



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. OF 2025**

**IN**

**(SPECIAL LEAVE PETITION (C) NOS. 23709-23710 OF 2023)**

**STATE OF SIKKIM AND OTHERS**

**.....APPELLANTS**

**VERSUS**

**DR. MOOL RAJ KOTWAL**

**.....RESPONDENT**

**J U D G M E N T**

**J.K. Maheshwari J.**

1. Leave granted.
2. Assailing the order dated 27.04.2023 passed in Writ Appeal No. 8 of 2022 confirming the order dated 08.09.2022 passed in Writ Petition (C) No. 14 of 2022, by High Court of Sikkim at Gangtok, the State of Sikkim (in short '**State**') has filed these appeals. The discord between the parties is regarding grant of benefit of leave encashment second time for the period of re-employment of respondent after attaining the age of

superannuation, in particular beyond the maximum period of 300 days as prescribed.

3. Being aggrieved by the order dated 21.05.2020 cancelling the order dated 31.05.2019 to grant leave encashment and directing payment of sum as sanctioned, the respondent preferred writ petition before the High Court. Learned Single Judge allowed the same relying upon Rule 36 read with Rule 32 of 'Sikkim Government Services (Leave) Rules, 1982' (in short '**Leave Rules**'), declaring him entitled for grant of leave encashment again for unutilized leave during the period of re-employment. On filing the Writ Appeal by State, it came to be dismissed by the impugned order. Hence the present appeals by State challenging both orders passed by learned Single Judge and Division Bench.

### **FACTS IN BRIEF**

4. Prequel to the present litigation, the respondent was appointed on deputation in year 1980 in the State services. On attaining the age of superannuation<sup>1</sup>, he retired on 31.01.2005 in terms of Rule 98<sup>2</sup> of Sikkim Government Service Rules, 1974 (in short '**Service Rules**') from the post of 'Medical Advisor and Chief

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<sup>1</sup> 58 years.

<sup>2</sup> Retirement on superannuation.

Consultant', working at Sir Thutob Namgyal Memorial (STNM) Hospital, in Health Care, Human Services and Family Welfare Department, Government of Sikkim at Gangtok. Upon his retirement and while settling post retiral benefits, he was paid leave encashment maximum of 300 days unutilized leave as prescribed in Rule 36<sup>3</sup> of Leave Rules.

5. After retirement, the respondent was re-employed on the same post for a period of 2 years, w.e.f. from 01.02.2005 to 31.05.2005, which was extended time to time upto 28.05.2019, i.e., the date on which he was officially relieved. Vide Office Order No. 710/G/DOP dated 31.05.2019 (in short '**2019 office order**'), he was allowed cash equivalent to leave salary of 300 days of earned leave standing to his credit for the period of re-employment.

6. The controversy was set into motion when the State on scrutiny found that the Leave Rules do not provide for grant of leave encashment to the re-employed employees second time beyond 300 days, which was paid to them once on their retirement. It was noticed that, leave encashment was being paid to the employees after their retirement and 'again' after relieving from re-employment, though it was not in conformity to the Leave Rules.

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<sup>3</sup> Cash payment in lieu of unutilized earned leave on the date of retirement.

The State Government took a decision to correct the perpetual mistake and issued Office Memorandum No. 4528/GEN/DOP, dated 27.02.2020 (the **“clarificatory order”**), clarifying that maximum of 300 days of leave encashment specified in Rule is inclusive of the period of leave earned during extension of service, re-employment etc. The said clarification is pivotal to the controversy involved, hence, reproduced as under –

“GOVERNMENT OF SIKKIM  
DEPARTMENT OF PERSONNEL  
GANGTOK

No. 4528/GEN/DOP

Dated: 27/02/2020

OFFICE MEMORANDUM

*Subject: Clarification on leave encashment of earned leave to Government Employees on Extension of Service, Re-Employment etc.*

*Rule 36 of the Sikkim Service (Leave) Rules, 1982 provides to a government employee who retires from service under the Sikkim Government Service Rules, 1974, cash equivalent of leave salary in lieu of earned leave on full day standing at his/her credit on the date of his retirement subject to a minimum of 300 days. Therefore, a maximum of 300 days of earned leave due at credit also includes the period of leave earned by a Government Employee during extension of service, Reemployment etc.*

