IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1347 OF 2016

1. Ashok s/o Munjappa Potphale,
   Age : 60 years, Occu. Nil,
   R/o Arunodya, Plot No. 54,
   Shivnerinagar, Airport Road,
   Sangvi (Bk.), Dist. Nanded

2. Chaganrao s/o Gulabrao More,
   Age : 59 years, occu. Nil,
   R/o Aastavanayak Nagaar,
   House No. 63, Taroda Kurd,
   Nanded, District Nanded

3. Mallana s/o Mallana Gangaiwar,
   Age : 55 years, Occu. As above,
   R/o House No. 55, Shrisai Ragvendra
   Homes, Badangpeth, Hyderabad **PETITIONERS**

VERSUS

1. Chief Secretary,
   Union of India, Banking Division,
   New Delhi

2. The State of Maharashtra,
   through Chief Secretary,
   Mantralaya, Mumbai

3. The Chairman,
   Maharashtra Gramin Bank,
   Head Office, Plot No. 35,
   Sector G, Town Centre,
   CIDCO, Aurangabad

4. General Manager,
   Bank of Maharashtra,
   R.R.B. Cell, Lokmangal,
   Shivajinagar, Pune-5 **RESPONDENTS**

(Respondent Nos. 1 and 2 have been deleted as per Court's order dated 14th March, 2016)

Mr. S.K. Adkine, Advocate for the Petitioners
Mr. A.B. Girase, Government Pleader for the State
Mr. Pradeep Shahane, Advocate for respondent Nos.3 and 4

CORAM : T.V. NALAWADE AND SANGITRAO S. PATIL, JJ.

JUDGMENT RESERVED ON : 13th FEBRUARY, 2017
JUDGMENT PRONOUNCED ON : 17th FEBRUARY, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Rule, returnable forthwith. With the consent of the learned counsel for the contesting parties, heard finally.

2. Whether the petitioners, out of whom one i.e. petitioner No. 3 has been removed from service, while the remaining two have been compulsorily retired by way of punishment after holding disciplinary proceedings against them, are entitled to get encashment of their privilege leave, is the question for determination in this writ petition.

3. The petitioners were the employees of Maharashtra Gramin Bank, Aurangabad (“the Bank”, for

short). They were subjected to disciplinary proceedings on account of certain allegations made against them. They were found guilty of the charges levelled against them and resultantly, one of the petitioners was penalized with the removal from service, while the remaining two were compulsorily retired. The petitioners applied to respondent No. 3 – the President of the Bank for grant of privilege leave encashment that was standing to their credit. Their claims for leave encashment came to be turned down by respondent No. 3 on the ground that their services have come to an end by way of punishment i.e. termination/compulsory retirement and therefore, their right to claim leave encashment has been forfeited.

4. The learned counsel for the petitioners submits that the petitioners are entitled to be paid a sum equivalent to the emoluments for the period of privilege leave standing at their credit as per the proviso under Regulation 66 read with Regulation 61 (4) of the Maharashtra Gramin Bank (Officers and Employees) Service Regulations, 2010 (for short "the Regulations"). He submits that there is no provision in the said

Regulations to withhold or forfeit the claim of the employees of the Bank for leave encashment in case their services are terminated or they are compulsorily retired by way of punishment. He submits that the amount payable to the petitioners towards leave encashment is their property which cannot be taken away without due process of law. In support of his contention, he relied upon the judgment in the case of ***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another (2013) 12 S.C.C. 210***. He, therefore, submits that respondent Nos. 3 and 4 may be ordered to pay the amount of leave encashment to the petitioners with interest at the rate of 18% per annum.

5. Respondent Nos. 3 and 4 filed their reply and opposed the petition. The learned counsel for respondent Nos. 3 and 4, relying on the averments made in the said reply, submits that there were serious allegations against the petitioners. They were subjected to full-fledged departmental enquiry. They were found guilty of the charges levelled against them and in the result, petitioner No. 3 was removed from service, while petitioner Nos. 1 and 2 were compulsorily

retired by way of punishment. He submits that since the petitioners have been penalized for their misconduct, they are not entitled to claim leave encashment. The learned counsel relied on the decision in the case of ***Allahabad Bank Officers Association and another Vs. Allahabad Bank and others (C.A. No. 5291/1990)***, decided by the Hon'ble the Apex Court on 1st May, 1996. He supports the decision of respondent No. 3 of not extending the benefit of leave encashment to the petitioners and prays that the writ petition may be dismissed.

6. As per Regulation 61 (1), an officer or employee shall be eligible for privilege leave computed at one day for every 11 days of service on duty. Sub-regulation (4) of Regulation 61 mentions that privilege leave may be accumulated upto 31st December, 1989 for an aggregate period upto 180 days and from 1st January, 1990, it may be accumulated upto not more than 240 days. Proviso No. 2 under Regulation 67 contains that where a staff retires from the service of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated

subject to sub-regulation (4) of Regulation 61. These provisions make it clear that the petitioners were entitled to leave encashment upto a period of 240 days, provided it was accumulated in their respective accounts.

7. In paragraph 16 of the judgment in the case of ***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another*** (supra), cited by the learned counsel for the petitioners, it has been observed that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "Property". Then, after reproducing Article 300-A of the Constitution of India, wherein there is a mandate that no person shall be deprived of his property save by authority of law, the Hon'ble the Apex Court observed as under :-

> *"Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part*

> *of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

8. In the case at hand, there is absolutely no provision in the Regulations of the Bank whereunder the claim of the petitioners for leave encashment can be withheld on the ground that they have been penalised. If that be so, respondent No. 3 was not right in refusing the claim of the petitioners for the amount of leave of encashment as was admissible to them.

9. The decision in the case of ***Allahabad Bank Officers Association and another,*** cited by the learned counsel for respondent Nos. 3 and 4, relates to the effect of compulsory retirement of a Government servant, which could not be said to be a stigma attached to such employee. The said ruling has no relevance in the facts of the present case.

10. In the facts and circumstances of the case, discussed hereinabove, we are of the considered view that the petitioners are entitled to get the amount of privilege leave encashment from respondent Nos. 3 and 4

vide proviso under Regulation 67 subject to sub-regulation (4) of Regulation 61. Though the petitioners were entitled to get their privilege leave encashed, respondent No. 3 rejected their claim without any authority of law and deprived them of the benefit of their right to encash privilege leave. Consequently, respondent Nos. 3 and 4 would be liable to pay interest on the amounts payable to the petitioners on account of their respective privilege leave encashment from the respective dates of their termination/compulsory retirement from service till the date of actual payment. In our view, it would be just and proper to direct respondent Nos. 3 and 4 to pay interest at the rate of Rs.8% per annum on the amounts payable to the petitioners, as observed above.

11. In the result, we allow the Writ Petition and direct respondent Nos. 3 and 4 to pay the amounts of privilege leave encashment to the petitioners as per their entitlement considering the privilege leave standing to their credit. Respondent Nos. 3 and 4 are further directed to pay interest at the rate of 8% per annum on the amount of privilege leave encashment

payable to the petitioners, as directed above. Rule is made absolute in the above terms. The Writ Petition is disposed of. No costs.

[**SANGITRAO S. PATIL**] **JUDGE** **[T.V. NALAWADE]** **JUDGE**

npj/wp1347-2016