

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO. 27125 OF 2016

Pranali Sawant & Ors. ... Petitioners
V/s.
State Consumer Dispute
Redressal Commission & Ors. ... Respondents

Mr. Ajit J. Kenjale a/w Mr. Akshay U. Kamble for the Petitioners.
Mrs. M.S. Bane, 'B' Panel Counsel for Respondent Nos. 2 to 4.
Mr. Milind M. Karande, Assistant Section Officer, Food & Civil
Supply Department, present.

**CORAM : ANOOP V. MOHTA AND
RAVINDRA V. GHUGE, JJ.
DATE : 21st APRIL, 2017.**

FINAL ORDER :

1 We have heard the learned counsel for the petitioners and the learned A.G.P. on behalf of the Respondents. All the Petitioners were the retired Presidents of the District Consumer Redressal Forum under the Consumer Protection Act 1986. All are aggrieved by the refusal of the Respondents to grant them leave encashment.

2 The Petitioners have put forth the following two prayers under paragraph 21(a) and (b) :-

“a. This Hon'ble Court may be pleased to issue writ of mandamus and/or any other appropriate writ, thereby directing the Respondent Nos.1 to 4 to grant Leave Encashment to the Petitioners as per their entitlements;

b. This Hon'ble Court may be pleased to issue writ of mandamus and/or any other appropriate writ, thereby directing the Respondent No.1 to 4 to grant leave encashment together with interest @ 12% per anum from the date of completion of tenure till realisation of the amount within stipulated period.”

3 Having considered the submissions of the learned Advocates for the respective sides, we find that this issue is no longer *res-integra* as an identical issue has been decided by this Court by judgment dated 11.09.2015 in Writ Petition No.9868 of 2014 in the matter of *Shri Chandrakant B. Pandharpatte and others vs. State Consumer Dispute Redressal Commission and others*. By a detailed judgment, this Court has concluded that these retired Presidents are entitled to the leave encashment. For the sake of clarity, we are reproducing paragraph 8 of the said judgment dated 11.09.2015 as under :-

“8. As pointed out earlier, on completion of the first tenure of five years of the first Petitioner, under a Government Resolution dated 3rd May, 2008, the benefit of encashment of earned leave was granted by the State Government. Even to

one Shri R.T. Patil, who was also an exChairman, the said benefit was granted under the Government Resolution dated 15th October, 2007. In the affidavit-in-reply of Shri Uddhav Dattatraya Walunj, who is a Deputy Secretary of the concerned department, in paragraph 4, he has stated that it was a mistake of the Government. The stand taken by the Deputy Secretary cannot be accepted. He has not disclosed his authority to take such a stand that an earlier Government Decision was wrong. If it was a mistake of the Government, some higher officer who is empowered to issue the Government Resolution ought to have filed an affidavit. As the Petitioners at the relevant time possessed qualifications to become a District Judge, they were appointed as the Presidents of the District Fora. Once the State Government applies all the relevant Service Rules applicable to its employees to the Presidents of the District Fora, the benefit of leave encashment to the Petitioners cannot be denied. The decision of the State Government denying the benefit of leave encashment of the earned leave to the Petitioners is arbitrary and illegal. Therefore, the Petition must succeed and we pass the following order :-

ORDER

(i) We hold that the Petitioners are entitled to the benefit of leave encashment of the earned leave. Therefore, letter dated 11th June, 2014 has no legal effect;

(ii) We direct the State Government to release the benefit of leave encashment to the Petitioners within a period of three months from today. On failure to release the amounts within a period of three months from today, the same will carry interest @ 9% per annum from the date of filing of this Petition till the payment of requisite amounts;

(iii) The Petition is disposed of on above terms with no order as to costs.”

4 The learned counsel for the Petitioners has rightly contended that when identically placed seven litigants as like these Petitioners had approached this Court in Writ Petition No.9868 of 2014 and when the cause of action was adjudicated upon by upholding the rights of these Petitioners for leave encashment, the Respondents have no reason to exclude these Petitioners and deprive them of the said right when the issue of entitlement was already decided by this Court.

5 Though the learned A.G.P. has tried to support the refusal, we do not find the submissions acceptable. A communication dated 19.04.2017 is placed before us which is marked as Exh. “X” for identification. By the said communication, the concerned Department has informed the learned A.G.P. that the claim of these Petitioners is now being processed.

6 We are in agreement with the grievance voiced by the Petitioners that when the issue was already decided and put

to rest, the Respondents ought not to have compelled the Petitioners to approach this Court by filing this Petition and seek orders in favour of each of these Petitioners.

7 Considering the above, this Petition is partly allowed. We are granting three months time to the Respondents to pay the leave encashment to the Petitioners as per their entitlement in the light of the law laid down by this Court in the matter of *Shri Chandrakant B. Pandharpatte (supra)*. Insofar as interest is concerned, we are granting 6% interest to these Petitioners on the entire amounts of leave encashment from the date of the filing of this Petition which is 29.09.2016 keeping in view that once this Court had decided an identical issue, these Petitioners ought not to have been compelled to approach this Court. The Respondents shall, therefore, calculate the interest as directed above and pay the same along with the leave encashment amounts as directed.

(RAVINDRA V. GHUGE, J.)

(ANOOP V. MOHTA, J.)