
(1990) 09 P&H CK 0128
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6531 of 1989

K.L. Sharma and Others

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 19-09-1990

Acts Referred:

All India Services (Leave) Rules, 1955 — Rule 20B
Constitution of India, 1950 — Article 14, 16

Citation : (1992) 1 ILR (P&H) 121

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : M.L. Puri, for the Appellant; S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

Amarjeet Chaudhary, J.—The Counsel for the parties have contended that in all the writ petitions bearing No. 10507 of 1988 Prithvi Raj Kumar v. State of Punjab, 1946 of 1989--Kidar Nath v. State of Haryana and Ors. 1575 of 1990, Dr. S.K. Sharma and Ors. v. State of Haryana and Ors. 4951 of 1990 K.K. Jagira v. State of Haryana and Civil Writ Petition No. 9428 of 1989 Gurdip Singh and Ors. v. State of Punjab the common questions of law and facts are involved and therefore the same be disposed of by a common judgment. So, I propose to dispose of the same by a common judgment. For the purpose of judgment, the facts have been picked up from Civil Writ Petition No. 6531 of 1989.

2. In the instant writ petition the Petitioners have sought for the quashing of impugned parts of the decisions contained in Haryana Government's letters dated 18th February, 1978 and 29th April, 1989, Annexures P-1 and P-2 respectively and have prayed for issuance of a direction to the Respondents to disburse cash payment in lieu of unutilized earned leave for 240 days with 12 percent interest per annum from the date of accrual to the date of actual payment.

3. That brief facts of the case are that the Petitioners are all retired Government Officers having retired on attaining the age of superannuation on different dates which are given below:

Number of the Petitioner Date of retirement.

Petitioner No. 1 30th September, 1976

Petitioner No. 2 31st July, 1982

Petitioner No. 3 30th April, 1973

Petitioner No. 4 31st August, 1982

Petitioner No. 5 30th September, 1982

Petitioner No. 6 30th June, 1986

Petitioner No. 7 30th November, 1982

Petitioner No. 8 19th April, 1973

Petitioner No. 9 30th April, 1982

Petitioner No. 10 31st August, 1982

Petitioner No. 11 31st July, 1976

Petitioner No. 12 31st March, 1982

Petitioner No. 13 30th September, 1982

Petitioner No. 14 29th February, 1982

Petitioner No. 15 31st August, 1981

4. The Haryana Government,--vide its circular letter dated 18th February, 1978 had taken a decision that Haryana Government employees retiring on superannuation on or after 31st January, 1978 would be paid cash equivalent of leave salary in respect of the period of earned leave at their credit at the time of retirement. According to this decision the payment of cash equivalent of leave salary was limited to a maximum of 180 days earned leave. Subsequently the limit of 180 days was raised to 240 days by the Haryana Government,--vide its letter dated 29th April, 1987 (Annexure P-2). This decision was applicable with effect from 1st July, 1986 and the benefit of leave encashment upto 240 days was to be extended to those employees who were to retire on 1st July, 1986 or therefore. In view of this communication, all the Petitioners, except Petitioners No. 1, 8 and 12, availed of the benefit of leave encashment upto 180 days though as per averment in the writ petition, the un-utilized earned leave at their credit at the time of retirement exceeded 180 days.

5. The grievance of the Petitioners is that they are entitled to the benefit of leave encashment upto the maximum limit of 240 days as per decision contained in

Annexure P-2. It was contended on behalf of the Petitioners that the denial of this benefit on the ground that they retired prior to 30th September, 1977 is absolutely, arbitrary, irrational and discriminatory being violative of Articles 14 and 16 of the Constitution. It was further argued by the learned Counsel that the decisions contained in Annexure P-1 and P-2 divided the homogeneous class of retirees into two categories. In support of this argument, the Petitioners Counsel has placed reliance on D.S. Nakara and Others Vs. Union of India (UOI), and in R.P. Khosla Former Judge Punjab and Haryana High Court Chandigarh v. Union of India and Ors. 1987 (5) S.L.R. 486. The Counsel for the Petitioners has also drawn my attention to Rule 20-B of the All India Services (Leave) Rules, 1955, which provides payment of cash equivalent to Leave Salary and it was strongly urged that in R.P. Khosla's case (supra) it was held by this Court that the date of retirement had no bearing regarding the entitlement of the benefit of leave encashment to the employees retiring on or after 30th September, 1977 and the Petitioner was held to be entitled to the payment of cash equivalent of leave salary including dearness allowance in respect of period at his credit on the date of his retirement subject to a maximum of 180 days.

6. On the other hand, Shri S.S. Dalal, Advocate, learned Counsel appearing on behalf of the State of Haryana has contended that since the communication dated 13th February, 1978 provided that the Haryana Government employees, who retired on superannuation on or after 31st January, 1978 (subsequently made applicable to the persons, who retired on or after 30th September, 1977,-- wide letter dated 27th February, 1979, are entitled to the benefit of leave encashment, the Petitioners Nos. 1, 8 and 11 could not avail of this benefit as they retired before the stipulated date i.e. 30th September, 1977, and as such they are debarred to agitate against the said decision of the Government after a lapse of about 11 years. It was further pleaded that the decisions contained in Annexures P-1 and P-2 for the grant of leave encashment to Haryana Government employees in lieu of unutilised earned leave are based on the decisions of the Government of India taken from time to time. The concessions allowed by the Haryana Government to its employees and the Petitioners cannot be claimed as a matter of right. It was also contended that no discrimination, as alleged, has been made. It was also urged that the case of Shri R.P. Khosla (supra) is quite distinguishable to the facts of the case in hand and the ratio of the decision taken therein is not applicable to them.

