

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1722/2014

Mahatma Phule Krushi Vidyapith Kamgar,
Karmachari Union,
Having its office at Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

..Petitioner

Versus

Mahatma Phule Krushi Vidyapith,
Rahuri, Post - Vidyapith,
Tq. Rahuri, Dist. Ahmednagar.
Through its Vice Chancellor And/or
Registrar.

..Respondent

**WITH
WRIT PETITION NO. 1723/2014**

Mahatma Phule Krushi Vidyapith Kamgar,
Karmachari Union,
Having its office at Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

..Petitioner

Versus

Mahatma Phule Krushi Vidyapith,
Rahuri, Post - Vidyapith,
Tq. Rahuri, Dist. Ahmednagar.
Through its Vice Chancellor And/or
Registrar.

..Respondent

**WITH
WRIT PETITION NO. 1724/2014**

Mahatma Phule Krushi Vidyapith Kamgar,
Karmachari Union,
Having its office at Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
Shrirampur, Tq. Shrirampur,

Dist. Ahmednagar.

..Petitioner

Versus

Mahatma Phule Krushi Vidyapith,
Rahuri, Post - Vidyapith,
Tq. Rahuri, Dist. Ahmednagar.
Through its Vice Chancellor And/or
Registrar.

..Respondent

**WITH
WRIT PETITION NO. 1725/2014**

Ahmednagar Zilla Shetmajoor Union,
Having its Office at Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

..Petitioner

Versus

Mahatma Phule Krushi Vidyapith,
Rahuri, Post - Vidyapith,
Tq. Rahuri, Dist. Ahmednagar.
Through its Vice Chancellor And/or
Registrar.

..Respondent

**WITH
WRIT PETITION NO. 6584/2014**

Mahatma Phule Krushi Vidyapith,
Rahuri, R/o. At Post - Vidyapith,
Tq. Rahuri, Dist. Ahmednagar.
Through its Registrar.

..Petitioner

Versus

Ahmednagar Zilla Shetmajoor Union,
R/o. Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
Shrirampur, At Post. Tq. Shrirampur,
Dist. Ahmednagar.

..Respondent

**WITH
WRIT PETITION NO. 6605/2014**

Mahatma Phule Krishi Vidyapeeth,
Rahuri, R/o. At Post. Rahuri,
Tq. Rahuri, Dist. Ahmednagar,
Through its Registrar.

..Petitioner

Versus

Mahatma Phule Krishi Vidyapeeth,
Kamgar Karmachari Union,
R/o. Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
Shrirampur, At Post. Tq. Shrirampur,
Dist. Ahmednagar.

..Respondent

**WITH
WRIT PETITION NO. 6609/2014**

Mahatma Phule Krishi Vidyapeeth,
Rahuri, R/o. At Post. Rahuri,
Tq. Rahuri, Dist. Ahmednagar,
Through its Registrar.

..Petitioner

Versus

Mahatma Phule Krishi Vidyapeeth,
Kamgar Karmachari Union,
R/o. Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
Shrirampur, At Post. Tq. Shrirampur,
Dist. Ahmednagar.

..Respondent

**WITH
WRIT PETITION NO. 6610/2014**

Mahatma Phule Krishi Vidyapeeth,
Rahuri, R/o. At Post. Rahuri,
Tq. Rahuri, Dist. Ahmednagar,
Through its Registrar.

..Petitioner

Versus

Mahatma Phule Krishi Vidyapeeth,
Kamgar Karmachari Union,

R/o. Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
Shrirampur, At Post. Tq. Shrirampur,
Dist. Ahmednagar.

..Respondent

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Advocate for Union : Shri Shelke Shivaji T.
Advocate for University : Shri Shahane Pradeep L.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 29, 2015

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ORAL JUDGMENT :-

1. On 27.7.2015, after considering the submissions of Shri Shelke and Shri Shahane, learned Advocates, I had recorded the undisputed factors in this case, as follows:-

- “a. The employees have filed 4 petitions and the Agricultural University has also filed 4 petitions in connection with the common judgment and order dated 09/01/2014 delivered by the Industrial Court in the four ULP complaints filed by the employees.
- b. An award dated 31/12/1984 in Ref.(IDA) No.48/1981 was delivered by Mr.N.B.Dharurkar, Member, Industrial Tribunal, Pune, in between the University and the Employees concerning 9 general demands.
- c. The employees have taken up the issue only as regards leave encashment based on paragraph No.18(iii) of the said Award.

