**(2019) 04 P&H CK 0147**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 12706 Of 2016

Paramjeet Pal Singh APPELLANT

Vs

State Of Punjab And Others RESPONDENT

**Date of Decision :** 02-04-2019

**Acts Referred:**

**Citation :** (2019) 04 P&H CK 0147

**Hon'ble Judges :** Harsimran Singh Sethi, J

**Bench :** Single Bench

**Advocate :** V.K. Shukla, Mehardeep Singh, Parambir Singh

**Final Decision :** Allowed

# Judgement

Harsimran Singh Sethi, J

In the present writ petition, the grievance which has been raised by the petitioner is that vide order dated 01.06.2016 (Annexure P-3),recovery of Rs.84,895/- has been imposed upon the petitioner alleging excess payment of leave encashment.

The facts as mentioned in the writ petition are that the petitioner joined Municipal Council, Moga as a Clerk on 07.01.1983. Thereafter, he was promoted as Inspector on 21.05.2013. While working as such , he retired from service on 31.01.2015.

State of Punjab amended the Punjab Civil Services Rules in the year 2012 so as to grant extension to the employees for a period of two years. Petitioner, who was eligible, applied for extension for a period of one year only and he continued in service till 31.01.2016 and then retired from service. After the retirement, pensionary benefits of the petitioner were calculated and on calculation, it transpired that petitioner was not entitled for the leave encashment of 300 days as he had already availed 78 earned leaves during the period of extension from 01.02.2015 onwards till 31.01.2016 and thereafter, the respondents passed the order dated 01.06.2016 (Annexure P-3) for the recovery of an amount of Rs.84,895/-. As the petitioner failed to comply with the said order, the amount for which the petitioner was found liable to refund, was withheld from the provident fund of the petitioner. In the present writ petition, order dated 01.06.2016 (Annexure P-3) by which the petitioner was asked to deposit Rs.84,895/- keeping view the excess payment of leave encashment paid to him, is under challenge.

In reply, the respondents have defended the order dated 01.06.2016. In the reply, it has been stated that vide Notification dated 25.05.2016 (Annexure P-5), the State of Punjab had clarified that in case, during the period of extension, any earned leave is availed by an employee, the same is to be deducted from the unutilized earned leave at his credit of leave encashment available to the employee at the time when employee reached the age of superannuation and, therefore, in view of the Notification dated 25.05.2016, petitioner was only entitled for the leave encashment for a period of 245 days. The relevant paragraph of the reply is as under:-

"(1) That the no cause of action arises to the present petitioner in regard to the answering respondents to file the present writ petition. It is pertinent to mention here that the main grievance as stated in the present writ petition is the recovery of Rs.84,895/- i.e. the excess payment of Leave Encashment and the said was duly communicated as per letter dated 1.6.2016 (Annexure P-3) has been alleged to be unlawful and unfair by the petitioner.

Further, it is relevant to mention here that the recovery of the leave encashment is due to the implementation of Punjab Govt. Notification No. G.S.R57/Const./ Art.309/Amd./2015 Dated:-30.10.2015 which was issued well before his age of supperanuation during his extension period.

(2) That the Punjab Govt. vide Notification No. G.S.R57/Const./Art.309/ Amd./2015 Dated:- 30.10.2015 has decided to incorporate the amendment in the Rule 8.21 which is reproduced below:-

I. "(b) In case of a Government employee, who is granted extension in service, on the completion of his extended period of service, shall be entitled to draw cash equivalent to un-utilized earned leave at his credit on the date of his superannuation.

II. Provided that a Government employee, who continues in service after his superannuation, shall earn leave at the rate applicable to him on the date of his superannuation.

Provided further that if a Government employee, avails earned leave in excess of leave earned by him during the period of his extension, in that case the excess of leave earned by him during the period of his extension, in that case the excess leave availed by him, shall be deducted from the un-utilized leave at his credit on the date of his superannuation;, and

 

III. sub-rule d), except the Notes given thereunder, shall be omitted.

According to the above amendment the recovery of leave encashment amounting to Rs.84,895/- is recoverable from the retiree which has been duly communicated to him vide office letter No. 387 dated 01.06.2016 (Annexure P-3).

