

(2015) 08 PAT CK 0075

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11219 of 2011

Shyam Sunder Acharia

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Citation : (2015) 08 PAT CK 0075

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Sujeet Kumar Sinha, for the Appellant; Prabhu Narain Sharma, AC to AG, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ahsanuddin Amanullah, J—Heard learned counsel for the parties.

2. The petitioner had moved the Court for sanctioning his leave encashment, group insurance, revised amount of gratuity and revised pension as well as arrears of salary.

3. Learned counsel for the petitioner submits that as of now the only grievance which remains is with regard to leave encashment for 300 days and further for interest on group insurance @ 12.5% compound interest.

4. From the pleadings on record, it appears that the stand of the University is that the amendment to the statute governing payment of leave encashment was with effect from 15.09.2006 by which the earlier benefit of leave encashment was increased to 300 days. On a specific query of the Court as to what was the amount of earned leave available in the account of the petitioner, learned counsel for the University takes a categorical stand that it was 297 days as on 14.09.2006. However, since on 14.09.2006, the maximum encashability limit was 180 days, therefore the University has treated the actual 297 days to be equivalent to 180 days. It is thus submitted that after that from 15.09.2006 onwards fresh accounting has been done with regard to the calculation of earned

leave admissible to the petitioner and he has been found entitled to 42 days for the subsequent period. Learned counsel for the University submits that the total days which have been found to be admissible and payable comes to 222 (180+42) days for which payment has been made.

5. Learned counsel for the petitioner submits that the way the respondent University has approached the issue borders on absurdity for the simple reason that computation of earned leave and encashability are different issues. It is submitted that a person earns earned leave, as per the existing mode of calculation, till the last working day in his career and thereafter, on the basis of the prevailing scheme and policy of the concerned employer, encashability is decided. In the present case, the University itself had kept adding the number of earned leave in the account of the petitioner and as per their own showing it was 297 days till 14.09.2006. Thus, it is obvious that after that, since the petitioner was in service for almost another three years, the total number of leave accumulated goes much beyond 300 days. However, the University, without any basis, has come up with a formula in which they have equated the earned leave of the petitioner with the maximum encashment limit. Learned counsel has relied upon a decision of a Bench of this Court in the case of Prof. Surendra Bahadur Singh Vs. The State of Bihar and Others, (2006) 4 PLJR 369 as well as on the order dated 06.08.2012 in the case of Dr. Ban Mala v. The State of Bihar & Ors. (C.W.J.C. No. 7837 of 2012) in support of his contention.

6. Upon hearing the rival contentions, the Court is in agreement with the submissions of learned counsel for the petitioner and is unable to understand as to how a simple issue can be made so complicated by the respondent University where it becomes not only arbitrary and illegal but also impractical. Accumulation of earned leave and encashability are separate and distinct issues. The only link between the two issues is that when it comes to encashment of the accumulated earned leave, there exists a ceiling on the maximum number of days for which it can be done. In the present case, as per the calculation of the University itself till 14.09.2006, the accumulated leave in the account of the petitioner was 297 days and subsequently after that till the date of his retirement the petitioner was entitled for further 42 days. Thus, if a simple addition is made to the amount of earned leave till 14.09.2006 and subsequent thereto, till the time of superannuation, the said would come to $297 + 42 = 339$ days. It would be relevant to notice here that the circular of the State Government dated 29.05.2008 enhancing the benefit of leave encashment of 300 days is with regard to how much a person, upon his superannuation, would be entitled to be paid under the leave encashment scheme/policy. The University having treated the actual accumulated leave of the petitioner till 14.09.2006 of 297 days to be equivalent to 180 days on the basis of correlating it to the maximum admissibility for encashment as per the then existing policy, itself is fallacious and outright erroneous. If the contention of the University is accepted, then the moment any employee had 180 days of leave in his account, there was no occasion for the University to maintain any record thereafter because of the

maximum ceiling having been reached. The University admittedly maintaining a record of the leave accumulated by the employee till the date of his superannuation also indicates that the process of accumulating leave continues from the moment a person joins service till his last date of working, though the mode of computing may keep changing as per the revised instructions of the employer. In the present case, there is no controversy that till 14.09.2006 the leave, as per the existing formula, available in the account of the petitioner was 297 days and thereafter, again as per the admitted calculation by the University itself, from 15.09.2006 till the date of superannuation of the petitioner, a further 42 days of such leave was admissible. Looking at it from another angle, the effective date of implementation of such revised policy of enhancement of leave encashment to 300 days with effect from 15.09.2006, if tested on the basis of the reasoning given by the University, an anomalous situation may arise inasmuch as on 15.06.2006 there would be no beneficiary under the scheme since admittedly every employee who had more than 180 days of accumulated leave in his account till 14.09.2006, due to a ceiling of 180 days on encashment, would have only 180 days to show in their account relating to accumulated leave meaning thereby that their earned leave beyond 180 days gets wiped out, which can neither be nor is the import of the government policy which is in the nature of enhancing the benefit rather than curtailing even the existing benefit. Clearly, such interpretation is illogical. Thus, testing the issue from both the angles, the Court is unable to accept the explanation or interpretation on behalf of the University relating to the policy of the State Government enhancing the limit of encashment of earned leave to 300 days. Accordingly, for the reasons aforesaid, the Court holds that the applicability of the policy of the University/State Government to enhance the maximum number of days permissible for encashment of accumulated leave shall be 300 days with effect from 15.09.2006. The employer is only entitled to make a calculation as to what would be the leave per year or per month, as the case may be, in accordance with the formula for such computation from time to time. However, by way of clarification, in the considered opinion of the Court, a person no matter how much earned leave he may have had in his account, if he superannuates on 14.06.2009, he would only be entitled for encashment of 180 days whereas if a person who superannuates on or after 15.09.2006, has accumulated leave of more than 180 days and even beyond 300 days, shall only be entitled to payment/encashment of the actual number of days beyond 180 days to a maximum of 300 days. Thus, the petitioner is also held entitled for payment of accumulated leave for 300 days.

7. Coming to the other grievance of the petitioner relating to payment of interest on group insurance @ 12.5% compound interest, learned counsel for the University submits that the University shall consider such grievance and pay as per the decision of the Court in the case of Prof. Surendra Bahadur v. State of Bihar (supra).

8. The writ petition stands disposed off in the aforementioned terms.

9. The payments due to the petitioner be made within six weeks from the date of production of a copy of this order before the respondents No. 4 and 5.