

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

WRIT PETITION NO. 9636 OF 2015

Suresh Arvind Shephard,
Age : 65 years, Occupation : Retired,
R/o Meharabad,
Tal. & Dist.Ahmednagar.

...PETITIONER

-VERSUS-

Maharashtra State Electricity
Distribution Company Limited,
Shahar/ Gramin Vibhag,
Station Road, Ahmednagar.
Through its Executive Engineer.

...RESPONDENT

...
Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondent : Shri Malte Uday S..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th September, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ Employee is aggrieved by the judgment dated 02.04.2015 by which the Labour Court has dismissed Application (IDA)

No.2/2012 filed by him under Section 33C(2) and (3) of the Industrial Disputes Act, 1947.

3 I have heard the strenuous submissions of Shri Barde and Shri Malte, learned Advocates for the Petitioner and the Respondent, respectively.

4 There is no dispute in between the parties on the following aspects:-

- (a) On 17.10.2006, the Petitioner was discharging his duties as a Driver and met with an accident.
- (b) Since he was unable to resume duties, he availed 352 days leave.
- (c) The Respondent paid Rs.1,33,062/- towards Disablement Leave Salary for 352 days.
- (d) The above said payment was made under the Service Regulation 50 and Rule A(vii) (a) and (b) under the 17th Schedule of the MSEDCL Employees Service Regulations, 2005.
- (e) The Petitioner filed Application W.C. No.61/2009 before the Labour Court which is the ex-officio Compensation Court and by judgment dated 05.02.2011, the Petitioner was granted

Rs.2,70,796/- (Rs.1,62,672/- as compensation amount with interest).

- (f) Though the Respondent had deposited Rs.1,30,000/- before the Labour Court, it imposed interest at the rate of 18% per annum on the entire amount of Rs.1,62,672/- and that is how the Respondent paid Rs.2,70,796/- to the Petitioner.
- (g) The Petitioner attained the age of superannuation and retired from service on 31.12.2008.
- (h) The Respondent/ Employer calculated his retirement benefits and after adjusting Rs.1,33,062/-, granted him the remaining amount.

5 Shri Barde has strenuously contended that the Respondent/ Employer is erroneously placing the case of the Petitioner under Rule A(viii) falling in the 17th Schedule. It is a right of the workman to such leave encashment. The period of recuperation cannot be at the costs of an injured employee. He was entitled to Rs.1,33,062/- towards the disablement leave payment for 352 days and as such, the Labour Court, without proper application of mind, has considered the case of the Petitioner differently and has wrongly rejected the application. In the alternative, he prays for remand to the Labour Court for a rehearing of the application.

6 Shri Malte points out that under Rule A(vii), sub clause (a) would indicate that leave salary payment towards disablement leave is to be calculated on the basis of full day wages for the first four months period of such special leave and average pay has to be drawn while making such payment. Under sub-clause (b) any period beyond the first four months is to be calculated at the half average pay. The Respondent has erroneously calculated special leave payment for the entire 352 days by inadvertently ignoring sub-clause (b) or losing sight of sub-clause (b).

7 He further submits that while calculating the retiral benefits of the Petitioner, the payment that the Petitioner received under the Workmen's Compensation Act (presently the Employees Compensation Act), was set off against the legal dues payable in the light of Rule A(viii). While doing so, the Management again had lost sight of Rule A(vii)(b) by which the amount beyond four months should have been reduced to half. He submits that despite the same, the Management has not recovered that excess amount from the Petitioner. He, therefore, prays for the dismissal of the petition.

