IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

COCP NO 0F 2020

IN C.W.P. No. 9558 of 2020

Birender Singh aged about 60 years s/o Sh. Rajmal Singh (Employee ID:0G45GV, PPO No. APP No.1017194380) Lecturer in Pol. Science (Now Retd.) G.S.S.S. Bhambhewa –Jind, presently resident of House no. 2281, Urban –Estate –Jind.

**VERSUS**

J. Ganesan I.A.S. Director-General, Secondary, Education- Haryana, Shiksha Sadan, Sector 5, Panchkula.

Chandigarh SURESH AHLAWAT

DATED : 15.12.2020 ADVOCATE

COUNSEL FOR THE PETITIONER

**Second Contempt Petition** under Section 12 of the Contempt of Court Act-1971 for initiating contempt proceedings against the respondents for willfully and intentionally disobeying the directions passed by this Hon’ble Court vide order dated 10.7.2020 passed in CWP no. 9558 of 2020 titled as Birender Singh V/S State of Haryana and others , where by his claim , to grant the benefit of Earned Leave after taking in to consideration the date of appointment as 13.3.1996 instead of 19.5.1999 with all consequential benefits along with 18%interst p.a. on the amount, so calculated towards leave encashment, from the date of accrued (i.e 13.3.1996 to 19.5.1999 ), till final payment, but more than **FIVE MONTHS** have passed ,but till date they did not do so, which makes them liable for the severe punishment under the Contempt of Courts Act:-

**RESPECTFULLY SHOWETH:**

* 1. That the petitioner is being aggrieved from non-compliance of order dated 10.7.2020 on part of respondents intentionally and deliberately is entitled to invoke inherent jurisdiction of this Hon,ble Court by filing present petition under section 12 of the Contempt of Courts Act,1971.
  2. That the petitioner filled civil writ petition no. 9558 of 2020 titled as Birender Singh and others versus State of Haryana and others before this Hon,ble Court. The petitioner has filed the writ petition seeking following relief :-

Issue a Writ in the nature of Certiorari for quashing the impugned orders Annexure P-8 dated 16.1.2020/17.1.2019 whereby claim of the earned leave(i.e period of 13.3.1996 to 19.5.1999) has been wrongly rejected, being fully entitled for the same, as every benefit (i.e. seniority, annual increments, A.C.P. scale, gratuity and superannuation pension ) has been granted treated the date of appointment as 13.3.1996 instead of 19.5.1999 under the order passed by the Hon’ble High in CWP no.10767 of 2002 in lieu thereof letter dated 17.1.2005 (Annexure P-1&P-2) granting the benefits has also been issued by the department.

Further a writ in the nature of Mandamus be issued directing the respondents to grant the benefit of Earned Leave after taking in to consideration the date of appointment as 13.3.1996 instead of 19.5.1999 with all consequential benefits along with 18%interst p.a. on the amount so calculated towards leave encashment from the date of accrued (i.e 13.3.1996 to 19.5.1999 ), till final payment .

3. That when the said writ petition has come for hearing before this Hon'ble Court on 10.7.2020, then this writ petition was disposed of by this Hon'ble Court and directed the respondents to compliance **said order within a period of one month,** which is reproduced below :-

**The petitioner is aggrieved of the rejection of his claim of earned leave from 13.03.1996 to 19.05.1999 and denial of other benefits by considering his date of appointment incorrectly. The petitioner retired on 30.06.2018.**

**Advance copy of the writ petition stands supplied. Learned counsel for the State, at the outset, submits that he has specific instructions to the effect that the petitioner's case is under consideration and the matter shall be decided expeditiously.**

**Keeping in view the specific stand of the respondents, this writ petition is disposed of with a direction that the competent authority shall consider and take a final decision on the grievance of the petitioner within four weeks.** A Copy of the order dated 10.7.2020 passed by this Hon,ble Court is annexed herewith as **Annexure P-1.**

4. That at the time of hearing of this case i.e. on 10.7.2020 , the state counsel specifically made the statement before the Hon.ble Court that he has specific instructions to the effect that the petitioner's case is under consideration and the matter shall be decided expeditiously. **But now FIVE months have been expired**  till date, no response has been given to the petitioner.

**5. That WHEN the five weeks have been expired**  than petitioner constrained to file the Contempt Petition no. 2194 of 2020 against you and Hon’bla High Court took the lenient view and directed on 16.10.2020 to the respondents to take the decision in this regard ,within four weeks from today i.e from 16.10.2020. Copy of the said order dated 16.10.2020 is attached herewith as **Annexure P-2.**

6. That it is very surprisingly, respondents not bothered the directions of the Hon’ ble High Court, which are given in first Contempt Petition after taking lenient view. Now FIVE MONTHS have been expired till today but respondents have not complied the order of this Hon'ble Court . Hence, the respondents have not complied the order of this Hon'ble Court therefore; the respondents have clearly violated the directions passed by this Hon'ble Court, from which it reflects that they are disobeyed the order dated 10.7.2020 passed by the Hon'ble High Court willfully, deliberately & intentionally.