7. I have considered the submissions made by the learned Counsel for the parties and perused the paper-book.

8. At the very outset it may be mentioned that All India Service (Leave) Rules, 1955 make a provision for matters relating to leave etc. of the members of the All India Service. Rule 20-B thereof, which envisages payment of cash equivalent of leave salary, reads as under:

(1) The Government shall suo moto sanction to a member of the Service under Sub-rule (i) of Rule 16 of the All India Services (Death-cum-Retirement Benefits)

Rules, 1958, having attained the age of 58 years on or after the 30th September, 1977, the cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his retirement subject to a maximum of 180 days.

(2) The cash equivalent of leave salary payable to a member of the Service under Sub-rule (1) above shall also include dearness allowance admissible to him on the leave salary at the rates in force on the date of retirement and it shall be paid in one lump-sum, as a one time settlement.

(3) The city compensatory allowance and the house rent allowance shall not be included in calculating the cash equivalent of leave salary under this rule.

(4) From the cash equivalent so worked out no deduction shall be made on account of pension and pensionary equivalent of other retirement benefits.

(5) A member of the service who retires from service on attaining the age of compulsory retirement while under suspension shall be paid the cash equivalent of leave salary under Sub-rule (1) above in respect of the period of earned leave at his credit on the date of his superannuation, provided that in the opinion of the authority competent to order reinstatement, the member of the service has been fully exonerated and the suspension was wholly unjustified.

A bare reading of this rule clearly indicates that the decision contained in Annexure P-1 of the Haryana Government allowing the benefit of leave encashment to the employees retiring on or after 31st January, 1978 is identical. Annexure P-2 is a subsequent decision of the Haryana Government whereby the maximum limit of leave encashment was raised to 240 days from 180 days. The said decision was made applicable with effect from 1st July, 1986 and the employees retiring on or after 1st July, 1986 were are entitled ,to the benefit of leave encashment subject to a maximum of 240 days. It was specifically mentioned in circular letter dated 29th April, 1987 (Annexure P2) that there will be no change in the existing terms and conditions for the grant of this benefit. The Division Bench of the Supreme Court in Union of India (UOI) Vs. Gurnam Singh, , while dismissing the SLP observed that even as a right to receive pension, although accruing on retirement, is a condition of service, so also the right to the payment of the cash equivalent of leave salary for the period of un-utilized leave accruing on the date of retirement must be considered as a condition of service.

9. In R.P. Kholsa (supra), the Petitioner retired as a Judge of this Court on 29th March, 1967. He claimed the benefit of leave encashment in view of the decision contained in letter dated 20th March, 1986, which was denied to him as the decision was made effective prospectively from April 1, 1986. Clause 4 of the aforesaid letter, which reads; "the decision will take effect prospectively from April 1, 1986" was declared unconstitutional and was struck down. The Petitioner was held entitled to the payment of cash equivalent of leave salary including allowance admissible to him on the leave salary in respect of period at his credit on the date of his retirement subject to a maximum of 180 days. It was

specifically held therein that the date of Petitioner's retirement had no bearing on his right to get this facility. While accepting the writ petition, it was observed as under:

For facility of retiring benefits like pension, retired Judges form one homogeneous class. They cannot be classified in two categories on the basis of a fortuitous circumstance like the date of retirement. The benefit provides under Rule 20-B of the Leave Rules cannot rationally and legitimately be confined only to those Judges who retired after 30th September, 1977. This benefit cannot be with-held from those Judges who happened to retire prior to this date. Such a treatment will attract the frown of Article 14 of the Constitution of India which does not permit any individuals discrimination amongst persons similarly situated and belonging to the same class.

The conclusions arrived at by this Court were virtually based on the principles laid down by the Supreme Court of India in D.S. Nakra (supra), wherein it was categorically held that pensioners form a homogeneous class and their classification on the basis of date of retirement was arbitrary and violative of Article 14 of the Constitution. Expanding the view, it was further observed by their Lordships as under:

...Where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that cannot be done when they are in service, can that be done during their retirement. Expanding this principle, it can confidently be said that if pensioners form a class, their computation cannot be "by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later.

In view of the law laid down by the Supreme Court of India in the aforesaid case and the decision of this Court rendered in R. P. Khosla (supra), I have no hesitation in mind to hold that all the Petitioners irrespective of their dates of retirement are entitled to the benefit of cash equivalent of leave salary including dearness allowance in respect of the period of earned leave at their credit on the date of retirement subject to a maximum of 240 days and the decisions contained in Annexures P-1 and P-2 saying that the benefit of leave encashment will be applicable to the employees retiring on, or after 30th September, 1977 and 1st July, 1986, respectively, are quashed being unconstitutional.

10. In view of the foregoing discussions, the writ petition is allowed and the Respondents are directed to pay the Petitioners cash equivalent to the leave salary (including dearness allowance admissible to them on the leave salary) at the rates in force on the date of their retirement in respect of the period of earned leave at their credit subject to a maximum of 240 days with 12 percent p.a. from the date of filing of the writ petition till realisation. This decision shall be implemented within three months from the receipt of a copy of judgment. No costs.