



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. : 5043 of 2022

Reserved on : 03.08.2023

Decided on : 08.08.2023

Sunita Sangroli

....Petitioner.

Versus

State of H.P. and Ors.

...Respondents.

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. R.L. Chaudhary, Advocate.

For the respondents : Mr. Pushpender Jaswal,
Additional Advocate General, with
Mr. Gautam Sood, Mr. Rahul
Thakur and Ms. Priyanka
Chauhan, Deputy Advocate
Generals.

Satyen Vaidya, Judge (Oral)

By way of instant petition, petitioner has
prayed for following substantive reliefs:-

- i) *That writ of certiorari may kindly be issued, quashing and setting aside the impugned office memorandum dated 06.07.2020 (Annexure P-7).*
- ii. *That writ of mandamus may kindly be issued, directing the respondent department to grant*

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

benefit of earned leave to the petitioner from the due date of regularization i.e. 25.06.1997, in view of the fact that the delay in regularization of service of the petitioner is clear cut fault on the part of the respondent department and for the fault of the respondent department, the petitioner cannot be deprived from getting the benefit of earned leave.

2. The issue involved in the instant petition is with respect to the grant of benefit of earned leave from a retrospective date.

3. Petitioner was appointed on contract basis as Lecturer (History) on 25.06.1997 and her services were regularized on 29.07.2010. Petitioner claimed seniority, monetary benefits and continuity in service from the date of her initial appointment i.e. 25.06.1997. Petitioner approached the H.P. Administrative Tribunal by way of O.A. No. 7377 of 2018 and claimed relief therein on the basis of the judgment passed by this Court in CWP(T) No. 5253 of 2008, titled Narain Singh Vs. State of H.P. and Ors., decided on 21.04.2010, as modified in LPA No. 146 of 2010, titled as State of H.P. and Ors. Vs. Narain Singh, decided on 01.09.2015. The O.A. was disposed of

on 08.01.2019 with direction to the respondents to extend the benefit of the judgments in Narain Singh case (supra) to the petitioner in case she was similarly situated. Initially, the implementation of order passed by H.P. Administrative Tribunal was deferred for the reason that the judgment in LPA No. 146 of 2010, titled as State of H.P. and Ors. Vs. Narain Singh, had been assailed before Hon'ble Supreme Court. However, lastly, the Special Leave Petition filed against the judgment in LPA No. 146 of 2010 was disposed of by Hon'ble Supreme Court on 14.12.2018. In this view of the matter, a Division Bench of this Court in CWP No. 4486 of 2019, vide order dated 31.12.2019, directed the respondents to reconsider the pending representation of the petitioner within four weeks. Since, the respondents did not comply with the aforesaid judgment, petitioner preferred COPC No. 72 of 2020, which was disposed of by this Court on 26.08.2020 in following terms:-

“Learned Counsel for the petitioner informs the Court that now appropriate order stands passed by the authority concerned but the release of due and admissible amount be made time bound. Accordingly,

this contempt petition is ordered to be closed by observing that due and admissible amount, be released in favour of the petitioner on or before 30th of September, 2020. Notice discharged.”

4. The grievance of the petitioner is that respondents have granted her all benefits in terms of judgment in Narain Singh case except the benefit of earned leave. Having remained unsuccessful in getting her grievance redressed from the respondents, petitioner has approached this Court by way of instant petition for the reliefs as noticed above.

5. Respondents by way of their reply to the petition have sought to defend their action on the basis of the instructions issued by the Finance Department, vide office memorandum dated 06.07.2020 (Annexure P-7), according to which, the benefit of earned leave was not a part of consequential benefits. It is submitted on behalf of the respondents that the leave is regularized under CCS Rules, 1972 and in such rules there is no provision to grant the benefit of earned leave from retrospective date.

6. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

7. An incumbent appointed to a civil post is governed under the relevant service rules. The entitlement of a civil servant to earned leave is warranted by Rule 10 of All India Service Rules, 1952. Under these Rules, the entitlement of civil servant for earned leave is defined and it also provides for the encashment of unutilized earned leave to a particular limit.

8. The Central Civil Service Leave Rules, 1972, also provides for the earned leave. Rule 28 of CCS Leave Rules, 1972, deals with the entitlement and manner of calculation of earned leave for persons serving in vacation department.

9. Petitioner is a school cadre lecturer and hence is working in the vacation department. Nonetheless, her entitlement to the earned leave is under Rule 28 of CCS Leave Rules, 1972.

10. The entitlement of civil servant to an earned leave starts from the date she joins the service, where

earned leave is permissible. That being so, the earned leave becomes an incidence of service, a benefit available to the civil servant by virtue of he being appointed to a civil post. In this view of the matter, to discriminate between the persons who have received service benefits of regular employment w.e.f. retrospective date, be it under the orders of the Court or otherwise and others in whose cases the requirement of grant of benefits retrospectively did not arise, is clearly discriminatory and without any intelligible differentia.

11. It is not a case that the petitioner had not rendered actual services to the State from the date from which she was allowed to derive her benefits by virtue of a decision in compliance to the orders of the Court. Once, she had rendered the services from such date and had been ordered to be conferred with all the service benefits from such date, denial of the benefit of earned leave to the petitioner from such retrospective date is bad in law for the reason that it is discriminatory and arbitrary and hence against the Articles 14 and 16 of the Constitution of India.

12. Instructions issued, vide office memorandum dated 06.07.2020, by the Finance Department of State Government, Annexure P-7, thus, cannot be sustained for the reasons detailed above. Even otherwise, the CCS Leave Rules, 1972, do not provide for any embargo on the grant of benefit of earned leave from retrospective date.

13. In result, the petition is allowed. Office memorandum dated 06.07.2020 (Annexure P-7), is quashed and set aside. Respondents are directed to grant benefit of earned leave to the petitioner from the initial date of regularization i.e. 25.06.1997 within eight weeks from today.

14. The petition is, accordingly, disposed of, so also the pending miscellaneous application(s), if any

8th August, 2023
(sushma)

(Satyen Vaidya)
Judge