- d. The matter had finally reached the Apex Court, which dealt with 20 appeals and by its order dated 24/07/2001, paragraph No.18(iii) of the Award was upheld.
- e. The parties were given liberty to approach the Industrial Court for the proper computation of the benefits claimed by them.
- f. ULP complaints were preferred and the same were decided by the Industrial Court, which was a subject matter of Writ Petition No.3660/2011 and connected matters, which were decided by this Court by order dated 10/07/2013.
- g. This Court, once again, referred the complaint to the Industrial Court only for dealing with paragraph No.18(iii) of the Award dated 31/12/1984 and no other issue was kept open.
- h. By the impugned judgment and order dated 09/01/2014, delivered by the Industrial Court in four complaints, it concluded that the maximum accumulation of earned leave as per the provisions of the M.C.S.Rules and Government Resolutions is 240 days earned leave.
- i. It was also held that any accumulation of earned leave beyond 240 days would get automatically lapsed and the employees would not get the benefit of any encashment of earned leave beyond 240 days.

- j. It is submitted by Mr.Shelke is that the only issue involved is as to the basis on which the Industrial Court has come to the above conclusion. ”

2. I have heard the learned Advocates today as well.

3. Rule.

4. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

5. Shri Shelke has submitted that about 20 Appeals, involving several daily wagers were decided by the Apex Court by its order dated 24.7.2001, by which, Clause 18(iii) of the Dharurkar Award was upheld and the said daily wagers were held entitled for leave encashment. Necessary directions were issued by the Apex Court to the management of the University. The employees in this case stand on an identical footing.

6. Shri Shelke submits that he has kept ready voluminous documents to be tendered across the Bar today, which are the specific statements indicating the completion of 240 days of all employees. These documents have been filed by the management before the Industrial Court and which are taken on record in Writ Petition No.1722 of 2014.

7. The said documents are taken on record and collectively marked as Exhibit "X" for identification. Exhibit "X" is in two volumes.

8. Shri Shelke, therefore, submits that the only issue involved is as regards the calculation of leave encashment and the error committed by the Industrial Court in imposing a ceiling on such accumulations to the extent of 240 days as is mentioned in Clause (H), (I) and (J), reproduced herein above. He, therefore, prays that the ceiling of 240 days be revoked and the management be directed to pay earned leave encashment to the beneficiaries as per their actual accumulations.

9. Shri Shahane, learned Advocate while opposing the petitions of the employees, has tried to support his contentions in the four petitions preferred by the management. His submissions can be summarized as under:-

(a) The issue of territorial jurisdiction was not considered by the Industrial Court in the light of the fact that some of the daily wagers were working in Dhule district and some in Igatpuri, District Nashik.

(b) Clause 18(iii) of the Dharurkar Award does not include Earned Leave.

(c) The Dharurkar Award would be applicable only to daily wager employees

(d) The encashment of earned leave should be made only at the prevailing rate in that year in which the earned leave was accumulated.

(e) By virtue of Section 28 of the Maharashtra Agricultural Universities Act, 1983 read with Statute 138, Rule 50(1)(a) and (1)(b) of MCS (Leave) Rules, 1981 would be applicable.

(f) The earlier provision on Earned Leave accumulation prescribed a ceiling at 240 days and not more.

(g) Applications under Section 33(C)(2) of the ID Act have been preferred by some of these daily wagers seeking recovery of money due from an employer and which have been withdrawn after the Apex Court delivered its order on 24.7.2001.