*This issues with the approval of Competent Authority.*

Sd/-

*(Tashi Cho Cho) SCS*  
*SPECIAL SECRETARY TO THE GOVERNMENT”*

7. After clarification, on 31.05.2019, order extending the benefit of cash equivalent to leave salary in lieu of 300 days of unutilized leave standing at the credit of Mr. M.R. Kotwal, Principal Medical Advisor (Petitioner before High Court/Respondent herein) during the period of his re-employment was cancelled vide order dated 21.05.2020 passed by the Government of Sikkim, Department of Personnel, Gangtok. The representation made by the respondent was also rejected on 18.02.2022 and the Chief Accounts Officer, Home Department, Government of Sikkim, vide letter No. GOS/Home/Acctt./726 dated 21.03.2022 sent the information that payment of leave encashment as prayed by the respondent cannot be released. That is how the dispute arose, and litigation commenced.

8. Being aggrieved, the respondent preferred Writ Petition (C) No. 14 of 2022 seeking writ in the nature of mandamus and prayed for quashment of the Office Order No. 493/G/DOP dated 21.05.2020 issued by Department of Personnel, Government of Sikkim, and letter no. GOS/Home/Actt./726 dated 21.03.2022 and to declare that the respondent is entitled to receive Rs.

20,51,100/- towards leave encashment alike similarly placed other re-employed employees.

9. Learned Single Judge allowed the Writ Petition observing that Leave Rule 36 should be read in conjunction with Rule 32, making the Leave Rules applicable to the re-employed government servants. The phrase 'retires from service' in Rule 36 is broad enough and includes the re-employed employees. It is noted that after an order allowing to receive cash equivalent for 300 days, withdrawal of such benefit by a subsequent office memorandum is arbitrary. The clarificatory order couldn't nullify the right accrued to the petitioner. While allowing the Writ Petition, the Court did not accept the argument of the State about financial burden because other similarly placed employees have been extended similar benefit of second time leave encashment.

10. Being aggrieved, the appellants preferred the writ appeal which came to be dismissed by the Division Bench observing that Rule 32 of the Leave Rules creates a legal fiction treating re-employed and regular employee at par as if former had entered into service for the first time, and made the Leave Rules applicable, and consequently held that Rule 36 applies to re-employed government servants also. The Court refused to interfere with the judgment of

learned Single Judge and noted that no palpable infirmity or perversity warranting interference in intra-court appeal is made out.

### **ARGUMENTS ADVANCED BY APPELLANT – STATE**

11. Mr. Sameer Abhyankar, learned counsel representing the appellants extensively urged that Leave Rule 36 prescribes leave encashment maximum of 300 days after retirement on attaining the age of superannuation as specified in Service Rules. It was noticed that employees who were re-employed after retirement were availing benefit of leave encashment of the leave available in their credit after being relieved. On examining the issue, the government found that grant of such benefit is not as per the spirit of Rule 36 of Leave Rules, therefore, issued the office memorandum dated 27.02.2020 clarifying the same. In consequence to the clarificatory order, the benefit of leave encashment allowed to the respondent was cancelled vide order dated 21.05.2020. Accordingly, after availing the benefit of leave encashment of maximum of 300 days on retirement, he was not found entitled to same benefit for the period of re-employment. He submitted that the findings of learned Single Judge in reference to Rule 36, re-affirmed by the Division Bench are not in conformity

to the real intent and object to grant benefit of leave encashment under Rules to the retired employees. Rule 32 and Rule 36 of Leave Rules deal with different spheres and they cannot be read in conjunction, therefore, the interpretation as made in the impugned judgment is not correct. On independent reading of Leave Rule 36, it is clear that a person who has attained the age of retirement as per Service Rules, i.e., 58 years, would be entitled for leave encashment maximum up to 300 days. The said rule does not deal with relieving after the re-employment, rather, it merely deals with contingency of grant of leave encashment on retirement of an employee under Service Rules. Therefore, the findings as recorded by the learned Single Judge and affirmed by the Division Bench misinterpreting the formula of granting leave encashment to an employee after retirement, require due indulgence and interference in these appeals and interpretation of the rules in right perspective.

