

K. I. Thakkar

Vs

Chief Commissioner of Income Tax, Gujarat and Another

Civil Appeal No. 2847 of 1987

(Ranganath Misra, L.M. Sharma JJ)

15.01.1988

ORDER

1. The appellant who has filed this appeal by special leave in person does not appear at the hearing but has sent a written note requesting that this submissions may be taken into consideration while disposing of the appeal. We have persued his written note and have heard the learned Additional Solicitor General on behalf of the respondents.

2. Proper interpretation of Rule 39(5) of the Leave Rules is in issue. The appellant was an Assistant Commissioner of Income Tax and has now superannuated with effect from September 3, 1985. Upon superannuation he became entitled to the benefit of encashment of earned leave lying to his credit at the time of retirement. The mode of computation of such entitlement under the Government Scheme is covered by the aforesaid rule. That rule provides :

A government servant who retires or is retired from service in the manner mentioned in clause (c) of sub-rule (1), may be granted suo moto by the authority competent to grant leave, cash equivalent of the leave salary in respect of earned leave at his credit subject to a maximum of 180 days and also in respect of all the half-pay leave at his credit provided this period does not exceed the period between the date on which he so retires or is retired from service and the date on which he would have retired in the normal course after attaining the age prescribed for retirement under the terms and conditions governing his service. The cash equivalent shall be equal to the leave salary as admissible for earned leave and/or equal to the leave salary as admissible for half-pay leave plus dearness allowance admissible on that leave salary for the first 180 days at the rates in force on the date the government servant so retires or is retired from service. The pension and pension equivalent of other retirement benefits and ad hoc relief/granted relief on pension shall be deducted from the leave salary paid for the period of half-pay leave, if any, for which the cash equivalent is payable. The amount so calculated shall be paid in one lump sum

It is the common case of parties that the proviso in the sub-rule does not apply. It is also not in dispute that for the first 180 days, whether it is full leave or leave on half-pay, full benefit is admissible. The aspect which is disputed and requires clarification is as the whether when within the period of 180 days credit is given to a period of half-pay leave, deduction referred to in the last portion of the said rule relating to pension, pension equivalent of other retiral benefits would be deductible in respect of the half-pay leave period included in 180 days.

3. We find that for calculating the benefit for 180 days referred to in the rule, deduction of pension

is not taken into account. Only in respect of half-pay leave period pension is deductible. Even when the half-pay leave period is taken into account within 180 days, the requirement of the sub-rule is that out of it deduction has to be made on the different heads indicated in the sub-rule. We are of the view that the Administrative Tribunal was right in refusing to entertain the claim of the appellant. The appeal is dismissed. No costs.

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