7. **That the** petitioner also served the contempt notice to the respondent but all in vain .Copy of the contempt notice is attached herewith as **Annexure P-3.**

8**. That despite** repeated requests and frequent visits, grievance of the petitioner has not yet been redressed. Even petitioner is not listened by the respondents and respondents are not caring about order passed the Hon,ble Court.

9**. That** when the respondents did not pay any heed than petitioner constraint to file this contempt petition before this Hon’ble Court

10. **That now** **FIVE MONTHS have been expired** from the date of passing of order dated 16.10.2020 by this Hon,ble High Court ,this matter is hanging fire since july-2018 but the respondents did not pay any heed and are not implementing the order passed by this Hon.ble Court on 10.7.2020 . The act and conduct of the respondents shows clear cut willful and deliberate disobedience of the order dated 10.7.2020 passed by this Hon,ble High Court.

11. **That the** respondents have deliberately and intentionally disobeyed the order of the Hon’ble Court as they have no respect for law and order . In order to fulfill their own oblique motive ,the respondents have committed the offence of Contempt of Court Order.

12. **That** the respondents have, thus, made themselves liable to be prosecuted under the contemptuous proceedings for disobedience of the High Court which makes them liable for severe punishment under the Contempt of Courts Act.

13. **That n**o such or similar petition has earlier been filed either before this Hon,ble Court or Hon,ble Supreme Court except COCP no.2194 of 2020.

It is, therefore, respectfully prayed that present contempt petition may kindly be allowed, contempt proceeding against the respondents for non-compliance and non-implementing the order dated 10.7.2020 passed in CWP no. 9558 of 2020 by this Hon,ble Court willfully and deliberately may kindly be initiated under the provision of the Contempt of Courts Act, 1971, in the interest of justice.

Any other relief to which this Hon’ble Court deems fit and proper in the peculiar facts and circumstances of the present case may also be granted in favour of the petitioners.

It is further prayed that the petitioners may kindly be exempted from certified/true typed copy of annexures in the interest of justice.

Chandigarh SURESH AHLAWAT

DATED : 15.12.2020 ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB & HARYANA

AT   CHANDIGARH

COCP NO 0F 2020

IN C.W.P. No. 9558 of 2020

Birender Singh -----------Petitioner

                                      Versus

G.Ganesan IAS ----Respondent

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| 1.1. | Contempt Petition under Section 12 of Contempt of Court Act,1971 | 15.12.2020 | | 1-6 | 3.00 | | | |
| 2 | Affidavit | .12.2020 | | 7 |  | | | |
| 3 | Annexure P-1 (Order of High Court) | 10.7.2020 | | 8 | 3.00 | | | |
| 4 | Annexure P-2 (Order In COCP) | 16.10.2020 | | 9-10 | 3.00 | | | |
|  | Annexure –P-3 (Contempt Notice) |  | | 11-14 | | | 3.00 |  | |
|  | Power of Attorney |  | |  | |  | | |
|  |  | | | | | | |
|  | 3.00 | | | | | |

Total Court Fee with U.Form Rs.

Similar case if any :- C.O.C.P.no.2194of 2020

CHANDIGARH SURESH AHLAWAT

ADVOCAT

DATED: 15.12.2020      COUNSEL FOR THE PETITIONER

P/370/1994

IN THE HIGH COURT OF PUNJAB & HARYANA

AT   CHANDIGARH

COCP NO 0F 2020

IN C.W.P. No. 9558 of 2020

Birender Singh -----------Petitioner

                                      Versus

G.Ganesan  IAS ------- ----Respondents

Court Fee

CHANDIGARH SURESH AHLAWAT

ADVOCAT

DATED: 15.12.2020      COUNSEL FOR THE PETITIONER

P/370/1994

IN THE HIGH COURT OF PUNJAB & HARYANA

AT   CHANDIGARH

COCP NO 0F 2020

IN C.W.P. No. 9558 of 2020

Birender Singh -------Petitioner

**VERSUS**

G.Ganesan I.A.S. ------ Respondent

Affidavit of Birender Singh aged about 60 years s/o Sh. Rajmal Singh Lecturer in Pol. Science (Now Retd.) G.S.S.S. Bhambhewa –Jind, presently resident of House no. 2281, Urban –Estate –Jind. -

I, the above named deponent, do hereby solemnly affirm and declare as under:-

1. That the contents of paras of the petition are true and correct to my knowledge . No part therein is false and nothing material has been kept concealed therein.

2. That no such or similar petition except COCP No.2194 of 2020 has been filed by the deponent either in this Hon’ble Court or before the Hon’ble Supreme Court of India.

CHANDIGARH

DATED:- . .2020

VERIFICATION: Verified that the contents of paras of my above affidavit are true and correct to my knowledge . No part of it is false and nothing has been concealed therein.