### **ARGUMENTS ADVANCED BY RESPONDENT – EMPLOYEE**

12. Per contra, learned senior counsel Mr. A. Mariarputham for the respondent submits that on relieving from re-employment, sanction of leave encashment was allowed vide office order dated 31.05.2019. The same was cancelled vide order dated 21.05.2020



relying on the office memorandum dated 27.02.2020, without notice and affording an opportunity of hearing. Further, the rejection of representation is discriminatory and violates Article 14 of the Constitution of India because similarly situated other re-employed relieved employees have been allowed the same benefits. In addition, the order cancelling the benefit of leave encashment is in violation of the principles of natural justice and without affording opportunity of hearing, the action of the State was unfair which has rightly been interfered with by the High Court.

13. It is further urged that Rule 32 applies to the re-employed government servants alike an employee entered into service at first instance. Leave Rule 36 also applies to the employees on whom Leave Rules are applicable, however, on conjoint reading, the grant of benefit of leave encashment, again to re-employed employee is not prohibited. Thus, pretext taken to rectify the mistake by the State Government cannot defeat the right of the re-employed employees conferred under the Leave Rules. It is urged that two Courts have rightly dealt with the interplay of Rules 32 and 36 of Leave Rules and it does not call for any interference.

### **ANALYSIS AND REASONINGS**

14. After having heard learned counsels at length and on perusal of the material, in our view, the short question falls for our consideration is, *‘whether an employee of the State who had availed the benefit of leave encashment maximum of 300 days once on attaining the age of superannuation under Rule 36 of Leave Rules, can further be entitled for leave encashment again on relieving after the period of re-employment?’*

15. Prior to adverting to the issue and the submissions on merits, it is necessary to refer the relevant Rules governing the controversy involved in the present case. The retirement on attaining the age of superannuation has been prescribed in the Service Rules and the relevant Rules are reproduced below for ready reference –

**“Sikkim Government Service Rules, 1974**

**98. Retirement on Superannuation –**

(1) *The date of retirement on superannuation of any Government Servant in the regular service shall be the afternoon of the last day of the month in which he attains the age of 58 years. The Government retains the right to change the prescribed age of retirement.*

*Provided that the Government Servant who had attained the age of 58 years or more on the date of issue of this Notification shall retire from the service with effect from the afternoon of 31<sup>st</sup> October 1983.*

**xx xx xx xx**

*Explanation. – For the purpose of this rule, a Government Servant whose date of birth falls on the first day of any month shall have attained the age of fifty-eight years on the afternoon of the last day of the preceding month.*

**xx xx xx xx**

**102.** *A Government Servant, who is retired according to the provisions of rule 98, may be re-employed by the Government if it is satisfied that such employment is definitely in the interest of the Government and that the Government Servant is physically and mentally fit. The period for reemployment shall be determined by the Government.*

*Provided that the day fixed plus the retiring pension shall not, on the day of re-employment, exceed the pay last drawn by the Government Servant before retirement, and also that the pay plus the retiring pension shall not, at any time, exceed the maximum of the pay scale of the post held by him during the period of re-employment.”*

The said Rule 98 deals with superannuation from regular service and specifies the date of retirement which would be the afternoon of the last day of the month on which the employee attains the age of 58 years. Therefore, the emphasis can be gathered from the word ‘date of retirement’, ‘from regular service’, ‘the last day’ and ‘on which the employee attains 58 years’. Further, as per Rule 102, if an employee has retired under Rule 98, he/she may be re-employed if such re-employment is in the interest of government and retired government employee is

physically and mentally fit. Therefore, the re-employment is not a right of the retired employee, but on the discretion and may be exercised if service of an employee is required in public interest by the government.

