

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9862 OF 2014

1. Tapti Education Society, Bhusawal,
Tq. Bhusawal, District Jalgaon,
Through its President.

2. Bhusawal Arts, Science and P.G.
Nahata Commerce College, Bhusawal,
Tq. Bhusawal, District Jalgaon,
Through its Principal.

..Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Higher Department,
Mantralaya, Mumbai.

2. The Joint Director,
Higher Education, Jalgaon Division,
Jalgaon, Dist. Jalgaon.

3. The North Maharashtra University,
NMU Nagar, Jalgaon.

4. Raghunath Bhikari Choudhari,
Age 63 years, Occ. Pensioner

5. Manohar Govind Saraf,
Age 74 years, Occ. Pensioner,

6. Vijay Baburao Parve,
Age 75 years, Occ. Pensioner,

7. Hari Arjundas Bajaj,
Age 61 years, Occ. Pensioner.

8. Eknath Yashwant Patil
Age 60 years, Occ. Pensioner,

9. Nivrutti Namdeo Wani,
Age 63 years, Occ. Pensioner,

10. Deelip Damodhar Patil,
Age 68 years, Occ. Pensioner

11. Pradeep Govind Joshi,
Age 68 years, Occ. Pensioner,

The respondent Nos.4 to 11 all
R/o C/o P.G.Joshi, Tara Niwas,
Hanuman Nagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

..Respondents

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Advocate for Petitioners : Shri Hon V.D. Sr. Advocate
i/b Shri Shinde A. D.

AGP for Respondents 1 & 2 : Smt. Kshirsagar Y.M.

Advocate for Respondent 3 : Shri Bachate P.D. h/f Shri Girase A.B.

Advocate for Respondents 4 to 11 : Shri Barahate Yuwaraj R.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 08, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

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

4. After hearing the petitioners on 7.11.2014, this Court had passed the following order:-

"1. The issue involved is calculation of leave encashment.

2. In an earlier round before this Court in Writ Petition No.9341 of 2013, this Court, by its order dated 6.8.2014, has noted in

paragraph No.8 that though the maximum quantum of entitlement is 180 days, said entitlement will have to be calculated in each case of the employees and not by holding that each of them would automatically be entitled to the said 180 days, which is the maximum limit.

3. In order to primarily calculate the entitlement of the employees and then to calculate the amount to which they would be entitled to, the Joint Director was directed to decide the claim after hearing the parties. Shri Hon, learned Advocate for the petitioners submits that thereafter, the Joint Director has mechanically passed the impugned order dated 8.10.2014.

4. Issue notice before admission to the respondents returnable on 10.12.2014.

5. Learned AGP waives service for respondents 1 & 2.

6. The petitioners inform that an amount of Rs.1,50,000/- has already been deposited in this Court by an order passed in the earlier round of litigation. The petitioners prays that the impugned order be stayed and prevent the respondents from causing recovery against the petitioners.

7. Since, this matter involves a monetary aspect and prima facie, the entitlement of the quantum of leave encashment has been arrived at in the impugned order, I am inclined to direct the petitioners to deposit an amount of Rs.5,00,000/- on/or before 6.12.2014. On condition of deposit, the impugned order dated 8.10.2014 shall stand stayed till the next date of hearing in this matter.”

5. The amount of Rs.5,00,000/- was deposited in this Court on 20.11.2014 by D.D.No. 00340.

6. I have heard Shri Hon, learned Sr. Advocate along with Shri Shinde for the petitioners, the learned AGP on behalf of the respondents 1 and 2 and Shri Barhate, learned Advocate on behalf of respondent Nos. 4 to 11, who are the beneficiaries of Statute 423(c).