CHANDIGARH

DATED . .2020

**SURESH AHLAWAT OFFICE-CUM-RESIDENCE**

**ADVOCATE H.No. No.413, SECTOR.11,**

**PUB. & HAR. HIGH COURT PANCHKULA.**

**CHANDIGARH**  **Resi: Mb.94171-11917**

**------------------------------------------------------------------------**

To

1. Dr. Mahavir Singh I.A.S. Addl. Chief Secretary to Government, Haryana, School Education Department, New Secretariat Haryana, Sector 17 Chandigarh.

2. J. Ganesan I.A.S. Director-General, Secondary, Education- Haryana, Shiksha Sadan, Sector 5, Panchkula.

Sub**:- REMINDER (** **Pre- Second Contempt Notice)** - on behalf of my client Birender Singh aged about 60 years s/o Sh. Rajmal Singh (Employee ID:0G45GV, PPO No. APP No.1017194380) Lecturer in Pol. Science (Now Retd.) G.S.S.S. Bhambhewa –Jind, presently resident of House no. 2281, Urban –Estate –Jind. for initiating contempt proceedings against you under Section 12 of the Contempt of Courts-Act,1971 for willfully and intentionally disobeying order dated 10.7..2020 , passed by this Hon’ble Court in “CWP No 9558 of 2020 titles as Birender Singh versus State of Haryana , whereby FOUR WEEKS have been passed till date, which makes you liable for the severe punishment under the Contempt of Courts Act.

**R/ Sir,**

I have been instructed on behalf of my client Birender Singh aged about 60 years s/o Sh. Rajmal Singh (EmployeeID:0G45GV, PPO No. APP No.1017194380) Lecturer in Pol. Science (Now Retd.) G.S.S.S. Bhambhewa –Jind, presently resident of House no. 2281, Urban –Estate –Jind.

I hereby serve the present notice for initiating contempt proceedings against you as under:-

That my client has filed above stated writ petition before this Hon'ble Court with the following relief:-

Issue a Writ in the nature of Certiorari for quashing the impugned orders Annexure P-8 dated 16.1.2020/17.1.2019 whereby claim of the earned leave(i.e period of 13.3.1996 to 19.5.1999) has been wrongly rejected, being fully entitled for the same, as every benefit (i.e. seniority, annual increments, A.C.P. scale, gratuity and superannuation pension ) has been granted treated the date of appointment as 13.3.1996 instead of 19.5.1999 under the order passed by the Hon’ble High in CWP no.10767 of 2002 in lieu thereof letter dated 17.1.2005 (Annexure P-1&P-2) granting the benefits has also been issued by the department.

Further a writ in the nature of Mandamus be issued directing the respondents to grant the benefit of Earned Leave after taking in to consideration the date of appointment as 13.3.1996 instead of 19.5.1999 with all consequential benefits along with 18%interst p.a. on the amount so calculated towards leave encashment from the date of accrued (i.e 13.3.1996 to 19.5.1999 ), till final payment .

2. That when the said writ petition has come for hearing before this Hon'ble Court on 10.7.2020, then this writ petition is disposed of by this Hon'ble Court and directed the respondents to compliance **said order within a period of one month,** which is reproduced below :-

**The petitioner is aggrieved of the rejection of his claim of earned leave from 13.03.1996 to 19.05.1999 and denial of other benefits by considering his date of appointment incorrectly. The petitioner retired on 30.06.2018.**

**Advance copy of the writ petition stands supplied. Learned counsel for the State, at the outset, submits that he has specific instructions to the effect that the petitioner's case is under consideration and the matter shall be decided expeditiously.**

**Keeping in view the specific stand of the respondents, this writ petition is disposed of with a direction that the competent authority shall consider and take a final decision on the grievance of the petitioner within four weeks.**

1. That the state counsel specifically stated before the Hon.ble Court that he has specific instructions to the effect that the petitioner's case is under consideration and the matter shall be decided expeditiously.
2. **WHEN the four weeks have been expired**  than petitioner constrained to file the Contempt Petition no. 2194 of 2020 against you and Hon’bla High Court took the lenient view and directed the respondents to take the decision in this regard ,within four weeks from today i.e from 16.10.2020.
3. That it is very surprisingly, respondents not bothered the directions of the Hon’ ble High Court, which are given in first Contempt Petition after taking lenient view. Now FIVE MONTHS have been expired till today but respondents have not complied the order of this Hon'ble Court . Hence, the respondents have not complied the order of this Hon'ble Court therefore; the respondents have clearly violated the directions passed by this Hon'ble Court, from which it reflects that they are disobeyed the order dated 10.7.2020 passed by the Hon'ble High Court willfully, deliberately & intentionally.

5. That it is a pre-requisite condition for filing a contempt petition that notice be served upon you by name by bringing to your knowledge the order passed by the Hon’ble Punjab and Haryana High Court, which has to be complied with by you. Therefore, the present notice is being served upon you.

