

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

**REVIW APPLICATION STAMP NO. 31214 OF 2014
IN
WRIT PETITION NO. 5468 OF 2012**

1. The Executive Engineer,
Maharashtra State Electricity Distribution
Company Ltd., Om Colony, Savda,
Tal. : Raver, Dist. : Jalgaon
2. The Superintending Engineer,
Maharashtra State Electricity Distribution
Company Ltd., MIDC Area, Vidhyut Bhavan,
Ajantha Road, Jalgaon
3. The Maharashtra State Electricity Distribution
Company Ltd.,
Prakash - Gad, Plot No. 9,
Bandra (East), Anant Kanekar Marg, Mumbai,
Through its Executive Engineer (HR) .. Applicants

Versus

1. Prakash S/o Krishnarao Kulkarni,
Age : 64 years, Occu. : Retired,
R/o : Rameshwar Nagar, New Colony,
Block No. 6, Bhusaval,
Tal. : Bhusawal, Dist. : Jalgaon
2. The State of Maharashtra,
Through its Principal Secretary,
Energy Department, Mantralaya,
Mumbai – 400 032 .. Respondents

Shri A. S. Bajaj, Advocate for for Applicants.
Shri K. C. Sant, Advocate for the Respondent No. 1.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

RESERVED FOR JUDGMENT ON : 15/01/2016
JUDGMENT PRONOUNCED ON : 29/01/2016

JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. The original respondent Nos. 2 to 4 in writ petition No. 5468 of 2012 seek review of the order dated 23.09.2014. Vide said order we had allowed the writ petition thereby directing the respondent Nos. 2 to 4 therein to make payment towards the leave encashment.

2. Mr. Bajaj, the learned counsel for the Review Applicants submit that, the non applicant No. 1 / original writ petitioner was removed from the service by way of punishment with effect from 20th June, 2007, as such, is not entitled for benefit of leave encashment in view of the General Order No. 114 of the year, 1982. According to the learned counsel, in view of the said General Order which is adopted by the Board, the employee who has ceased to be in the service of the Board on account of resignation / dismissal or discharge as a measure of punishment shall not be eligible for the benefit of encashment of outstanding balance of leave pay at the time of such cessation of service. According to the learned counsel, the said General Order was by mistake not carried out in the Service Regulations prepared by the Board. The Maharashtra State Electricity Distribution Company Ltd. (M. S. E. D. C. L.) was formed in the year, 2005, on unbundling of M. S. E. B. M. S. E. D. C. L. adopted M. S. E. B.

Employees Service Regulations. There were number of correction slips / Administrative Circulars, issued by the erstwhile M. S. E. B. and later on by M. S. E. D. C. L. The corrections which were issued were not carried out in the book of Service Regulations published by the M. S. E. B. and the same mistake was also carried further in the M. S. E. D. C. L. Employees Service Regulations, 2005. On 10th October, 2002, Errata is also published thereby necessary mistakes which were appearing are pointed out. According to the learned counsel, when the original writ petitioner is removed from the service he is not entitled for benefit of leave encashment. Service Regulation No. 43 (iii) as corrected should be read as, that, if employee quits service on his own accord or is discharged as a punishment, he will not be entitled to any pay or allowances in lieu of leave not availed of. This aspect could not be pointed out to the Court while deciding the writ petition. As such, the order deserves to be reviewed.

3. Mr. Sant, the learned counsel for the original writ petitioner submits that, after necessary corrections M. S. E. D. C. L. Employees Service Regulations, 2005, is published. Service Regulation No. 40 and 43 unequivocally speaks about the grant of leave encashment even on account of termination of the

employee. The Court has rightly considered the said aspect.

4. The M. S. E. D. C. L. Employees Service Regulations, 2005, is provided by the learned counsel for the Review Applicants.

Service Regulations 40 and 43 (iii) reads as under -

“Regulation 40

An employee who has resigned or whose services have been terminated as a punishment shall not be eligible to enjoy any kind of leave beyond the effective date of termination or that of acceptance of the resignation.

Regulation 43 (iii)

If services of an employee are terminated for whatever reason before he has taken the entire leave to which he is eligible or having applied for and having not been granted, he will be eligible to payment of his pay and allowances in lieu of the leave not availed of.”

5. Reading both the Regulations it is clear that, the employee who has resigned or whose services have been terminated as a punishment is not allowed to enjoy any account of leave beyond the effective date of termination. So also, it provides that, if, service of the employee is terminated for what so ever reason he will be eligible for the payment of his pay and allowances in lieu of the leave not availed of. The Preface to the said Regulations states that, the updated M. S. E. B. Employees Service Regulations Volume was published on 02.12.2002, thereafter,

various correction slips were issued by the Board after 06.06.2005 up to 31.12.2008 M. S. E. D. C. L. has issued clarifications and Administrative Circulars from time to time and as such, the said correction is updated up to 31.12.2008. No Errata or correction slips are published thereafter or shown to have been published.

6. Even otherwise, the petitioner is not dismissed from service. Dismissal is a different punishment laid down under Service Regulations 1991 than removal. It is not shown that, the same would be applicable even to a person who is removed from service.

7. Even otherwise, the same was never a subject matter of context when the writ petition was decided. The learned counsel for the Review Applicants further submits that, the calculation with regard to benefit of leave encashment has not been properly made and there was a mistake. The said calculations were never a subject matter of consideration before this Court. The Review Applicants may submit the calculations. The Review Applicants may deposit the amount of leave encashment as per the said calculations and Rs. 4,00,000/- (Rs. Four Lacs Only) are already deposited. As per the calculations made by the Review

Applicants the original writ petitioner / present non applicant No. 1 is allowed to withdraw the same. If any shortfall remains the same shall be paid by the applicants and if the surplus is deposited the surplus amount if any is allowed to be withdrawn by the applicants.

8. If, the Service Regulations are amended naturally the employer and employee would be governed by the said Service Regulations that would be amended from time to time and in that case the present Judgment would not operate as a res judicata.

9. The review application is accordingly stands dismissed, however, with no orders as to costs.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

sam/Jan.16