8 I find from the submissions of the learned Advocates and the record available that Rule A(vii) coupled with Rule A(viii) have not been

challenged by any employee before any Court. For the sake of clarity, Rule (A) falling in the 17th Schedule of the MSEDCL Employees Service Regulations, 2005 is reproduced as under:-

- “A.
- i) *Subject to the condition here in specified, the Company may grant special disability leave to the Company employee, [including Veej Sevak appointed under G.O.162(P) dated 15.03.2005] whether permanent or temporary who is disabled by injury intentionally inflicted or caused in, or in consequences of, due to performance of his official duties or in consequence of his official duties.*
 - ii) *Such leave shall not be granted unless the disability manifested itself within 3 months of the occurrence to which it is attributed and the person disabled acted with due promptitude in bringing it to notice. But the Company may, if satisfied as to the cause of the disability, permit leave to be granted in case where the disability is manifested itself more than three months after the occurrence of its cause.*
 - iii) *The period of leave granted shall be such as it certified by the Medical Officer of the Company's Establishment or by the Civil Surgeon or Government Hospital Authorities or by the Private Registered Medical Practitioner in which case the certificate should be countersigned by the Government Hospital Authorities. It shall not be extended except on the certificate of the appropriate authorities and shall in no case exceed Twenty four months.*
 - iv) *Such leave may be combined with the leave of any other kind.*
 - v) *Such leave may be granted more than once if the disability is aggravated or reproduced in similar circumstances at a later date but not more than Twenty four months of such leave shall be granted in consequence of any one disability.*
 - vi) *Such leave shall be counted as duty for calculating service for pension, gratuity and the Company's share of C.PF. and shall not except, half the period*

of leave on half average pay (other than Special Disability Leave) or on quarter average pay or of Special Disability leave on average pay, be debited against the leave account.

vii) *The leave salary during the Special Leave shall be equal to:*

a) *for the first four months of any period of Special Leave including a period of such leave granted under clause (v) of this rule to average pay; and*

b) *for the remaining period of any such leave on half average pay or at the Company employee's option for a period not exceeding the period of average pay which should otherwise be admissible to him to average pay.*

viii) *In the case of person to whom the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948 apply, the amount payable under these rules shall be reduced by the amount of compensation payable under Section 4(i)(d) of the Workmen's Compensation Act and the amount of sickness benefit payable under Section 49 of the Employees' State Insurance Act.*

ix) *Provisions of this rule apply to:*

a) *the Company employees disabled in consequences of the service with military force, if he is discharged as unfit for further military service but he is not completely and permanently incapacitated for further Company's service and*

b) *a Company employee, not so discharged, who suffers a disability which is certified by the Medical Officer of the Company's Establishment or by the Civil Surgeon or Government Hospital Authorities or by Private Registered Medical Practitioner (in which case the certificate should be countersigned by the Civil Surgeon or the Government Medical Authorities) to be directly attributable to his service with a military force.*

But in either case, any period of leave granted to such person under Military Rules in respect of that disability shall be reckoned as leave granted under this rule for the purpose of calculating the period

admissible.”

9 As recorded above, there is no dispute that leave salary for special leave for the first four months is full wages based on average pay per day. For the rest of the period, it has to be half average pay. As such, the Petitioner would have been entitled for full average pay for the first 120 days. For the remaining 232 days, he would have been entitled for half average pay. Despite this fact, the Respondent has paid full average pay for the entire 352 days. Considering the fact that the amount has already been paid, though by oversight or inadvertence, now that the Petitioner has superannuated, there is no question of the Respondent recovering that amount from the Petitioner. (see *Syed Abdul Qadir vs. State of Bihar*, **(2009) 3 SCC 475** and the *State of Punjab vs. Rafiq Masih (White Washer)*, **(2015) 4 SCC 334**).

10 The issue, therefore, is as regards interpretation of Rule A(vii) and Rule A(viii). The said Rules are in existence from 2005. Rule A(vii) under its sub-clauses (a) and (b) permits the payment of special leave pay and Rule A(viii) entitles the Respondent to set off the special leave salary pay as against compensation which an employee may have acquired under the Workmen's Compensation Act or under the Employees' State Insurance Act.

11 While considering retiral benefits, the Respondent kept in view the amount of Rs.2,70,796/- that was paid to the Petitioner and hence, adjusted the amount of Rs.1,33,062/- in the light of Rule A(viii).

12 In the light of the above, though I find that the Labour Court may not have dealt with Rule A(viii) in the manner in which it has been considered by this Court, yet the conclusions arrived at by the Labour Court cannot be faulted because Rule A(viii) was referred to by the Labour Court and the conclusions, therefore, cannot be said to be erroneous.

13 As such, I do not find that the impugned judgment of the Labour Court could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.