6. That as a compliance of the aforesaid order dated 10.7..2020 you are duty bound in law as a compliance of the order passed by the Hon’ble High Court in letter and spirit, but you have intentionally and willfully disobeyed that order, which makes you liable for the severe punishment under the Contempt of Courts Act.

It is, therefore, prayed from you that the grievances of my client not redress **WITHIN SEVEN DAYS**  from the receipt of this contempt notice failing which, I have clear instructions from my client to initiate contempt proceedings against you for intentionally and willfully not complying with the order passed by the Hon’ble High Court.

In that eventuality, you will be liable to the expenses and costs that my client shall have to incur on the same as it would be uncalled for and unnecessarily burdening him to file Contempt Petition in the Hon’ble High Court for getting the justice which is being denied to him by you in an arbitrary manner.

Please take further notice that you are also liable for the costs of the present notice which are assessed by me at Rs.22,000/-.

A copy of this notice has been retained by me in my office for reference and record.

**SURESH AHLAWAT**

**ADVOCATE**

Not :- Copy of High Court order dated 16.10 .2020 is attached herewith .

In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.\_\_\_\_\_\_\_\_\_of 2021

**MEMO OF PARTIES**

Birender Singh aged about 60 years s/o Sh. Rajmal Singh (EmployeeID:0G45GV, PPO No. APP No.1017194380) Lecturer in Pol. Science (Now Retd.) G.S.S.S. Bhambhewa –Jind, presently resident of House no. 2281, Urban –Estate –Jind.

**-------------------Petitioner**

**Versus**

1. State of Haryana through Additional Chief Secretary to Govt. of Haryana, Education Deptt. Civil Sectt. Chandigarh.
2. Director, Secondary Education, Haryana, Shiksha Sadan, Sector 5, Panchkula.

3. District Education Officer ,Jind

4. Principal, Govt. Sr. Sec. School, Bhambhewa (Jind)

5. Accountant –General (A&E) Haryana Plot No. 4&5

Sector, 33-B Chandigarh.

**----------------Respondents.**

**Chandigarh (SURESH AHLAWAT)**

**Dated 10.1.2021 ADVOCATE**

**Counsel for the Petitioner**

Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate order or direction, calling for the record of the case and after perusal of the same : -

Issue a Writ in the nature of Certiorari for quashing the impugned order dated 10.12.2020 (Annexure P-9) whereby claim of the earned leave (i.e period of 13.3.1996 to 19.5.1999) has been wrongly rejected, being fully entitled for the same, as every benefit (i.e. seniority, annual increments, A.C.P. scale, gratuity and superannuation pension ) has been granted treated the date of appointment as 13.3.1996 instead of 19.5.1999 under the order passed by the Hon’ble High in CWP no.10767 of 2002 in lieu thereof letter dated 17.1.2005 (Annexure P-1 & P-2) granting the benefits has also been issued by the department.

Further a writ in the nature of Mandamus be issued directing the respondents to grant the benefit of Earned Leave after taking in to consideration the date of appointment as 13.3.1996 instead of 19.5.1999 with all consequential benefits along with 18%interst p.a. on the amount so calculated towards leave encashment from the date of accrued (i.e 13.3.1996 to 19.5.1999 ), till final payment OR to issue any other appropriate order or direction which this Hon’ble Court may deem fit and proper peculiar facts and circumstances of the case.

**Respectfully showeth : -**

1. That the petitioner is resident of Haryana State and being the citizen of India, he is entitled to invoke the extraordinary writ jurisdiction of this Hon’ble High Court under Articles 226/227 of the Constitution of India.
2. That in 1995 the Haryana Service Selection Board (now H.S.S.C) advertised the various post of lecturers for appointment in Secondary Education, Haryana. Petitioner being fully eligible in the Category of Ex-Service Man (ESM ,Gen.) applied for the post of Lecturer in the subject of Political Science . Service Selection Board followed the proper process, interviews were conducted of the candidates and later on, final result of the subject of Pol. Science was declared in March,1996 but petitioner surprised after seeing the final result , being meritorious candidate in ESM Cat. not figured his roll no. in the selection list. Petitioner came to know that dependents of E.S.M. were wrongly selected in the said list, who were not eligible .Than petitioner filled the writ petition CWP no. 9014 of 1996 in this Hon’ble Court, the said writ petition was allowed and Hon’ble Court directed the respondents to re- determine the merit of the Ex Service Man /dependents of Ex service Man .Than petitioner was appointed in the cat. of E.S.M. and joined after three years later i.e on 19.5.1999 in Govt.Sr.Sec.School Kalwa (Jind) but the respondents gave him fresh appointment , in fresh pay scale and seniority has also not been granted, whereas similar situated persons in the same selection list were appointed and joined in month of March -1996 .
3. That than petitioner constrained by the respondents to file another writ petition before this Hon’ble Court vide CWP no.10767of 2002, prayer was made to grant the seniority with all service consequential benefits w.e.f. 13 March-1996, where by similar situated persons in the same selection list were appointed . Than Hon’ble High Court vide order dated 25,Sep.2003 directed the respondents to consider the claim of the petitioner in the light of previous judgment in CWP 9014 of 1996 and under Rule 4.9 of the Punjab Civil Service Rules Volume-1.

