

(2012) 02 KAR CK 0078

In the Karnataka High Court

Case No : Writ Petition No. 41011 of 2011 (L-RES) and 41012 of 2011 (L-RES)

Management of Sri Ramakrishna Pre-University College

APPELLANT

Vs

Ms. Pushpa Anchan and Another

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 33 (C-2)

Citation : (2012) 4 LLJ 179

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : K. Ramachandran and M.R.C. Ravi, for the Appellant; Y. Rajendra Prasad Shetty, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Aravind Kumar

1. These two writ petitions are by the management of Sri Ramakrishna Pre-University College, Mangalore, questioning the order passed by Labour Court dated September 8, 2011 in Application No. 4/2010 and 2/2010 respectively. Heard Sri Ramachandran, learned Counsel appearing for petitioner and Sri Y. Rajendra Prasad, learned Counsel appearing for respondents. Perused the impugned order as also the records.

2. Respondents filed Applications u/s 33(C-2) of the Industrial Disputes Act, 1947 praying for computation of the amount towards Leave Encashment for a period of 240 and 180 days respectively and to direct the management to pay the same along with interest at 18% p.a. with costs.

3. It was contended by respondents that they were serving as Attenders in the petitioner college and after working continuously for a period of 12 years and 18 years respectively, they have opted for Voluntary Retirement and at the time of leaving the job they were drawing salary of Rs. 4,380/- per month and Rs.

5,928/- per month respectively inclusive of Dearness Allowance per month. It was also contended that they had accumulated leave for maximum period of 240 days to their credit at the time of leaving of the service. It was contended that they were entitled for a sum of Rs. 35,040/- and Rs. 41,952/- towards Leave Encashment for a period of 240 days and 184 days respectively. from the management. On account of non payment of amount towards Earned Leave, they filed Applications, On service of notice, petitioner-management appeared and filed statement of objections denying the claim. It was contended that applicants are not entitled for Leave Encashment as there is no earned leave to their credit.

4. Before the Labour Court, parties tendered their oral and documentary evidence. After considering the arguments and evaluating the evidence available on record, Labour Court by impugned orders allowed the applications and directed the petitioner-management to pay a sum of Rs. 35,040/- and Rs. 41,952/- to respondents with interest at 12% P.A. from the date of order till date of realisation. It is these orders which are impugned in the present writ petitions.

5. It is the contention of Mr. Ramachandran, that orders passed by Labour Court are erroneous and contends that there are no Leave Rules framed pertaining to the petitioner College and petitioner Institution have adopted Karnataka Educational Institutions (Certain Terms and Conditions of service of employees in Private, Unaided. Primary, Secondary and Pre-University) Rules. 2005 (hereinafter referred to as "2005 Rules" for the sake of brevity), and said Rules do not provide for encashment of any earned leave after leaving the service of the petitioner College and this fact has not been appreciated by the Labour Court.

6. He would further contend that finding of Labour Court as per Sub Rule (7) of Rule 20 of 2005 Rules provides for accumulation of earned leave to the extent of 240 days and as such, necessary inference that has to be drawn is that at the time of retirement from service, the employee should be given encashment of the said earned leave. He would draw the attention of Court to the said Rules to contend that Sub Rule (7) of Rule 20 of 2005 Rules only states that the total duration of vacation, earned leave and commuted leave taken in conjunction or together should not exceed 240 days and contends that said sub rule does not provide for encashment. As such, he contends in the absence of a specific provision in this regard, Labour Court committed a serious error in drawing presumption. In support of his submission, he has relied upon the judgment in the case of Syed Ilias v. State of Karnataka, LNIND 1984 KANT 294 : 1986-I-LLJ-288 (Kant).

7. Per contra, Sri Rajendra Prasad Shetty, learned Counsel appearing for respondents would support the order passed by Labour Court and contends that Leave Encashment is part of salary and it is nothing but salary which relates to unavailed leave to the credit of employees. He contends that judgment of Hon"ble Supreme Court in the case of State of Rajasthan and Another v. S.R. Higher Secondary School, Lachhmangarh and Others AIR 2005 SC 3541 : (2005) 10 SCC 346 relied upon by the Labour Court is squarely applicable to the facts on

hand and as such, he contends that order passed by Labour Court is just and proper and prays for dismissal of Writ Petition.

8. He submits that Karnataka Private Educational Institutions (D & C) Rules, 1978, is applicable to the facts on hand which provides for employees to claim leave encashment not exceeding 240 days and contends that respondents are entitled for encashment of un availed leave to their credit. He would also contend that in the appointment order issued to respondents itself, it has been made clear that these provisions namely 1978 Rules are applicable and as such petitioner cannot now contend that it is inapplicable.

