

**State of Himachal Pradesh & ors. versus
Gian Chand & ors.**

LPA No.147 of 2024

28.06.2024 Present: Mr. Ramakant Sharma, Additional Advocate General, for the appellants.

Mr. Ashwani K. Sharma, Advocate, for the respondents.

Compliance affidavit along with consideration order dated 21.06.2024, stands filed by Director Health Services, Himachal Pradesh, wherein, he has concluded that case of the appellants is not similar to case decided in CWP No.7359 of 2021, titled Amita Gupta versus State of H.P. & ors., mainly on the ground that petitioner in Amita Gupta's case was extended benefit of 2-tier pay scale at later stage from the retrospective date and subsequently her pay was re-fixed in the higher pay scale after her retirement in the pre-revised pay scale, whereas in present case, appellants are claiming benefit of revised leave encashment in the revised pay scale in terms of Notification of Himachal Pradesh Civil Services (Revised Pay) Rules, 2022, notified by Notification dated 03.01.2022.

2. The facts itself clearly indicate that in both cases issue involved is common that whether an employee/retiree is entitled for revised leave encashment on the basis of pay scale re-fixed from the retrospective date either on extension of benefit of 2-tier pay scale or on revision of pay scale. Therefore, it does not make any difference as to whether benefit of higher pay scale is extended on account of 2-tier pay scale from retrospective date or revision of pay scale from retrospective date because in both cases pay scale is revised or re-fixed from the retrospective date as per entitlement.

3. Leave encashment in terms of Rule 39 of CCS (Leave) Rules is to be calculated on the basis of last pay admissible to the employee on the date of retirement.

4. In case pay admissible to the retiree from the date of retirement is enhanced either on the basis of re-fixation on account of 2-tier pay scale or on revision of pay scale, it makes no difference because leave encashment is to be

counted on the basis of pay admissible to the retiree on the last date of retirement.

5. Therefore, differentiation between Amita Gupta's case and present case is superfluous and misconceived, and thus, conclusion arrived at by Director Health Services, is contrary to the verdict of the Court and, therefore, he is directed to reconsider the matter in light of ratio of the judgment in Amita Gupta's case read with Rule 39 of CCS (Leave) Rules.

6. Compliance affidavit be filed within two weeks.

List for consideration on **23.07.2024**.

**(Vivek Singh Thakur)
Judge**

June 28, 2024
(*Shivender*)

**(Ranjan Sharma)
Judge**