**Rule 4.9 Vol.1 Part 1** is reproduced below for kind attention : - The following provisions prescribe the conditions on which service counts for increments in a time-scale-

a) All duty in a post on a time scale counts for increment in the time scale: Provided that ,for the purpose of arriving at the date of the next increment in that time scale ,the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment…..

A copy of the order dated 25.9.2003 passed by this Hon.ble Court is attached herewith as **Annexure P-1**

**4. That** after passing the order by the Hon’ble High Court in C.W.P. No. 10767 0f 2002 ,respondents had complied the said order vide letter dated 17.1.2005 wherein, it is clear mentioned that petitioner would deemed to be appointed as lecturer in Pol. Science w.e.f 13.3.1996 instead of 10.5.1999 and pay of the petitioner has been re-fixed vide letter dated 8.2.2005 w.e.f 13.3.1996 . True copies of the said letters dated 17.1.2005 issued by the Director, Secondary Education and letter dated 8.2.2005 issued by the concerned Principal of the School are attached herewith as **Annexure P-2 .**

**5. That** when petitioner was rendering his services to the education department very honestly, sincerely and continuously without any complaint, than respondents rightly treated his appointment w.e.f. 13.3.1996 (in terms of letter dated 17.1.2005 Ann. P-2) and granted the First ACP Scale after completed the 10 years regular satisfactory service w.e.f. 1.4.2006 vide letter dated 1.9.2009 issued by the Respondent no.3. A copy of the ACP Letter dated 1.9.2009 issued by the respondent no.3 is attached herewith as **Annexure P-3.**  In this way, Second ACP Scale was also granted to the petitioner vide letter dated 12.8.2015 w.e.f. 4.3.2014 after completion of 8 years regular satisfactory service.

**6. That** on 30.6.2018 after rendering the total qualifying services i.e 22 Years 3 Months 19 Days w.e.f. 13.3.1996 ( deemed dated of appointment ) to the education department, petitioner was gracefully retired from service after attaining his age of superannuation .

**7. That** before attaining his age of superannuation, respondent no.4 (i.e School Principal) submitted his superannuation pension papers along with other documents related to retiral benefits to the respondent no .5 i.e Accountant –General. In all the papers submitted to the respondent no.5 in which clearly mentioned that qualifying service of the petitioner is 22 years 3 months 19 days w.e.f 13.3.1996 ( Date of entry in service) which are attached herewith dated 17.9.2017 as **Annexure P-4** for kind consideration.

**8. That** respondent no 5 i.e. Accountant –General ,Haryana has also considered the deemed date of appointment of the petitioner w.e.f. 13.3.1996 and calculated his total qualifying services 22 Years 3 months 19 daysupto30.6.2018 and started the superannuation pension accordingly . In this regard true extract copy of P.P.O. (pension paper order) dated 7.6.2018 of the petitioner is attached herewith **as Annexure P-5.**

It is pertinent to mention here that DCRG (Gratuity) is also granted after calculating total Gross service ( regular) w.e.f. 13.3.1996 to 30.612018 i.e. 22 years 3 months 19 days. Respondents calculated the amount of DCRG (Gratuity) in the form of ; i.e.

1. Last Emoluments :- Pay in pay matrix 85800+DA(4%) 3432+ Total Rs. 89232
2. Qualifying service in half years

Maximum 66 half years of Group A.B.and C.

C . DCRG (A) Rs. 89232 x(B) 45 + Rs.10,03,868/-

4

**9. That** vide order dated 25.9.2003 passed by the Hon’ble High Court in CWP No. 10767 of 2002 and letter dated 17.1.2005 issued by the Director Secondary Education Haryana, (Annexure P-1 and P-2) respondents granted all service retiral benefits ( i.e , ACP’s Annual Increments, Gratuity and Sup. Pension) after considering the deemed dated of appointment 13.3.1996 instead of 19.5.1999 of the petitioner,

but in the matter of granting the benefit of Earned Leave (leave encashment) Gross service (Regular) of the petitioner wrongly considered w.e.f. 19.5.1999 instead of 13.3.1996 ( 3 years is less) which is totally violation of the order passed by the Hon High Court (P-1) and totally contrary to the letter dated 17.1.2005 (P-2) issued by itself and granted the amount of leave encashment w.e.f 19.5.1999. Whereas petitioner is fully entitled of leave encashment on the basis of Gross Service (Regular) w.e.f. 13.3.1996 i.e 22 Years 3 months 19 days up to 30.6.,2018 rendered to the education department . As per service record of the petitioner his earned leave becomes which is given below for kind attention :-

