IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1079 OF 2015

The State of Maharashtra and others PETITIONERS
VERSUS
Vishwambhar Tukaram Waghmare RESPONDENT

Mr.D.R.Korde, AGP for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 31/03/2016

PER COURT :

1. The sole respondent was served with court notice and the office noting dated 20/03/2015 indicates that the service is complete.

2. By order dated 20/10/2015, the sole respondent was put to notice as under :-

> *"1. Since the amount has been deposited in this Court, the ad-interim protection stands continued.*
>
> *2. Despite Court service, the sole respondent has chosen not to enter an appearance either in person or through an Advocate.*
>
> *3. Stand over to 24/11/2015. Respondent to note that in the event he chooses to remain absent, this matter will be decided*

without his assistance.

4. The learned AGP requests that Writ Petition No.4057/2011 involving a similar cause of action pending in this Court, be heard alongwith this petition.

5. As such, on 24/11/2015, Writ Petition No.4057/2011 shall be heard alongwith this petition."

3. Even today, none appears for the sole respondent Vishwambhar Tukaram Waghmare in this case despite the fact that this matter is shown in the admission category on the daily board and the respondent was put to notice that if he chooses to remain absent, this matter would be heard in his absence.

4. I have heard the learned AGP for the petitioner. The only issue raised for the consideration of this Court is as to whether the respondent was entitled to encashment of the earned leave for a maximum of 300 days or more.

5. The petitioner contends that it was specifically pointed out to the Labour Court through its written statement that Rule 68 of the M.C.S.R. (Leave) Rules, 1981 would be applicable and that the

maximum limit for being entitled for encashment of earned leave is 300 days. The Labour Court has erroneously granted the earned leave for 341 days to the respondent.

6. I have considered the submissions of the learned AGP. Rule 68 of the 1981 Rules provides for "Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation." Rule 68 reads as under :-

*"**68. Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation***

(1) The authority competent to grant leave shall suo-motu sanction to a Government servant who retires on attaining the age of superannuation, the cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his superannuation, subject to a maximum of [300] days.

(2) The cash equivalent of leave salary payable under sub-rule (1) above, shall also include dearness allowance admissible on the leave salary at the rates in force on the date of retirement and it shall be paid in one lumpsum, as a one-time settlement.

(3) The compensatory local allowance and house rent allowance shall not be included in calculating the cash equivalent of the leave

salary under this rule.

(4) From the cash equivalent so worked out, no deduction shall be made on account of pension and pensionary equivalent of other retirement benefits.

(5) [Subject to the provisions of sub-rule (6), a Government servant] who retires from service on attaining the age of compulsory retirement while under suspension shall be paid cash equivalent of leave salary under sub-rule (1) above in respect of the above period of earned leave at his credit on the date of his superannuation, provided that in the opinion of the authority competent to order reinstatement, the Government servant has been fully exonerated and the suspension was wholly unjustified.

[(6) (a) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings,he shall become eligible to the amount so withheld after adjustment of government dues, if any.

(b) Where a Government servant is compulsorily retired as a measure of punishment under the provisions of Maharashtra Civil Service (Discipline and Appeal) Rules, 1979, the authority competent to

grant leave shall issue an order granting cash equivalent of leave salary for earned leave, if any, at credit of the Government servant on the date of such retirement, subject to a maximum of three hundred days, in the manner specified in this rule.]

Note 1.-*A Government servant can also avail of as leave preparatory to retirement a part of earned leave at his credit. In that case, he shall be allowed payment of cash equivalent of leave salary for the balance of the earned leave that remains at his credit on the date of retirement in accordance with sub-rule (1) above.*

Note 2.-*With a view to enabling the retiring Government servant to receive cash equivalent of leave salary in respect of the unutilised earned leave without delay, the following procedure shall be followed :*

(a) A Government servant nearing the date of retirement on superannuation should inform in writing to the authority competent to sanction him leave, three months in advance of the date of retirement, if he desires to avail of cash equivalent of leave salary in respect of the unutilised earned leave at his credit on the date of his superannuation.