7. In Writ Petition No. 9341 of 2013, this Court had directed the petitioners to deposit the amount, which according to the petitioners, was payable as encashment of earned leave to respondents 4 and 6 to 10. It is stated that pursuant to the order dated 20.11.2014, the amount of Rs.1,50,141/- has been deposited. A chart explaining the apportionment of the said amount in between respondents 4 to 11 is tendered across the Bar, which is taken on record and marked as Exhibit "X" for identification. By order dated 7.11.2014, this Court had directed the petitioners to deposit an amount of Rs.5,00,000/- which has also been deposited.

8. The Joint Director (Higher Education) was directed by this Court by its order dated 6.8.2014, delivered in Writ Petition No.9341 of 2013 to look into the matter and consider the documentary evidence produced before him by the employer as well as the employees and to evaluate the quantum of entitlement as encashment of leave. The relevant observations of this Court, in paragraph Nos. 8 to 12 of the order dated 6.8.2014 read as under:-

“ 8. There is no dispute that the maximum quantum of entitlement is 180 days. The entitlement was objected by the petitioner - Management by filing objection to claim of each of the employees. What was expected of the respondent - Joint Director, Higher Education, to hear the petitioner - management and respondents - employees on the said issue and to reach to a particular conclusion after adjudicating the entitlement. Perusal of the order passed by the Joint Director reflects that the Joint Director, having taken shelter of Statute 424 (3)(C)(b) of the respondent No.3 - University, has granted entitlement of maximum 180 days, as is provided, in my opinion, reflects non-application of mind. As such, the order is not sustainable. The said order also appears to be contrary to the spirit of the order passed by this Court on 25th September 2013.

9. In that view of the matter, writ petition is allowed. The order dated 8th November 2013 passed by respondent No.2 - Joint Director, Higher Education, Jalgaon Division, Jalgaon is quashed and set aside. The matter is remanded to respondent No.2 - joint Director, Higher Education, Jalgaon Division, Jalgaon for taking decision afresh in the light of the earlier order passed by this Court on 25th September 2013 in Writ Petition No.10074/2012 and other connected petitions and the observations made herein above.

10. The failure on the part of the petitioner i.e. petitioner - management or the respondents - employees in producing the sufficient evidence so as to support their contentions shall not stop the Joint Director, Higher Education, Jalgaon from proceeding further in the matter of evaluating the quantum of entitlement for encashment of leave. He shall proceed to evaluate the quantum as ordered by this Court on the available record placed before him.

11. It is expected of the Joint Director, Higher Education, Jalgaon

to decide the claim after hearing the parties within a period of eight weeks from the date of communication of this order.

12. The amount deposited in this petition shall be invested in a Nationalised Bank, initially for a period of ninety days in the name of Registrar (Administration) of this Court.”

9. Shri Hon points out that by the impugned order dated 8.10.2014, the Joint Director of Education has considered the claims of the respondent Nos.4 to 11 and has mechanically held that each of them is entitled for encashment of earned leave as mentioned in Chart “A” on page No.2 of the impugned order.

10. Shri Hon submits that though the chart has been prepared by the Joint Director, the number of days of earned leave mentioned is not on the basis of the service record of the respondents, but purely as per their claims. There is no reference to any document so as to draw an inference as regards the basis for preparing the Chart “A”. He further submits that the number of days mentioned in Chart “A” do not tally with the entries in the service record.

11. Shri Barhate has strongly opposed this petition. He submits that the petitioners are equipped with the necessary record for computing the earned leave. Contention of the petitioner that respondent No.5 - Manohar Govind Saraf and respondent No.11 - Pradip Govind Joshi are not entitled to encashment of earned leave is an erroneous submission, since both of them are entitled to encashment of 120 days and 180 days respectively. He,

therefore, submits that the petition is devoid of merits and be dismissed.

12. The directions of this Court, by which, the Joint Director of Higher Education was to compute the number of earned leave, though appears to have been implemented by the said authority, I am unable to find any justification in the impugned order, by the basis of which, the said authority could have prepared Chart "A".