Earned Leave (13.3.1996 to 30.6.1999) becomes +220 E. Leave availed+ 4

Balance :216

Hence amount of leave encashment +

216x91806(BP+DA) = 6,6,10032

30

Paid to the petitioner +569197 on 23.7.2018

Balance = Rs. 91,803/-

**Whereas, respondents wrongly calculated his E/Leave from the dated of joining i.e. 19.5.1999 which is given below =**

As per calculation Total E. Leave =190

E/leave availed : 4

Balance = 186

Amount of leave encashment = 91806x186 =531960/-

30

Total + 37237(DA@7%)= 569197/-

In this way, total financial loss caused by the respondents to the petitioner amount of Rs.91803/- of 30 days E/Leave .

It is pertinent to mention that grant the benefit of the earned leave to the govt. employee is mentioned under rule **8.116 of the Punjab Civil Services Rules, Vol.1 Part 1,which is reproduced below for kind consideration of this Hon’ble Court :-**

**“ earned leave” means leave earned in respect of period spent on duty**

**“earned leave due” means the amount of earned leave ,to the credit of govt. employee ..**

**8.116 (i) The earned leave admissible to a govt. employee in permanent employ is :-**

**a) 1/24th of the period spent on duty ,during the first 10 years of his service .**

**b) 1/18th of the period spent on duty during the next 10 years of his service .and 1/12th of the period spent on duty ,thereafter……**

**and further govt. of Haryana vide letter dated 12.8.1998 in the matter of encashment of unutilized leave decided to raise the maximum limit of leave encashment from 240 days to 300 days to the category of retirement on attaining the age of superannuation w.e.f. 1.7.1997.**

**10. That** petitioner immediately took the step before the respondents and submitted various representations and RTI applications to release the full amount of leave cashment after considering the entire regular services w.e.f. 13.3.1996 instead of 19.5.1999 i.e 22 Years 3 months 19 days up to 30.6.,2018 , according the judgment of the High Court and letter dated 17.1.2005 issued by itself (P-1 and P-2). Copies of the said representations dated 2.8.2018 and 25.11.2019 are attached herewith as **Annexure P-6 .**

It is pertinent to mention here that concerned principal of the school sought the clarification from the D.E.O Jind that It may be clarified that whether the earned leaves are to be paid w.e.f. 13.3.1996 to 19.5.1999 whereas others retrial benefits have been given to the applicant w.e.f 13.3.1996 instead of 19.5.1999. True translated Copy of the said letter dated 6.7.2018 is attached herewith **as Annexure P-7.**

**11. That** the petitioner represented to the respondents so many times to grant the benefit of earned leave w.e.f 13.3.1996 to 19.5.1999 because after his retirement from govt. service, every benefits ( i.e , ACP’s Annual Increments, Gratuity and Sup. Pension) have been granted by considering the notional date of appointment ( period spent on duty ) w.e.f. 13.3.1996 but in the matter of earned leave, his services is counted from 19.5.1999.

**12. That** respondent no.3 i.e D.E.O and respondent no.4 i.e Principal of the school without applying their mind and were not competent authority to decide such matter rejected the representations/ genuine claim of the petitioner on 16.1.2020/17.1.2019 , on the sole ground that calculation of the earned leave of the applicant is to be counted from date of joining of the service i.e. 19.5.1999 instead of 13.3.1996 ,which is gross violation of the

Judgment of the Hon’ble High Court and contrary to the letter dated 17.1.2005 issued by Director ,Secondary Education . ( Annexure- P-1& P-2).

**13. That** lastly, when the respondents not considered his claim than petitioner constrain to file the writ petition in this Hion’ble Court vide C.W.P. No. no 9558 of 2020 which was disposed of on 10.7.2020 with a direction that the competent authority shall consider and take a final decision on the grievance of the petitioner within four weeks. A copy of the said order dated 10.7.2020 passed by this Hon/ble Court is attached herewith as **Annexure P-8.**

**14**. That lastly respondent no.2 i.e. Director, Secondary Education rejected the claim of the petitioner on the sole ground that petitioner actually joined as lecturer on 19.5.1999 but his notional appointment is 13.3.1996 and whereas as per ,

**Rule 9 (7) of the HCS (Leave) rules, 2016 “Earned Leave “ means leave earned in respect of period spent on duty .** So he is not entitled for the said benefit. A copy of the impugned order dated 10.12.2020 passed by the respondent no.2 i.e. Director, Secondary Education is attached herewith as **Annexure P-9.**

