

Court In Whose Limits Retired Employee Draws Pension Has Jurisdiction To Hear Plea For Dues, Employer's Convenience Not Relevant: Kerala HC

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

ANU SIVARAMAN; J.

WP(C) NO.22109 OF 2022; 5 December 2022

M.S. ANIL versus M/s. HIL (India) Ltd.

Petitioners by Advs. K.P. Justine (Karipat), A. Joseph George (Azhikkakath)

Respondents by Advs. M. Gopikrishnan Nambiar, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan

J U D G M E N T

This writ petition is filed seeking directions to the respondents to pay the leave encashment/half pay sick leave encashment amount to the petitioners within a time limit as may be stipulated by this Hon'ble Court.

2. Heard the learned counsel for the petitioners and the learned Standing Counsel appearing for the respondents.

3. The learned Standing Counsel appearing for the respondents raises a preliminary objection that the claim of the petitioners being for earned leave encashment, the writ petition is not maintainable before this Court on account of the fact that no part of the cause of action has arisen within the jurisdiction of this Court.

4. I notice that the 1st petitioner admittedly retired from service from HIL (India) Limited, which is a company, whose headquarters is situated in New Delhi. However, the specific case of the 2nd petitioner is that he had retired from HIL (India) Limited, Rasayani, Maharashtra on 30.6.2020. It is contended that they have been relieved from the services of the company and that they are drawing their pension in the addresses shown in the writ petition in Kerala. The claim of the petitioners is with regard to earned leave encashment. The said amount is to be paid to the petitioners on their retirement from service. The amount should have been paid immediately on demitting office. It is not in dispute that there is an undue delay on the part of the respondents in releasing the amounts of earned leave encashment due to the petitioners. To now require the petitioners who are service pensioners to approach the High Courts at Delhi and Bombay for receiving amounts which are admittedly due to them, according to me, is a complete misconception and would amount to denial of the petitioners' valuable rights.

5. The Apex Court in Shanti Devi alias Shanti Mishra v. Union of India and ors. [Civil Appeal No.3630/2020] had specifically considered the question of forum non conveniens and it was held that where a pensioner approaches a court for receipt of amounts due on account of his earlier service, the ground reality and the facts of the matter have to be looked into by the constitutional court. The Apex Court had held that for a retired employee, convenience is to prosecute his case at the place where he belongs to and was receiving pension at. It is not the convenience of the company which has to be taken into account, but the convenience of the pensioner who otherwise would have to be driven to other jurisdictions to get amounts which are admittedly due to him.

6. Though the learned counsel for the respondents placed reliance on a decision of this Court in W.P.(C) No.23423/2021, I notice that the same was specifically a case where the employee was in service and was employed out of the territorial jurisdiction of this Court but was permitted to work from home during the period when the writ petition was

filed. This Court held that the fact that the petitioner had been permitted to work from home and was working from within the jurisdiction of this Court at the relevant time would not, by itself, confer jurisdiction on this Court to consider a service dispute when the actual site of the petitioner's employment was outside its jurisdiction. However, in the instance case, in view of the fact that what is being claimed is admittedly a terminal benefit which has not been released even long after retirement, the said decision would have no application to the facts of this case.

7. In view of the fact that the petitioners are retired employees of the 1st respondent who draw their pensionary benefits within the territorial jurisdiction of this Court and since the earned leave encashment amount represents a part of the terminal benefits that the petitioner would be entitled to, the writ petition is indeed maintainable before this Court. The respondents are duty bound to see that the amounts admittedly due are released to the petitioners.

There will be a direction to the respondents to take up the claim of the petitioners and release the earned leave encashment amounts, taking note of the date of retirement of the petitioners as well. Appropriate steps shall be taken to see that the entire amounts are released to the petitioners within a period of six months from the date of receipt of a copy of this judgment, failing which the amounts due will carry interest at the rate of 6% per annum.

This writ petition is ordered accordingly.

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