16. The leave encashment is governed by Sikkim Government Services (Leave) Rules, the relevant rules thereof are reproduced below:-

**“Sikkim Government Services (Leave) Rules, 1982**

**6. Earning of leave –**

*Save as otherwise provided in these rules, leave shall be earned for the period for which a Government servant is on duty only.*

**Explanation I.** – *Duty includes period of casual leave, departmental examination leave under rule 25, in service training joining time, quarantine leave but does not include the periods of Extraordinary leave, examination leave, study leave, maternity leave and all other kinds of leave including special disability leave for accidental injury.*

**Explanation II.** – *For the purpose of this rule the period spent on deputation to autonomous bodies, public undertakings shall count as duty only if contribution towards leave salary and pension are paid either by the borrowing employer or the government servant.*

**17. Earned leave for Government servants serving in departments other than the vacation department –**

(1) *Save otherwise provided in rule 27, all Government servants shall be eligible for earned leave on full pay to the extent on one-eleventh of the period spent on duty.*

(2) *In addition, a Government servant shall be entitled to half pay leave of 20 days in respect of each completed year of service which may be granted on medical certificate or on private affairs.*

**Note** – *A Government servant shall cease to earn or accumulate leave under sub-rule (1) above when earned leave at credit exceeds 300 days.*

**18. Calculation of earned leave –**

*In calculating earned leave referred to in sub-rule (1) of rule 17, the actual number of days of duty shall first be counted and then multiplied by 1/11 and the product expressed in days. The fraction in the earned leave shall be rounded off to the nearest day that is fraction below half a day shall be ignored and that a fraction exceeding half a day or more shall be reckoned as one day.*

**31. Leave during a period of extension of service**

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*Where the services of a government servant has been extended in the interest of public service beyond the date of his retirement, such government servant may be granted earned leave subject to a maximum of 300 days, as follow*

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(i) *during the period of extension, any earned leave due in respect of that period of such extension and, to the extent necessary, the earned leave which could have been granted to him under sub-rule (2) of rule 28 had he retired on the date of retirement;*

(ii) *after the expiry of the period of extension –*

(a) the earned leave which could have been granted to him under sub-rule (2) of rule 28 had he retired on the date of retirement decreased by the amount of such leave availed of during the period of extension; and

(b) any leave earned during the period of extension as has been formally applied for a preparatory to final retirement in sufficient time during the extension and refused to him on account of the exigencies of the public service.

**32. Leave during a period of re-employment after retirement –**

*In the case of a Government servant re-employed after retirement, the provisions of these rules shall apply as if he had entered government service for the first time on the date of his re-employment.*

**xx xx xx xx**

**36. Cash payment in lieu of unutilized earned leave and half pay leave on the date of retirement –**

*The Government may sanction to a Government servant who retires from service under the Sikkim Government Service Rules, 1974, cash equivalent of the leave salary in lieu of the period of earned leave on full pay standing at his credit on the date of his retirement subject to a maximum of 300 days.”*

17. On bare reading of the Leave Rules, it is clear that government servant may earn leave for the period on which he is on duty. Under Rule 17, a government servant in department may be eligible for earned leave on full pay to the extent of 1/11<sup>th</sup> of the

period spent on duty. In addition, he may also be entitled 20 days half-pay leave in each calendar year on medical ground or on private affairs. The note appended to it makes it clear that on accumulation of maximum of 300 days of earned leave, it may not be accrued in leave account of an employee. Rule 18 has relevance to the extent of how calculation of the earned leave can be made for the purpose of Rule 17(1).

18. Rule 31 applies for extension of service which is not specified in Rule 102 of the Service Rules. Thus, a government servant whose service is extended may be granted earned leave subject to a maximum of 300 days including the extended period of service. Therefore, in case of extension of service, Leave Rule 36 applies with a rigor that on adding the period of extension of service, leave encashment beyond 300 days is not permitted. As per Rule 32 of the Leave Rules, if the government servant is re-employed after retirement, the provision of Leave Rules shall apply as if he had entered in government service for the first time on the date of re-employment for the purpose of granting leave during the period of re-employment. To understand the inter-play of these rules, it's important to examine them carefully.

19. Rule 36 quoted as above consists of two limbs – (i) the retirement of the government servant ought to be under Sikkim Government Service Rules, 1974 and; (ii) the earned leave on full pay standing at his credit on the date of retirement, maximum of 300 days may be granted. On fulfillment of these twin requirements, the retired government servant may be allowed cash equivalent to leave salary at his credit for leave encashment maximum upto 300 days.