**15. That** the respondents not properly considered in the matter of that every benefits i.e ( ACP’s, Seniority, Annual Increments, Gratuity and Superannuation .Pension) granted to the petitioner by considering the period spent on duty i.e w.e.f 13.3.1996 to 19.5.1999 than why in the matter of earned leave, this period ( w.e.f. 13.3.1996 to 19.5.1999) is not considered . In this way, respondent grave erred while not considering the period w.e.f. 13.3.1996 to 19.5.1999 as duty period notionally in the matter of earned leave . Whereas , petitioner was not at fault in delay to joining after three years . It is totally discrimination done with the

petitioner. On one side, not counted the period spent on duty i.e. w.e.f 13.3.1996 to 19.5.1999 for grant the benefits of earned leave whereas, another side the period w.e.f 13.3.1996 to 19.5.1999 counted spent on duty notionally while granted all other service benefits after his retirement from service than petitioner also entitled for the said period counted to spent on duty in the matter of earned leave . Therefore, On this score alone . impugned order dated 10.12.2020 is liable to be set-aside.

**16. That** rejection of the claim of the petitioner was for extraneous reasons as based on irrelevant considerations, denial of justice to the petitioner has led to a long and tortuous road to justice. The above said matter has been hanging fire since then. This attempt before the authority was in vain and this; he is before this Hon’ble Court.

**17. That** the following material questions of law arises for determination by this Hon’ble High Court : -

**i)** Whether the action of the respondents to denial the claim of the petitioner, is violation of the order of the High Court Annexure P-1 and contrary to letter dated 17.1.2005 Annexure P-2 issued in terms of P-1 .

**ii)** Whether the action of the respondents is violative of principle of natural justice?

**iii)** Whether the action of the respondents is discriminatory and violative of Articles 14 and 16 of the Constitution of India?

**iv)** Whether grave and manifest injustice has been done with the petitioner?

**18. That** the petitioner has not filed any other such or similar writ petition earlier in this Hon’ble High Court or in the Hon’ble Supreme Court of India except C.W.P. no.9558 of 2020.

**19. That** the petitioner has no other alternative remedy of statutory appeal or revision against the impugend order of the respondents except to file the present writ petition under Articles 226/227 of the Constitution of India.

In view of the submissions made above, it is, therefore, respectfully prayed that this Hon’ble Court may graciously be pleased to :-

1. Issue a Writ in the nature of Certiorari for quashing the impugned order dated 10.12.2020 (Annexure P-9) whereby claim of the earned leave (i.e period of 13.3.1996 to 19.5.1999) has been wrongly rejected, being fully entitled for the same, as every benefit (i.e. seniority ,annual increments, ACP scale, gratuity and superannuation pension ) has been granted, treated the date of appointment as 13.3.1996 instead of 19.5.1999 under the order passed by the Hon’ble High in CWP no.10767 of 2002 in lieu thereof letter dated 17.1.2005 (Annexure P-2, granting the benefits) has also been issued by the department.
2. Further a writ in the nature of Mandamus be issued directing the respondents to grant the benefit of Earned Leave after taking in to consideration the date of appointment as 13.3.1996 instead of 19.5.1999 with all consequential benefits along with 18%interst p.a. on the amount so calculated towards leave encashment from the date of accrued (i.e 13.3.1996 to 19.5.1999 ), till final payment .
3. Issue any other appropriate writ, order or direction which this Hon’ble Court may deem fit and proper in the peculiar circumstances of the case;
4. permission may be granted to place on record the photo copies of the annexures
5. filing of certified/true typed copies of annexures may kindly be exempted;
6. issuance of advance notice upon the respondents be dispensed with;

**Chandigarh**

**Dated: 10.1.2021**

**Through Counsel**

**( SURESH AHLAWAT)**

**Advocate**

**Verification.**

Verified that the contents of para 1 to 16 and 18 to 19 are true and correct to my knowledge. Legal averments are made in para 17 on the advice of the counsel and the same are believed to be correct.

Chandigarh

Dated:- 10.1.2021

**LIST OF EVENTS**

**1995 That** in 1995 the Haryana Service Selection Board (now H.S.S.C) advertised the various post of lecturers for appointment in Secondary Education, Haryana. Petitioner being fully eligible in the Category of Ex-Service Man (ESM ,Gen.) applied for the post of Lecture in Political Science

Final result, of the subject of Pol. Science was declared in March,1996 but petitioner’s name was not figured in the said selection list. Petitioner came to know that dependents of ESM were wrongly selected in the said list,.

**10.5.1999** Than petitioner and similar candidates filled the writ petition CWP no. 9014 of 1996 in this Hon’ble Court the said writ petition was allowed .Than petitioner was appointed in the cat. of E.S.M. and joined after three years later i.e on 19.5.1999 in G.S.S.S. Kalwa (Jind) but the respondents has given the fresh appointment to the petitioner , in fresh pay scale and seniority was also not granted, whereas similar situated persons in the same selection list were appointed and joined in month of March -1996 .

