

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 5TH DAY OF DECEMBER 2022 / 14TH AGRAHAYANA, 1944

WP(C) NO.22109 OF 2022

PETITIONERS :-

- 1 M.S.ANIL, AGED 61 YEARS
S/O. SUKUMARA KURUP, ASWATHI, PARAT LANE,
ALUVA - 683 101, (VOLUNTARILY RETIRED AS DEPUTY GENERAL
MANAGER (TECHNICAL) ON 30.7.2021 FROM CORPORATE OFFICE,
HIL (INDIA) LIMITED, 2ND FLOOR, CORE-6, SCOPE COMPLEX,
LODHI ROAD, NEW DELHI - 3.
- 2 K.K.MOHANAN, AGED 60 YEARS,
S/O.KANNAN.K.K., KRISHNA PRIYA, KRISHNAPURAM, OLLUKKARA,
THRISSUR - 680 655, (RESIGNED ON 30.6.2020 AS DEPUTY
GENERAL MANAGER (HR & A) FROM HIL (INDIA) LTD.,
RASAYANI, 410 207, RAIGAD, MAHARASHTRA, INDIA).

BY ADVS.
K.P.JUSTINE (KARIPAT)
A.JOSEPH GEORGE (AZHIKKAKATH)

RESPONDENTS :-

- 1 M/S. HIL(INDIA) LTD., REP BY THE CHAIRMAN &
MANAGING DIRECTOR, CORE-6, 2ND FLOOR,
SCOPE COMPLEX, LODHI ROAD, NEW DELHI - 110 003.
- 2 THE CHAIRMAN & MANAGING DIRECTOR,
HIL (INDIA) LTD., CORE-6, 2ND FLOOR,
SCOPE COMPLEX, LODHI ROAD, NEW DELHI - 110 003.
- 3 THE ASSISTANT MANAGER (HR & ADMINISTRATION),
HIL (INDIA) LIMITED, UDYOGAMANDAL - 683 501.
- 4 THE FINANCE MANAGER,
HIL (INDIA) LIMITED, UDYOGAMANDAL.P.O., PIN : 683 501.

BY ADVS.
M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN
KURYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.11.2022, THE COURT ON 5.12.2022 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 5th day of December, 2022

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 head quarters 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.

**Sd/-
ANU SIVARAMAN
JUDGE**

APPENDIX OF WP(C) 22109/2022

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE RELIEVING MEMORANDUM DATED
30.7.2021 ISSUED TO THE 1ST PETITIONER.

Exhibit P2 TRUE COPY OF THE RELIEVING MEMORANDUM DATED
30.06.2020 ISSUED TO THE 2ND PETITIONER.

Exhibit P3 TRUE COPY OF THE LETTER DATED 19.08.2021
REGARDING THE RETIRAL DUES TO THE 1ST
PETITIONER.

RESPONDENT EXHIBITS

Exhibit R1(a) TRUE COPY OF THE PROFIT AND LOSS STATEMENT OF
THE HIL (INDIA) LTD., UDYOGAMANDAL UNIT FOR THE
YEAR ENDING 31/03/2022.

Exhibit R1(b) TRUE COPY OF THE SENIORITY LIST REGARDING
TERMINAL DUES-LEAVE ENCASHMENT PAID/PAYABLE TO
RETIRED/RESIGNED/EXPIRED EMPLOYEES OF HIL
(INDIA) LTD., UDYOGAMANDAL.