(3) That the petitioner further had alleged that the said recovery has been affected in view of the notification dated 25.05.2016 (Annexure P-5), however the bare perusal of the said letter crystal clears the fact that the said is just a letter issued in clarification to the reference to the notification dated 30.10.2015 (Annexure P-4).

It is pertinent to mention here that the present petitioner was fully aware of the implementation of the amendments that the Punjab Govt. Notification No. G.S.R57/Const./Art.309/Amd./2015 Dated:- 30.10.2015 much before his date of superannuation for the extended period of service.

Therefore, in the light of the submissions made in the preliminary submissions the present writ petitions deserves to be dismissed."

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The grievance of the petitioner is only against the recovery of an amount of Rs.84,895/-. The said amount has been recovered on the ground that as per the Instructions issued by the Government of Punjab dated 25.05.2016, the petitioner was not entitled for the total earned leave of 300 days available to him. The earned leaves availed during the period of extension are to be deducted from 300 days earned leave while calculating the entitlement of an employee for leave encashment.

Learned counsel for the petitioner states that the said action is contrary to the law and no hearing whatsoever was given to the petitioner before arriving at a conclusion that the earned leave availed by the petitioner during the extension period is to be deducted while making payment of the leave encashment to the petitioner. In the absence of any notice, the said recovery is liable to be rejected.

Learned counsel for the respondents states that once according to the Instructions, the petitioner was not entitled for the leave encashment of the total period, the case of the petitioner for the grant of leave encashment was to be calculated on the basis of the Instructions dated 25.05.2016, therefore, there was no need of issuance of any show cause notice as the calculations are to be done on the basis of the Instructions already issued.

I am of the considered opinion that the Instructions dated 25.05.2016, according to which, for the first time the Government of Punjab had decided that while calculating the leave encashment, the leave availed by an employee during the period of extension is to be deducted, cannot be made applicable upon the petitioner for the reason that the petitioner had already retired on 31.01.2016 and these Instructions had come into existence only on 25.05.2016. The Instructions, which were not available at the time of the retirement, cannot be made applicable upon the petitioner and, therefore, the recovery order dated 01.06.2016, which is solely based upon the Instructions dated 25.05.2016, cannot be sustained.

Learned counsel for the respondents further states that the Instructions dated 25.05.2016 are only clarificatory in nature and the same clarify the Instructions issued by the Government of Punjab dated 30.10.2015 and, therefore, the same clarification has to relate back to 30.10.2015 when the petitioner was in service and, therefore, the impugned order dated 01.06.2016 is valid.

I am afraid that the said argument cannot be accepted for the reason that there is no mention of deduction of the leave encashment or the non-entitlement of the full leave encashment by an employee, who is on extension. The clarification can only be given in respect of a subject matter which already was there in the Instructions dated 30.10.2015 and which, does not mention the denial of leave encashment to an employee. Therefore, it cannot be said that Notification dated 25.05.2016 was only a clarification to the Instructions dated 30.10.2015, rather by Instructions dated 25.05.2016, the Government of Punjab had imposed another condition independent of the conditions already imposed vide Notification dated 30.10.2015 for the grant of extension. Therefore, the argument raised by the counsel for the respondents that the Notification dated 25.05.2016 is only clarificatory, cannot be accepted.

Furthermore, it is a settled principle of law that the Instructions issued by the Government, cannot have retrospective effect. Instructions are always prospective in nature. The Instructions dated 25.05.2016 will be applicable upon the employees, who retired after 25.05.2016. Therefore, as the petitioner had already retired from service prior to the issuance of instructions dated 25.05.2016, the same cannot be made applicable upon him for recovery of the amount. Therefore, the impugned order dated 01.06.2016 (Annexure P-3) is contrary to the law and cannot be sustained and, therefore, is set-aside.

The writ petition is allowed. The amount of Rs.84,895/- is ordered to be refunded to the petitioner within a period of two months from the receipt of copy of this order. Learned counsel for the petitioner states that he is not pressing the request for the interest keeping in view the order passed by this Court.

 