13. The petitioners submit that the number of earned leave mentioned in Chart "A" does not tally with the service book. The respondents contend that the Chart "A" has been properly arrived at. The missing link is as to what is the basis of the number of days of earned leave, calculated by the Joint Director. It is merely mentioned in the impugned order that he has gone through the original service books and the letter submitted by the respondents and he has arrived at the number of days of earned leave mentioned in Chart "A".

14. I do not find that the Joint Director (Higher Education) has taken efforts to consider the submissions of both the sides and consider the record while arriving at Chart "A". In the event, the respondents prove that the number of earned leave is more than what is reflected in the service book, the Joint Director should have arrived at independent conclusions with respect to each of the respondents. The management insists that Shri Saraf and Shri Joshi are not entitled for earned leave, which is contrary to the conclusions of the Joint Director in Chart "A". Even on this count, I do

not find any conclusion by the Joint Director as to why the management's contention can be said to be rendered unsustainable.

15. In the light of the above, while partly allowing the petition, I am inclined to issue certain directions so as to balance the equity and at the same time, ensure that none of the respondent Nos. 4 to 11 are deprived of any encashment of earned leave strictly as per their entitlement.

16. In the light of the above, the impugned order dated 8.10.2014 is quashed and set aside and this petition is partly allowed. Consequentially, I am issuing the following directions:-

(A) An amount of Rs.1,50,141/- has been deposited by the petitioners in this Court, in the light of Exhibit "X", as being payable to those mentioned in Exhibit "X".

(B) The employees mentioned at Sr. Nos.1 to 6 in Exhibit "X" are held entitled for certain amounts, which are mentioned in their respective rows in column No.3 at Exhibit "X".

(C) As such, the employees at Sr. Nos.1 to 6 in Exhibit "X" shall withdraw their amounts and share the accrued interest that has accumulated on the amount of Rs.1,50,141/- deposited in this Court by order dated 21.11.2013, passed in Writ Petition No.9341 of 2013.

(D) The amount of Rs. 5,00,000/- deposited by the petitioners in this Court, pursuant to the order dated 7.11.2014, passed in this Writ Petition, shall be withdrawn by the petitioners with accrued interest.

(E) After the disbursement of the amount as per Exhibit "X", each

of the respondent Nos. 4 to 11, who are at Sr. Nos.1 to 8 in Exhibit "X" shall prepare their individual computation of earned leave. Shri P.G.Joshi and Shri M.G.Saraf shall also compute their own entitlements.

(F) The computation as above, prepared by the employees will be submitted to the petitioners / management Tapti Education Society, Bhusawal within six weeks from today.

(G) After receiving such computation / representation, the petitioners / management shall hear each of these claimants on 29.8.2015 at 11.00 am at the management office at Bhusawal. Thereafter, the petitioners shall hear the respondents on such dates as per their respective convenience and accordingly prepare a report in relation to each of these claimants on/or before 16.9.2015.

(H) The petitioners shall supply a copy of its report to each of these claimants and shall also transmit its report along with the accompanying documents on the basis of which the report is prepared, to respondent No.2 - Joint Director (Higher Education), Jalgaon Division, Jalgaon on/or before 30.9.2015.

(I) The claimants, as well as the petitioners shall thereafter attend the office of respondent No.2 - Joint Director (Higher Education), Jalgaon Division, Jalgaon at 11.00 am on 5.10.2015, so as to enable respondent No.2 - Joint Director (Higher Education), Jalgaon Division, Jalgaon to assess whether any dispute still remains.

(J) In the event, there is no dispute, respondent No.2 - Joint Director (Higher Education), Jalgaon Division, Jalgaon shall accordingly direct the management to make the payments to the claimants on/or before 30.10.2015, which is prior to the Diwali festival.

(K) In the event any dispute persists, respondent No.2 - Joint Director (Higher Education), Jalgaon Division, Jalgaon shall hear the disputants and the management and shall pass a specific order with reasons based on all material available before him, in case of each of the claimants. Same shall be done on/or before 31.10.2015.

17. Rule is accordingly made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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akl/d