9. Having heard the learned advocates appearing for parties, it is noticed that Labour Court has relied upon the judgment of the" Hon"ble Apex Court in the case of State of Rajasthan and Another v. S.R. Higher Secondary School, Lachhmangarh and Others (supra) to hold that applicants are entitled for Leave Encashment. A perusal of the said" judgment would go to show issue as to whether teachers of Non Government Educational Institutions, receiving aid are entitled for Leave Encashment benefits after retirement under the Act and Rules framed thereunder was in question. The Hon"ble Supreme Court in the said case was concerned with teachers of Non-Government Educational Institutions receiving grant-in-aid. In this background, Hon"ble Apex Court examined the definition of salary as defined u/s 2(s) of the Panchayath Act and Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service conditions etc.,) Rules 1993 and found that Chapter V of the said Rules relates to admissibility of leave and Rule 51 specifically provided for encashing the earned leave and in this background, it came to conclusion as under:

16. From the aforesaid rules, regulating leave, it is clear that benefit of encashment of leave is nothing but payment of salary for the leave not availed by an employee and which is to his credit.

10. In other words, it was found in the said case that rules specifically provided for encashment of earned leave remaining credit to an individual on the date of retirement. Thus, it has to be seen in the present case as to whether any such rule is available or formulated which would enable the respondents to seek for Leave Encashment. Learned advocates appearing for parties agree that it is only Rule 20 which relates to earned leave. There is no dispute on this issue and same reads as under:

20. Earned Leave-(1) Earned leave admissible to a permanent employee is 1/11th of the period spent on duty:

Provided xxxx upto (6) xxxx

(7) The total duration of vacation, earned leave and commuted leave taken in conjunction shall not exceed two hundred and forty days.

A reading of the above Rule does not establish or go to show that it provides for encashment of earned leave. It only stipulates that total duration of vacation,

including earned leave and commuted leave if taken in conjunction should not exceed 240 days. It does not specify or provide for encashment of earned leave. This Court in the case of Syed Ilias v. State of Karnataka (supra), while considering the distinction between grant of earned leave and sanction of refused leave after superannuation held that there is clear distinction between sanction of refused leave after superannuation and granting of earned leave. On the issue of pecuniary benefits that would accrue to civil servants on his superannuation it has been held as follows:

8. But the effect of encashment of leave is entirely different. That is a pecuniary terminal benefit allowed to a civil servant, if a civil servant does not, utilise his leave to his credit, but for the rule providing for encashment, the leave would lapse on the date of superannuation. The provision or encashment, of leave enables a civil servant to secure pecuniary benefit equal to the salary for the period of leave which stands to his credit as on the date of retirement. Xxx clearly untenable.

(Emphasis supplied)

11. In the instant case facts would go to show that admittedly, Sub Rule (7) of Rule 20 of 1978 Rules would enable an employee to have in all 240 days of earned leave to his credit and total duration of vacation, earned leave and commuted leave taken in conjunction shall not exceed 240 days. It does not provide for encashment of Earned leave. In the absence of any Rule providing for encashment of earned leave, applicants would not be entitled to such encashment. In view of the judgment of this Court in Syed Ilias v. State of Karnataka (supra) and the case relied upon by Labour Court being inapplicable to the facts and circumstances of the case, I am of the considered view that respondents would not be entitled to seek for encashment of earned leave.

12. Yet another contention that has been raised by the learned Counsel appearing for respondent that similarly placed employees have been extended earned leave and same also is to be extended to them does not merit acceptance and same is liable to be rejected since this Court would not issue writ or direction to an authority to do an act contrary to the Rules. It would be of benefit to extract the judgment of the Hon'ble Supreme Court in the case of Union of India and Others Vs. Rakesh Kumar etc., wherein, it has been held in paragraph 21 as follows:

21. Learned Counsel for the respondents xxx xxx is eligible to get the pension. Therefore, by erroneous interpretation of the Rules if pensionary benefits are granted to some one it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor can there be any estoppel. Further, in such cases

there cannot be any consideration on the ground of hardship. If the Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but the Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule. xxxxxx are special provisions.

(Emphasis supplied)

13. In that view of the matter, the respondents are not entitled for the relief in the result. I pass the following:

ORDER

- (1) Writ petitions are allowed.
- (2) Orders passed by the Labour Court dated September 8, 2011 in Application Nos. 4/2010 and 2/2010 are hereby set aside.
- (3) No order as to costs.
- (4) The amount in deposit made by petitioner is ordered to be refunded to petitioner.