<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>
<u>BENCH AT AURANGABAD</u>

<u>WRIT PETITION NO. 12433 OF 2015</u>

Govind s/o Pandurang Rathod,
Age : 59 years, Occu. Pensioner,
R/o Near Kalikadevi Temple,
Sadgurunagar, Latur, Taluka
and District Latur **PETITIONER**

VERSUS

1. The State of Maharashtra,
through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32

2. The Superintendent of Police,
Superintendent of Police Office,
Latur, Tq. & Dist. Latur **RESPONDENTS**

Mr. R.D. Biradar, Advocate for the Petitioner
Mr. S.D. Kaldate, A.G.P. for the respondents

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

DATE : 18th JULY, 2016

<u>PER COURT</u> :

Heard the learned counsel for the petitioner and the learned A.G.P. for the respondents/State. With their able assistance, we have perused the grounds taken in the petition, the annexures thereto and the judgment of the Hon'ble the Supreme Court of India in ***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and***

another, dated 14th August, 2013 delivered in Civil Appeal No. 6770 of 2013.

2. The learned counsel for the petitioner submits that the petitioner is entitled for pensionary benefits and also the leave encashment towards accumulated leave of 300 days. He invited our attention to the judgment of the Hon'ble Supreme Court of India in ***State of Jharkhand and others*** (supra) and in particular, paragraph No. 14 thereof and submits that it is the right of the employee to receive the pension and pensionary benefits and also the leave encashment under Article 300A of the Constitution of India. He submitted that even considering the facts in ***State of Jharkhand and others*** (supra), there were administrative instructions issued by the respondent-authorities to withhold the amount towards the leave encashment. However, the Hon'ble the Supreme Court quashed and set aside the said administrative instructions. Therefore, according to the learned counsel for the petitioner, the petitioner is entitled for the reliefs prayed in this petition.

3. On the other hand, the learned A.G.P., relying on the averments made in the affidavit-in-reply filed on behalf of respondent Nos. 1 and 2 and in particular Rule 68 (5) of the Maharashtra Civil Services (Leave) Rules, 1981, submits that the facts of the present case are distinguishable to that of ***State of Jharkhand and others*** (supra), since there is specific Rule, as aforesaid, so as to withhold the payment of leave encashment during the pendency of the departmental enquiry though the employee is retired during the pendency of the enquiry.

4. Upon hearing the learned counsel for the parties and upon careful perusal of the judgment in ***State of Jharkhand and others*** (supra), having explained the legal position, the Hon'ble the Supreme Court after considering the provisions of Rule 43 (a) and 43 (b) of the Bihar Pension Rules, recorded in para 4 of the judgment that there is no provision in the said Rules which enables the State to withhold the leave encashment. It appears that by issuing the administrative instructions, the leave encashment was not granted in favour of the petitioner therein. However, in the present case, as rightly contended by

the learned A.G.P., there is specific Rule which enables the State to withhold such payment of leave encashment. Sub-Rule (5) of Rule 68 of the Maharashtra Civil Services (Leave) Rules, 1981 reads as follows :

> **68. Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation.**
>
> (1) *****
> (2) *****
> (3) *****
> (4) *****
>
> (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 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.

5. During the course of the hearing, the learned counsel for the petitioner submitted that as a matter of fact, the order was issued by the Superintendent of Police, Latur on 18^{th} September, 2015 thereby sanctioning the amount towards leave encashment of 300 days to the petitioner. The learned counsel also submits that one

Gurunath Namdeo Chavan, Assistant Police Inspector, who was placed under suspension, was also granted payment of leave encashment during the pendency of departmental enquiry against him and there are other two employees, namely, Ramchandra Rambhau Dhole and Dilip Dagdu Sarvade, in whose favour the amount towards leave encashment was granted though the departmental enquiry was pending against them.

6. As regards the above submissions made on behalf of the petitioner, upon careful perusal of the letter written by the Incharge Superintendent of Police, Latur on 24th November, 2015, it is abundantly clear that the order dated 18th September, 2015, issued by the earlier Superintendent of Police, Latur was cancelled realising the mistake committed by the predecessor of the Incharge Superintendent of Police, Latur. In that view of the matter, merely because inadvertently the order was passed in favour of the petitioner or even for that matter, the other employees are granted payment of leave encashment contrary to the Rule, it would not make the petitioner entitled to receive the said benefits in view of the specific Rule in this respect.

7. There cannot be quarrel on the proposition that the retired employee is entitled for the pensionary benefits and to receive such benefits, which is recognized as a right by Article 300A of the Constitution of India. However, in the present case, there is specific Rule to withhold the payment of leave encashment during the pendency of the departmental enquiry. In that view of the matter, we are unable to persuade ourselves to grant any relief to the petitioner at this stage. Hence, the writ petition is dismissed. No costs.

[**SANGITRAO S. PATIL**]
JUDGE

[S.S. SHINDE]
JUDGE

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