

(2024) 11 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : CWP Nos.3330 & 4765 Of 2022

Kamlesh Kumar Parmar

APPELLANT

Vs

State of H.P. & Ors

RESPONDENT

Date of Decision : 12-11-2024

Acts Referred:

Citation : (2024) 11 SHI CK 0025

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Vikas Rajput, Menka Raj Chauhan

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

CWP No. 3330 of 2022

1. More than four years after retirement of the petitioner, respondents have issued a notice to him that he was erroneously paid leave encashment by treating his earned leave to be 300 days in lieu of his retrospective regularization, whereas in terms of the office memorandum dated 06.07.2020, petitioner was entitled to leave encashment in lieu of 139 days, which he had actually earned during the period of his service. Accordingly, recovery proceedings were initiated against the petitioner. The petitioner was directed to deposit the amount of leave encashment allegedly paid in excess to him in order to settle his admissible retiral dues. Feeling aggrieved, petitioner has instituted this writ petition.

2(i). Petitioner was released from Indian Army on 31.03.1996. His name was sponsored by the Ex-servicemen Employment Cell on 18.11.2002 for appointment to the post of Assistant Librarian, reserved for ex-servicemen. The respondents failed to issue appointment letter to the petitioner as also to the other similarly situated ex-servicemen. Resultantly, Original Application No. 2303

of 2003 (Vikram Chand and others Vs. Sate of H.P.) was instituted before the H.P. Administrative Tribunal. The Original Application was disposed of on 29.06.2004 by directing the respondents to take appropriate decision in the matter for appointment of the petitioner in the cadre of Assistant Librarian (School Cadre) within a period of four months.

2(ii). Respondents did not implement the decision. Petitioner and other similarly situated ex-servicemen again moved the Tribunal by means of O.A. No. 97 of 2007. The said Original Application was decided by this Court on 24.07.2010 as CWP(T) No. 14614 of 2008 with the following operative directions: -

"4. There is no reply as yet. Therefore, the writ petition is disposed of directing the 1st respondent to appoint the petitioners with retrospective effect from the date of expiry of the period granted by the Tribunal. The orders, as above, shall be passed within a month from today. All the petitioners shall be entitled to continuity of service with effect from the date. However, they shall be entitled to the actual wages only from the date of the appointment as above, if the appointments as above are not granted, it is made clear that the petitioners will be entitled to salary from retrospective date as noted above and the officer responsible for the delay shall be personally liable for the same. It is also clarified that in case the petitioners have crossed the age. of superannuation, they shall be deemed to have been in service from the date indicated above till the date of their superannuation and their retiral benefits be settled accordingly within another three months."

Pursuant to the above directions, respondents issued an office order on 28.09.2010, appointing the petitioner as Assistant Librarian on regular basis w.e.f. 29.10.2004. The post of Assistant Librarian was a Class-III post at the relevant time. Petitioner was granted all service benefits viz seniority, pay fixation etc. w.e.f. 29.10.2004.

2(iii) The controversy in this writ petition primarily pertains to the earned leave credited in the leave account of the petitioner w.e.f. date of his retrospective regularization. Following facts need noticing in that regard:-

(a) The respondents, in terms of the computation sheet (Annexure P-6), showed accumulation of earned leave to the extent of 300+6 days in the leave account of the petitioner w.e.f. 29.10.2004 till his superannuation on 31.12.2017. Accordingly, an amount of Rs. 10,39,010/- was sanctioned and paid to the petitioner.

(b) It is the case of the petitioner and not disputed by the respondents that on account of accumulation of 300 days of earned leave to his credit, he had been utilizing and permitted to utilize earned leave over 300 days of accumulated earned leave, every year as admissible to him in law during his service tenure.

(c) Pursuant to the judgment rendered in OA No. 1114 of 2015, decided on 07.05.2019, services of the petitioner were regularized by the respondents w.e.f.

08.12.2002 instead of 29.10.2004. Consequent thereupon, the petitioner came within the purview of Old Pension Scheme, hence, fresh documentation process was started. In process thereof, the respondents issued an office communication dated 11.02.2021, mentioning that petitioner was entitled for 139 days' earned leave encashment instead of 300 days allowed to him. For this reason, the petitioner was directed to deposit the excess amount of leave encashment paid to him for 161 days of earned leave for settling his retiral dues.