**2002**  Than petitioner constrained by the respondents to file another writ petition before this Hon’ble Court vide CWP no.10767of 2002, prayer was made to grant the seniority with all service consequential benefits w.e.f. 13 March-1996 instead of 19.5.1999 , where by similar situated persons in the same selection list were appointed . vide order dated 25,Sep.2003 Hon’ble Court directed to the respondents to consider the claim of the petitioner in the light of previous judgment in CWP 9014 of 1996 and Rule 4.9 of the Punjab Civil Service RulesVolume-1

It is pertinent to mention here that respondent after treated his appointment (vide Annexure P1 and P-2) w.e.f. 13.3.1996 granted all services benefits like ACP Scale and annual increments etc. w.e.f. 13.3.1996 instead of 19.5.1999.

**On 30.6.2018** after rendering the total qualifying services i.e 22 Years 3 Months 19 Days w.e.f. 13.3.1996 ( deemed dated of appointment ) to the education department, petitioner was gracefully retired from service after attaining his age of superannuation .

That respondent no 5 i.e. Accountant –General ,Haryana has also considered the deemed date of appointment of the petitioner w.e.f. 13.3.1996 and calculated total qualifying services rendered by the petitioner 22 Years 3 months 19 days up to 30.6.,2018 and started to paying the superannuation pension accordingly .

It is pertinent to mention here that DCRG (Gratuity) is also granted after calculating total Gross service ( regular) w.e.f. 13.3.1996 to 30.612018 i.e. 22 years 3 months 19 days.

But in the matter of Earned Leave (leave encashment), Gross service (Regular) of the petitioner wrongly considered w.e.f. 19.5.1999 instead of 13.3.1996 ( 3 years is less) which is totally violation of the order passed by the Hon High Court (P-1 and totally contrary to the letter dated 17.1.2005 (P-2) issued by itself and granted the amount of leave encashment . Whereas petitioner is fully entitled of leave encashment on the basis of Gross Service (Regular) w.e.f. 13.3.1996 i.e 22 Years 3 months 19 days up to 30.6.,2018 rendered to the education department .

That petitioner immediately took the step before the respondents and submitted various representations and RTI applications to release the full amount of Earned leave after considering the entire service w.e.f. 13.3.1996 instead of 19.5.1999 , according the judgment of the High Court and letter dated 17.1.2005 issued by itself (P-1 and P-2).

**10.12.2020** That lastly respondents rejected the representations/ genuine claim of the petitioner on 14.12.2020, on the sole ground that calculation of the earned leave of the applicant is to be counted from date of joining of the service i.e. 19.5.1999 instead of 13.3.1996 ,which is gross violation of the Judgment of the Hon’ble High Court and contrary to the letter dated 17.1.2005 ( Annexure- P1& P-2).

**Hence this writ petition. SURESH AHLAWAT**

Chandigarh Advocate

DTAED:- 10.1.2021 Counsel for the petitioner

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

IN C.W.P. NO. OF 2021

Birender Singh …………. Petitioner

Versus

State of Haryana and Others ---------------Respondents

Affidavit of Birender Singh son of Sh. Rajmal Singh presently resident of House no. 2281, Urban –Estate –Jind.

I, the above named deponent do hereby solemnly affirm and declare on oath as under: -

1. That the deponent has gone through the contents of the accompanying petition which have been drafted by the counsel on my instructions. The contents of the same are admitted to be true and correct and be read as part and parcel of this affidavit.

2. That no such or similar petition has earlier been filed either before this Hon,ble Court or Hon,ble Supreme Court of India

CHANDIGARH

DATED . .1.2021

*VERIFICATION*

Verified that the contents of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been kept concealed therein.

CHANDIGARH

DATED : 1.2021

IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. of 2021

Birender Singh - ------------ Petitioner

VERSUS

State of Haryana and others ----------- Respondents

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NOTE: Rs. 74/-

1. That the main law points involved in the writ petition are contained in para no. 17 at page no.13

2. Relevant Statutes/Rules:

i. The Constitution of India.

ii. Punjab Civil Services Rules

3 Caveat petition filled :- No.

Similar case if any: No

CHANDIGARH  **(SURESH AHLAWAT)**

DATED: 10.1.2021 **ADVOCATE**

**COUNSEL FOR THE PETITIONER**

**En. No. P-370/1994**

IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. of 2021

Birender Singh - ------------ Petitioner

VERSUS

State of Haryana and others ----------- Respondents

Court Fee

CHANDIGARH  **(SURESH AHLAWAT)**

DATED: 10.1.2021 **ADVOCATE**

**COUNSEL FOR THE PETITIONER**

IN THE HIGH COURT OF PUNJAB & HARYANA

AT   CHANDIGARH

COCP NO 0F 2021

IN C.W.P. No. 20539 of 2021

Dr. Mangal Singh -----------Petitioner

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Similar case if any :- C.O.C.P.no.2194of 2020

CHANDIGARH SURESH AHLAWAT

ADVOCAT

DATED: 15.12.2020      COUNSEL FOR THE PETITIONER

P/370/1994