20. On analysis of the first limb as indicated, it is clear that the government servant ought to retire under the Service Rules. The government servant as specified in Leave Rule 36 for sanction of earned leave are those who are in regular service as employed in terms of the Service Rules. The re-employed government servants are not included in the said Rule, however, inclusive benefit of leave encashment may be available only to those employees whose services have been extended as per Rule 31 of Leave Rules, subject to a maximum of 300 days. It is not out of place to note that Rule 99 of Service Rules deals with compulsory retirement in public interest and Rule 99A with voluntary retirement. The former may be on discretion of the government analyzing the utility of service



in public interest, while later on a choice or request of the employee to continue in regular service after completion of 20 years.

21. The re-employment in the service has been prescribed in Rule 102 of Service Rules, by which, the government servant who stood retired under Rule 98 but not under Rules 99 or 99A, on the discretion of the government. In the said rule, the entitlement of salary has also been prescribed. After perusal of the above referred rules, mere applicability of Leave Rule 32 would not ipso facto bring an employee within the connotation “government servant” to whom Leave Rule 36 applies. The said fact is discernable from the language employed in Leave Rule 32 which specifies “government servant re-employed after retirement” and “the provision of these rules shall apply as if he had entered in government service for the first time on the date of his re-employment”. So, Leave Rule 36 shall apply to those government servants who were in regular service prior to their retirement upto attaining the age of superannuation, i.e., 58 years.

22. The second limb of Rule 36 of Leave Rules makes it clear that an employee may get cash equivalent of the period of earned leave on full pay maximum of 300 days at his credit on the date of retirement. Meaning thereby, the benefit of cash equivalent to leave salary which is in other words known as leave encashment, is

available on retirement to a regular government servant, maximum upto 300 days, inclusive of those whose service has been extended and for the purpose of Rule 31 of Leave Rules. The language of Leave Rule 36 makes it clear that the unutilized earned leave which is in the credit of the employee on the date of retirement, including extension of service, maximum upto 300 days may be granted. By using the words “the government may sanction to a government servant who retires from service under the Sikkim Government Service Rules, 1974”, makes the legislative intent clear that the government servant can get leave encashment on retirement from regular service and not on relieving after re-employment. Thus, after granting leave encashment once on retirement to a maximum of 300 days, the employee cannot get benefit of leave encashment second time in lieu of his relieving on completing the period of re-employment.

23. The language of Leave Rule 32 makes it clear that grant of leave during the period of re-employment shall be alike a new entry of an employee in service on the date of re-employment, whereas, Leave Rule 36 specifies cash payment of un-utilized earned leave and half pay leave on the date of retirement of a regular government servant subject to a maximum of 300 days. In view of the foregoing discussion, we have no hesitation to say that, Rule

32 cannot be read in a manner to revive the 300 days of unutilized leave afresh for the re-employed employees who have already availed the benefit of leave encashment maximum of 300 days during regular service. As such, there is no interplay of Rule 32 with Rule 36 and both are independent and apply in different spheres. The unutilized leave in credit beyond period of 300 days during re-employment would not be inclusive for leave encashment under Rule 32 of Leave Rules. Therefore, in our view Rule 36 cannot be read in conjunction to Rule 32.

24. In view of the above discussions, learned Single Judge was not correct to interpret Rule 32 and 36 by applying deeming fiction for the re-employed government servant. Hence, those findings cannot be countenanced, and the Division Bench erred in affirming the same. In our opinion, Leave Rule 32 does not ipso facto deal with the applicability of Leave Rule 36 for grant of leave encashment.

25. In the said sequel, the philosophy and purpose of granting encashment of unutilized earned leave also warrants attention. Leave encashment is a legal entitlement that exists within the framework of service law and in the welfare of the employee. It allows employees to receive a monetary benefit in exchange for leave they have earned but not taken during regular employment.

This right is based on the principle of deferred compensation to an employee who has not taken leaves and served, for which the employer must compensate not only for his/her work, but also for benefits of leave accumulated over time limited to 300 days maximum. This entitlement is often established in statutory provisions, service rules (*such as Rule 36 of the Leave Rules*) or employment contracts, ensuring that employees are fairly compensated for their unutilized leave.