(d) In support of recovery of leave encashment from the petitioner for 161 days' of earned leave, the respondents relied upon an office memorandum dated 06.07.2020. The said office memorandum reads as under:-

"GOVERNMENT OF HIMACHAL PRDESH,
FINANCE (REGULATION) DEPARTMENT.

No. Fin(C) A(3)-1/2014 Dated shimla-2, the 6th July, 2020.

OFFICE MEMORANDUM

Subject:- Clarification regarding accumulation of earned leave from date of regularization of services retrospectively as per Court Orders etc.

The undersigned is directed to refer to the subject cited above and to say that in various cases the services of employees of various Departments have been regularized from the retrospective dates. as a result of Government decision or due to final Court orders with all consequential benefits.

2. The references are being received in this Department from various quarters seeking clarification as to whether these employees are entitled for the benefit of earned leave from retrospective dates of their regularization or otherwise. It is clarified that since the benefit of earned leave is not a part of consequential benefits and the said leave is regularized under separate set of rules i.e. CCS(Leave Rules). There is no such provision in the CCS(Leave) Rules, 1972 to grant the benefit of earned leave from the retrospective date, therefore, in such cases where the services of employees are regularized from the retrospective date, as a result of Government decision or due to final Court orders with all consequential benefits, the berefit of accumulation of earned leave from the retrospective cate due to regularization in service from the back date is not admissible.

3. These orders may be brought to the notice of all concerned.

Sd/-

Deputy Secretary (Finance) to the
Government of Himachal Pradesh.

All administrative Secretaries to the
Government of Himachal Pradesh.”

2(iv) In the above background, petitioner has instituted this writ petition, seeking quashing of office memorandum dated 06.07.2020 with further direction to the respondents not to recover any amount already paid to him on account of leave encashment.

3. I have heard learned counsel for the parties and considered the case file.

4. Consideration

Respondents in their reply have not denied the facts pleaded by the petitioner. The stand taken by the respondents is that the petitioner was given retrospective appointment on regular basis, initially w.e.f. 29.10.2004 and later on w.e.f. 08.12.2002. Such retrospective appointment of the petitioner was in compliance to the Court decisions rendered in his favour. The petitioner had served as

Assistant Librarian on regular basis actually from September 2010, as such, he had to his credit earned leave only to the extent of 139 days till his superannuation. Earned leave could not be credited in the leave account of the petitioner w.e.f. 08.12.2002/29.10.2004, when the petitioner had not served with the Department. That the decision of the respondents to seek recovery of the leave encashment paid to the petitioner for 161 days of earned leave was in accordance with the office memorandum dated 06.07.2020 (extracted earlier).

4(i) Sh. Naresh Kumar & others Vs. State of Himachal Pradesh & others CWP No. 6484 of 2022 decided on 26.07.2023 was a case where, after retrospective regularization, petitioners therein, were denied earned leave from the date of their retrospective regularization till the date of actual appointment on the ground that there is no provision in the CCS (Leave) Rules, 1972 to grant the benefit of earned leave from the retrospective date. Hon’ble Division Bench of this Court held that grant of consequential benefits includes all benefits including earned leave. Denial of regularization to the petitioners therein, was held to be an arbitrary act of the respondents-Department. Therefore, delay in passing the order of regularization of the petitioners with retrospective effect was held to be un-usable tool of the Department to deny them the earned leave from the date of their regularization. The delay in regularization of the petitioners was held attributable to the Department and not to the petitioners. Relevant paras from the judgment read as under:-

“9. It is an admitted factual position that the petitioners were regularized as Lecturer (School-New) Commerce) w.e.f. 27.04.2016, in compliance to the orders passed in their favour by the learned Tribunal, though the office order, ordering their regularization was issued on 03.07.2020. The order passed by the learned Tribunal itself is dated 29.05.2019 and the same was complied after the petitioners invoked the contempt jurisdiction of this Court.

10. Be that as it may, a regular employee of the respondent Department is entitled for Earned Leave as from the date he is appointed in regular service.

11. In the present case, the date of regular appointment of the petitioners with the respondent-Department for all intents and purposes is 27.04.2016. In fact, in terms of the order passed by the learned Tribunal, direction issued to the respondents was to regularize the services of the petitioners upon completion of five years of service from the date persons similarly situated as the petitioners were regularized "with all consequential benefits."

