The petitioner was in service of the respondent-Himachal Pradesh Tourism Development Corporation Ltd. and retired as Housman on 30.04.2022 from Hotel Holiday Home, HPTDC, Shimla, District Shimla, H.P. after rendering 23 years, 05 months & 07 days of regular service. It is the case of the petitioner that his balance amount of gratuity of Rs.04,59,487/-and leave encashment of Rs.03,13,961/- have been sanctioned by the respondents, vide order dated 23.06.2022 Annexures P-1 and P-2, respectively. The grievance of the petitioner is that despite the aforesaid gratuity and leave encashment being sanctioned, the same have not been released. It is, however, submitted that an amount of Rs.1,00,000/- has been disbursed to the petitioner by the respondents on account of retiral benefits, i.e. gratuity.

In the facts and circumstances of the case, this writ petition is disposed of by directing the respondents to release the admissible retiral benefits along with statutory interest to the petitioner within a period of six months from today, in accordance with law. If the amount due is not paid within the aforesaid period, the same shall carry interest at the rate of 9% per annum from the due date of actual payment.”

7. In the background of the judgments passed in the cases of; Dile Ram and Sh. Nand Lal, supra, the learned counsel for the petitioner submits that the petitioner has not been granted the balance Gratuity sanctioned and the Leave Encashment, which is also borne out from the averments made in Paras-5 of the writ petition.

8. Per contra, Mr. Shivank Singh Panta, learned Standing Counsel, submits that the respondent-Corporation does not dispute the mandate of law laid down in the case of Dile Ram, supra. She submits that the process for release of Gratuity and Leave Encashment is underway and the same shall be released shortly.

9. In rebuttal, Mr. Vinay Mehta, learned counsel, states that even if the matter for release of Gratuity and Leave Encashment is underway then also, the same cannot be a ground to deprive the petitioner of these retiral benefits and statutory interest.

10. In background of entirety of the facts and circumstances hereinabove, since the admissibility of retiral benefits of Gratuity and Leave Encashment alongwith interest to the petitioner is not disputed by the respondent, in terms of the mandate of this Court in the case of Dile Ram and Sh. Nand Lal), supra, therefore, this Court directs the Respondent-Corporation to release the payable retiral benefits of Gratuity and Leave Encashment alongwith statutory interest within a period of six months from today, failing which, the interest @9% per annum shall accrue from due date till actual payment or release of these benefits, in accordance with law and also directions contained in the case of Dile Ram and Sh. Nand Lal, supra, shall mutatis-mutandis apply to the case of the petitioner(s) herein.

11. Needless to say that this Court has not adverted to the merits of the matter and all Questions of Facts as well as Law are left open.

As aforesaid, the writ petition as well as the pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.