(b) (i) The competent authority should within 15 days of receipt of such an intimation from a Gazetted Officer move the Audit Officer to communicate to him the amount of earned leave to his credit on the date of his superannuation.

(ii) The Audit Officer should communicate the title to earned leave due and admissible as on the date of superannuation to the competent authority at least a fortnight before the date of retirement of the Government servant, endorsing a copy to the concerned Gazetted Officer.

(iii) While reporting the title to the earned leave at the credit of the retiring Gazetted Officer, the Audit Officer will indicate the rate of cash equivalent of leave salary in respect of the unutilised earned leave due and admissible subject to the condition that the cash equivalent at the rates indicated by the Audit is not payable before the date of retirement and that the officer does not avail of any earned leave subsequent to the date of report of the title to leave by the Audit Office.

(c) In the case of a Non-gazetted Government servant the competent authority should within 15 days of receipt of intimation from the concerned Government servant, himself arrange to have ascertained the amount of earned leave due and admissible to the credit of the Government servant on the date of superannuation.

(d) The competent authority should after satisfying himself that earned leave, if any, availed of by the concerned Government servant, Gazetted or Non-gazetted after receipt of his written intimation admissible as in (a) above, is actually deducted from the earned leave due and admissible as on the date of superannuation as reported by the Audit /his office, arrange to issue necessary orders sanctioning cash equivalent of leave salary in respect of the unutilised

earned leave. This should be done within a week of the retirement of the concerned Government servant.

(e) Thereafter, the competent authority should within 15 days after the date of retirement, prefer a bill claiming the cash equivalent of leave salary in respect of the unutilised earned leave to the Treasury.

(f) Payment of cash equivalent of leave salary in respect of the unutilised earned leave at the credit of the Government servant retiring on superannuation, should be made irrespective of whether or not ' No Demand Certificate' from the Audit Office/Department concerned is received.

Note 3:- *The cash payment for unutilised earned leave shall be made in the following manner:-*

$$\text{Cash Payment} = \frac{\text{Pay + D. A. admissible on date of retirement}}{30} \times \text{No. of unutilised days of retirement earned leave at credit subject to a maximum of (300) days.}$$

1 substituted for the figure "240" by notification no. LVF-240/7/SER-9 dated 05.02.2001 w.e.f. 01.02.2001.

2 Substituted for the words "A Government servant" by notification no.LVE.2405/CR.14/SER-8 dated 29.06.2006, w.e.f. 01.07.2006.

3 Inserted, ibid."

7. Learned AGP has canvassed that the ceiling of encashment of earned leave was 300 days in the light of Rule 68(1). Though the Rule was cited, the Labour Court has failed to consider it. I find that the learned AGP is right in his submissions. In the face of the applicability of Rule 68, the leave encashment as against earned leave was restricted at a maximum of 300 days. The Labour Court has not even referred to Rule 68 much less discussed the said Rule in the impugned judgment, despite the petitioner having pointed out Rule 68 in paragraph No.3 of its written statement dated 27/04/2011.

8. It is, therefore, apparent that the Labour Court has erroneously concluded that the petitioner shall pay an amount of Rs.27,058/- towards earned leave encashment for 341 days.

9. This petition is, therefore, partly allowed. Clause 2 below paragraph No.9 of the impugned order shall stand modified to the effect that the petitioner herein shall pay the encashment of earned leave for a maximum of 300 days and shall pay the said amount to the respondent alongwith costs of Rs.1,000/- as is awarded by the Labour Court.

10. Since an amount of Rs.30,000/- has been deposited in this Court by the petitioner on 19/03/2015, the respondent shall be at liberty to withdraw the amount of Rs.23,805/- without conditions by producing tangible evidence of his identity by submitting a copy of the Election ID Voters Card or the Aadhar Card.

11. The rest of the amount shall be withdrawn by the petitioner from this Court.

(RAVINDRA V. GHUGE, J.)