12. In our considered view "with all consequential benefits", includes all benefits, including Earned Leave. The order of the learned Tribunal, in terms whereof, the Department was directed to regularize the services of the petitioners upon completion of five years of service has attained finality. This means that the Department accepted the judicial verdict that the petitioners were entitled for regularization upon completion of five years of service on contract basis. Meaning thereby, that denial of regularization to the petitioners upon completion of five years of service from the date when persons similarly situated to the petitioners were regularized, was an arbitrary act of the respondent-Department and therefore, the delay in passing of the order of regularization of the petitioners with retrospective effect cannot be used as a tool by the Department to deny the Earned Leave to the petitioners as from the date of their regularization.

13. The plea that there is no provision for grant of Earned Leave in case of retrospective regularization in CCS (Leave) Rules has no legal force, because fact of the matter remains that the delay in regularization of the petitioners is attributable to the Department and now the Department cannot take the benefits of its own acts of omission and commission.

14. Accordingly, this writ petition is allowed by holding that denial of Earned Leave as from the date of regularization to the petitioners by the respondent-Department is bad in law. The communications dated 01.04.2022 and 23.03.2022 (Annexure P-1) are hereby quashed and set aside and the petitioners are held entitled for the benefit of Earned Leave as from the date of their regularization, i.e. 31.03.2016."

Respondents were directed to pay earned leave to the petitioners (therein) from the dates of their retrospective regularization.

4(ii) Similar question cropped up in Sunita Sangroli Vs. State of H.P. and others CWP No. 5043 of 2022 decided on 08.08.2023. In the said case, petitioner was not being granted benefit of earned leave from retrospective date. To deny this benefit, the respondents had fallen back upon office memorandum dated 06.07.2020. Submission was also made that CCS (Leave) Rules 1972, contains no provision for granting the benefit of earned leave from retrospective date.

Rejecting the submission of the respondents, it was held that entitlement of the petitioner to earned leave is under Rule 28 of the CCS (Leave) Rules 1972. This

entitlement starts from the date of joining the service. That being so, the earned leave only becomes an incidence of service-a benefit available to a civil servant by virtue of his appointment to the civil post. There cannot be discrimination between the persons, who receive benefits of regular appointment from the retrospective dates, be it under the orders of the Courts or otherwise and others in whose cases the requirement of grant of benefit retrospectively did not arise. Such discrimination would be without any intelligible differentia. The office memorandum dated 06.07.2020 was held to be unsustainable and was accordingly quashed and set aside.

5. Following the ratio of above judgments, it has to be held that the petitioner was entitled to earned leave as incidence of his service benefits on the date of his retirement. Computation of earned leave admissible to the petitioner would start from the date of his retrospective appointment/regularization and not from the date when he was actually appointed on the post. The respondents cannot deny the consequential benefits to the petitioner on account of their having not given the appointment to the petitioner in time. It is not even in dispute that the petitioner has been allowed to avail and utilize earned leave over and above and after accumulation of 300 days of earned leave in his credit during his service tenure. Respondents had themselves taken into consideration earned leave to the credit to the petitioner as 306 days and accordingly, released leave encashment in his favour. Four years after petitioner's retirement, the respondents cannot even otherwise be permitted to recover the leave encashment amount allegedly paid in excess to him on the ground that there was error in calculating the earned leave, accumulated in petitioner's leave account. Petitioner was holder of a Class-III post (Assistant Librarian) at the relevant time. Recovery from him cannot be effected in view of law laid down in S.S. Chaudhary Vs. State of H.P. and others and connected matters CWPOA No. 3145 of 2019 decided on 24.03.2022. Forsaking brevity, it may again be emphasized that office memorandum dated 06.07.2020 (Annexure P-12) stands already quashed in "Sunita Sangroli2".

The result of above discussion is that this writ petition succeeds. Proceedings initiated by the respondents for recovery of leave encashment alleged to have been paid in excess to the petitioner are held to be illegal. Accordingly, Communications dated 13.04.2022 (Annexure P-13) and dated 24.03.2022 and 06.04.2022 [Annexure P-14 (colly)] are quashed and set aside. Respondents are directed to release due and admissible balance retiral benefits to the petitioner without insisting upon recovery of leave encashment paid to him. This exercise be carried out within a period of four weeks from today.

Pending miscellaneous application(s), if any, also stand disposed of.

CWP No. 6547 of 2022

This writ petition has been filed seeking retiral benefits due to the petitioner.

In view of the judgment passed in CWP No.3330 of 2022, this writ petition also

stands disposed of, so also the pending miscellaneous application(s), if any.