10. I have considered the submissions of the learned Advocates as recorded in the foregoing paragraphs.

11. Considering the fact that this litigation pertains to complaints which were filed 11 years ago, the fact that identically situated daily wagers have been paid earned leave encashments, the fact that the Agricultural University is situated at Ahmednagar and the Industrial Court at Ahmednagar has dealt with the complaints, I am not inclined to go into the aspect of territorial jurisdiction as it is rendered of academic interest. So also, it would further drag the employees in litigation and make them suffer rigors of litigation when they have been retrenched on 1.4.2001, which is about 14 years ago. It would be too

harsh to relegate them only for academic purpose to the Industrial Court at a particular place and undergo the entire litigation afresh which would be a mere formality.

12. This leaves me with the only contentious issue as to how is the rate of encashment to be calculated and whether the earned leave accumulations can be capped at 240 days or could it be more.

13. By notification dated 5.2.2001, Rule 50(1)(b) has undergone a change. The said Rule reads as under:-

“50(1)(a) The leave account of every Government servant who is serving in a Department other than a vacation Department, shall be credited with earned leave, in advance, in two installments of 15 days each on the first day of January and July of every calendar year.

(b) The leave at the credit of a Government at the close of the previous half year shall be carried forward to the next half year, subject to the condition that the leave so carried forward plus the credit for the half year do not exceed the maximum limit of 300 days.”

14. It is thus clear that by notification dated 5.2.2001, which is made effective from 1.2.2001, the earned leave accumulations have been increased to 300 from 240, which existed earlier. Needless to state, those employees who have retired on or after 1.2.2001 and who have

earned leave accumulated, would be entitled for its encashment to the extent of 300 days.

15. It is undisputed that employer - employee relationship was terminated between the employees and the University management on 1.4.2001. As such, all these employees, who are before this Court, have been discharged from employment on 1.4.2001. In my view, the amended Rule 50(1)(b) would cover these employees and they will stand to gain the benefit of accumulating 300 days earned leave. This was lost sight of by the Industrial Court while delivering the impugned judgment.

16. Some of the daily wagers are said to have withdrawn their applications under Section 33-C(2) after the orders of the Apex Court. It is evident that by the orders of the Apex Court, vide which the Appeals were decided, the University / Management was directed to make the payments to the daily wagers. The applications under Section 33-C(2) were, therefore, rendered infructuous.

17. It cannot be disputed that the leave encashment is normally taken after the retirement or upon the conclusion of employer - employee relationship. In a given case, an employee may choose to encash a portion of his earned leave and would therefore, be eligible for encashment at the rate at which he is drawing his wages.

18. In the instant case, the concerned employees are seeking leave encashment post their discharge on 1.4.2001. For the last 14 years, they have been litigating with the employer. They claim leave encashment pursuant to the severing of employee-employer relationship. As such, they would be entitled for encashment of the earned leave at the rate of their last drawn wages, since the calculation of their earned leave should be on the basis of their salary drawn as on date of seeking encashment. This has also been lost sight of by the Industrial Court.

19. In the light of the above:-

(A) Writ Petition Nos. 6584 of 2015, 6605 of 2014, 6609 of 2014 and 6610 of 2014 stand dismissed. Rule is discharged.

(B) Writ Petitions filed by the Union bearing Nos. 1722, 1723, 1724 and 1725 of 2015 stand partly allowed.

(C) The directions issued by the Industrial Court only to the extent of limiting the encashment of earned leave to the maximum of 240 days stands modified and the said clause No.3 shall, therefore, read as under:-

“ The University Management is directed to scrupulously verify from the record the completion of 240 days in three consecutive years strictly in accordance with their charts Exhibit “X” and similar other documents, which were placed before the Industrial Court as well as this Court and pay encashment of earned leave to the eligible persons

from their first year of completion of 240 days, subject to the maximum accumulation of 300 days, to be calculated at the rate of their last drawn monthly wages.”

(D) Rest of the directions in Clause Nos.1, 2 and 4 are maintained.

(E) In the event any employer has completed 239 days, he shall be construed to have completed 240 days.

(F) Needless to state the modified directions as above and the directions of the Industrial Court sustained by this judgment shall be implemented expeditiously and preferably within a period of five months from today.

(G) Rule is accordingly made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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