

IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

CWPOA No. 83 of 2020
Decided on 28th March, 2024

Anil Kumar Kohli

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting?

For the petitioner: Mr. V.B. Verma, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General,
with Mr. Rahul Thakur, Deputy
Advocate General, for respondents
No.1 and 2.

Mr. Yudhvir Singh Thakur, Advocate,
for respondent No.3

Ajay Mohan Goel, Judge (Oral)

By way of this writ petition, the petitioner has, *inter alia*, prayed for the following reliefs:

- i) *"The respondents may be directed to make the payments towards gratuity and leave encashment to the petitioner.*
- ii) *That the respondents may kindly be directed to release the amount of leave encashment to the petitioner with interest @18% per annum forthwith."*

2. When the case was listed on 26.03.2024, the following order was passed:-

Learned Counsel for the petitioner submits that the petitioner is aggrieved by the non-release of leave encashment in his favour. He further submits that the issue as to who has to pay the leave encashment to the petitioner is no more res-integra as it stands settled by this Court in CWP No. 60 of 2006, titled as Jagdev Katoch vs. State of H.P. and others, dated 20.06.2008, read alongwith judgment passed in Review Petition No. 22 of 2020, titled as Maharaja Lakshman Sen Memorial College versus State of H.P. and others, decided on 10.09.2020, that the liability to pay the leave encashment is that of the State to the extent of 95% and of the private institution is to the extent of 5%. Learned Counsel further submits that above cited judgments stand implemented by the respondents even qua other colleagues of the petitioners.

Learned Deputy Advocate General submits that he may be granted some time to have instructions in the matter.

As prayed for, list on 28.03.2024.

3. Learned Additional Advocate General submits that some more time be granted to have instructions in the matter.
4. This is opposed to by the learned counsel appearing for the petitioner, who submits that the prayer being made by the petitioner in the petition is squarely covered not only in terms of the Himachal Pradesh Non-Government Affiliated Colleges Grant-in-Aid Rules 1994, but also by the order dated 05.09.2022, that has been passed in Review Petition No.22 of 2020 read with order dated 10.09.2020, passed in Review Petition No.22 of 2020, in which, it has been settled that as far as the leave encashment is concerned, the liability of the State is to the extent of 95% and that of the private institution is to the extent of 5%.
5. A perusal of Rule, 6 of the Himachal Pradesh Non-Government Affiliated Colleges Grant-in-Aid Rules 1994 demonstrates that Grant-in-Aid is inclusive of the teaching as well as non-teaching posts approved by the Government. It is not the case of the respondent that the petitioner was serving against a teaching post in the private institution, which was not

approved by the Government. Findings returned in Review Petition could not be denied by the respondents. That being so, petitioner is held entitled for the relief prayed for, therefore, in this view of the matter, this writ petition is disposed of by directing the respondents to pay admissible leave encashment to the petitioner, 95% of which shall be borne by the State and 5% by the private institution. In case the due and admissible amount is not paid within the said period, the same shall entail interest @6% per annum from the date of judgment. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

March 28, 2024
(Vinod)