26. A three-judges Bench of this Court in ***‘State of Rajasthan and Another Vs. Senior Higher Secondary School, Lacchmangarh and Others’***<sup>4</sup>, although in context of Section 29 of Rajasthan Non-Government Education Institutions Act, 1989, interpreted Leave Encashment as *‘nothing but salary for the un-availed leave to the credit of the employee’*. Nonetheless, something more is required to understand the full import behind grant of Leave Encashment, which is the benefit after retirement to a devoted employee. Jurisprudentially, leave encashment is grounded in two key principles: equity and economic security. The principle of equity ensures that employees who forgo their right to take leave for the benefit of the organization are not deprived of its

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<sup>4</sup> (2005) 10 SCC 346, (*Para 21*)

monetary value. The principle of economic security treats leave encashment as a form of deferred wages, similar to gratuity or pension benefits. This reinforces the employer's duty to maintain fair labour practices and protects employees' financial rights.

27. Interpreting leave encashment provisions goes beyond financial compensation and connects to broader legal principles of dignity and welfare during service. However, such interpretations must carefully balance the interests of both employees and the financial stability of the organization, especially when public exchequer is involved. Courts must tread carefully to prevent employees from claiming leave encashment multiple times for the same accrual, which could lead to unjust enrichment and may go against the public interest of largesse.

28. Therefore, while leave encashment ensures that extraordinary work ethic of an employee is rewarded, it must be applied in a way that upholds both employee rights and institutional sustainability. Naturally, courts must interpret leave encashment rules and statutes in a manner that prevents undue financial burden on employers while ensuring that employees receive what they are lawfully entitled to.

29. Thus, Leave Rules recognize benefit of leave encashment to a government servant whose service has been extended and who has

retired from regular service under the Service Rules, but not to the re-employed retired government servant. Therefore, the leave encashment is permissible maximum upto 300 days of leave and not beyond as on the date of retirement, including the case of extension of service.

30. In view of the discussions made hereinabove, in our considered opinion, clarificatory order issued by State in the matter of grant of leave encashment for the earned leave to government employees on 'extension of service' subject to maximum period of 300 days and not beyond, is completely in consonance with the spirit of Rules 31, 32 and 36 of Leave Rules.

31. In the present case, the respondent was in the regular employment and superannuated on completion of 58 years of age on 31.01.2005 under Service Rules. He was granted benefit of leave encashment maximum of 300 days under Rule 36 of the Leave Rules. On re-employment, he was continued for more than 14 years and relieved on 28.05.2019. On relieving after re-employment, the benefit of leave encashment was again sanctioned on 31.05.2019. The government on realising the mistake and interplay of Rules 32 and 36 with the spirit of the Leave Rules, issued clarificatory order on 27.02.2020 denying the

benefit of leave encashment beyond 300 days, is in consonance with the spirit of Rule 36, which is just and reasonable to the extent as indicated above. Therefore, cancellation of sanction of leave encashment order dated 31.05.2019 is also in consonance to the law.

32. Lastly, it is impressed upon that the leave encashment benefit granted to the respondent has been cancelled without affording due opportunity, and in violation of natural justice. In our view, the said argument appears attractive on first blush, but of no substance. When the respondent is unable to justify his claim of leave encashment and unable to set forth his right even allowing him reasonable opportunity, in our view, no prejudice was caused in cancelling the order granting leave encashment second time. As such, the argument of not granting an opportunity and violation of natural justice is hereby repelled.

33. In view of the foregoing, the irresistible conclusion can be drawn is that, under Rule 36 of Leave Rules, a regular government servant, if retires under Sikkim Government Service Rules, 1974 would be entitled for leave encashment maximum for 300 days. If the government servant is re-employed after 58 years of age and continued for a long time and get leaves accumulated during the

period of re-employment, he/she cannot get benefit of leave encashment second time merely because he/she is having leave in his/her credit during the period of re-employment. Consequently, the orders passed by the learned Single Judge and the Division Bench stand set-aside and both these appeals stand allowed. The pending application(s), if any, shall also stand disposed of. In the facts, there is no order as to costs.

.....J.  
(J.K. MAHESHWARI)

.....J.  
(RAJESH BINDAL)

**NEW DELHI;  
APRIL 23, 2025.**