(2019) 12 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2858 Of 2008

Satya Panwar APPELLANT

Vs

Union Of India And Another RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Citation : (2019) 12 SHI CK 0018

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Jagdish Thakur, Rajesh Kumar Sharma

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has prayed for the following substantive reliefs:-

"It is, therefore, respectfully prayed that a writ in the nature of certiorari may very kindly be issued to:

A) That the impugned order dated 31.7.2007 as contained in Annexure P-5 may very kindly be quashed and set aside.

B) That a writ in the nature of mandamus may very kindly be issued thereby directing the respondents to release the leave encashment of 93 days earned leave which has been deducted by respondent No. 2 illegally forthwith.

C) That the respondents more particularly respondent No. 2 may further be directed to pay the interest at the rate of 6% per annum from the date of due till payment."

2. Grievance of the petitioner is that despite the fact that she was entitled to encashment of 129 days earned leave, she was only granted leave encashment for 36 days by the respondents by crediting the same in her account on

10.10.2006. It is in this background that she has approached this Court praying for issuance of directions to the respondents for release of the balance amount of leave encashment for 93 days.

3. The claim of the petitioner has been resisted by the respondents on the ground that the services of the petitioner were governed by the provisions of the Cantonment Fund Servant Rules, 1937 and further as the respondents are following CCS (Leave) Rules, 1972, for the purpose of determining earned leave and the petitioner has been granted the benefit of encashment of earned leave to which she was entitled to. Accordingly, learned Assistant Solicitor General of India submits that there is no merit in the present petition and the same be dismissed.

4. I have heard learned Counsel for the parties and gone through the pleadings as well as documents on record.

5. Annexure P-1 is the voucher which demonstrates that petitioner served the respondents w.e.f. 03.07.1968 to 30.04.2006 as a Craft teacher and after her superannuation, she was paid an amount of Rs. 19,921/- as leave encashment for 36 days. There is no dispute that said amount stands received by the petitioner. Petitioner has placed on record, alongwith Annexure P-3, relevant extract of the service book of the petitioner (page 16 and 17 of the paper book), which demonstrates that in the service book of the petitioner, towards the balance earned leave as on the date when the petitioner superannuated, respondents themselves calculated 129 days earned leave in her account. However, for the purpose of calculating the benefits which were to accrue upon the petitioner, a period of 93 days has been deducted on the ground that there was an excess credit of leave made in the service book of the petitioner on the basis of the Director of Education, Himachal Pradesh, Shimla, letter No. EDN-H (8)B/96-Geni dated 23.11.1996.

6. Petitioner has also placed on record alongwith Annexure P-4 vacation schedule for educational institutions in the State of Himachal Pradesh as was circulated by the Department of Education, Government of Himachal Pradesh, which was being followed by the Himachal Pradesh Board of School Education, i.e. the Board of School Education in which the petitioner was imparting education was affiliated to. These Annexures further demonstrate that a teacher was entitled for 10 days earned leave by giving 20 days of teaching classes, i.e. in case a teacher worked for extra 20 days then he/she would be credited with 10 days earned leave in lieu thereof.

7. During the course of arguments, it has not been disputed that as far as the curricular or the pattern of vacation schedule being followed by the School in issue is concerned, the same was one which stood circulated by the Himachal Pradesh Board of School Education. It is on account of vacation schedule so issued by the Board that the petitioner ventured to impart education for additional 20 days so that she could earn 10 days extra earned leave in terms of

the notification of the Department of Education of the Government of Himachal Pradesh. At no stage, respondents informed her that she would not be credited with 10 days extra earned leave if she worked for 20 additional days in each academic session.

8. It is a matter of record that as far as service book of the petitioner which was being maintained by the respondents is concerned, earned leave was being entered into the same in the account of the petitioner in terms of the notification so issued by the Government of Himachal Pradesh. As noted above also at no stage during the entire service career of the petitioner, she was indicated or informed by the respondents that as respondents are not following the instructions so issued by the Government of Himachal Pradesh vis-a-vis earned leave, therefore, she need not to work for those extra 20 days so as to entitle her for earned leave in terms of the instructions of the Government of Himachal Pradesh, i.e. 10 days extra earned leave than the usual. Entries in this regard were duly reflected in the service record of the petitioner which was not maintained by the petitioner but was maintained by the respondents. Therefore, in my considered view, when the respondents always held it out to the petitioner by their acts that they were following the instructions issued by the Department of Education, Government of Himachal Pradesh, with regard to the earning of extra earned leave by putting extra days in an academic year, they cannot be now permitted to deny the claim prayed for by the petitioner of granting her leave encashment in terms of earned leave which stands reflected in her service book without any deductions. The respondents in fact are estopped from doing so on account of their own act and conduct as is evident from the entries in her service book.

9. The entire controversy can be perceived from another perspective. As for the period of 36 days, the petitioner has been paid leave encashment to the tune of Rs. 19,921/-. This means that the emoluments for one day's earned leave comes to approximately Rs. 553.36/- In case, the petitioner is granted leave encashment of remaining 93 days, then the total emoluments in addition to what already stands paid to the petitioner shall be about Rs. 50,000/-. In my considered view, denying such a meager amount to a teacher who served the respondents for about 38 years, is completely unjust. The petitioner has been unnecessarily dragged into this litigation by the respondents especially in the peculiar facts of the case where at no stage before the superannuation of the petitioner it was ever held out by the respondents to the petitioner that she will not be entitled to encashment of earned leave in terms of the instructions of the Department of Education, Government of Himachal Pradesh. To put it differently, had the petitioner before her superannuation been informed that she would not be getting any advantage of saving these leaves and putting additional work, but obvious, the petitioner would have had availed those leaves rather than working additionally to earn the extra earned leaves.

10. Accordingly, in view of above discussion, this petition is allowed. The act of

the respondents of denying leave encashment for full 129 days and curtailing the same to 36 days is held to be arbitrary and not sustainable legally as also on the basis of equity and fair play. Respondents are directed to pay the petitioner leave encashment for the remaining 93 days of earned leave at the rate she was entitled to at the time of her superannuation. Let the needful be positively done within a period of 60 days from today, failing which, respondents shall have to pay interest upon the said amount to the petitioner at the rate of 6% per annum as from the date of filing of the writ petition.

The petition stands disposed of in above terms, so also pending miscellaneous application(s), if any.

