

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.3954 OF 2001

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of mandamus declaring the letter No.17/Gratuity/2000-2001 issued by the respondent on 8.11.2000, whereunder payment of total privilege leave encashment amount claimed by the petitioner was refused, as illegal, arbitrary and contrary to the leave rules, and to set aside the same and to direct the respondent to forthwith pay the said amount to the petitioner.

2. The case of the petitioner is as follows:

Initially, he was appointed as Supervisor in the Land Mortgage Bank, Anantapur in the year 1958, and after completion of the probation, his services were regularized in that category and later, he got promotions as Grade II, Grade I Secretary and Branch Manager, and that in the year 1993 he was promoted as Assistant General Manager and he continued as such till his retirement on superannuation on 31.3.1998. Earlier, the Land Mortgage Bank and the District Co-operative Central Bank were functioning separately and in the year 1988, both these banks were merged and after amalgamation, the District Co-operative Central Bank alone continued and therefore, even though the petitioner was appointed in the erstwhile Land Mortgage Bank, after amalgamation he was absorbed into the District Co-operative Central Bank Services, and his services were utilized in various capacities. The respondent is bound to provide all the retirement benefits to the petitioner, and that as per the leave rules, the petitioner is entitled for privilege leave at 1/11<sup>th</sup> of his service on the date of application for leave. The respondent while calculating the amount payable to the petitioner towards the privilege leave (earned leave) had

taken into consideration the length of service he put in before claiming the encashment of leave by excluding 5 ½ months (170) days medical leave availed during the year 1996-97 and 1998. The respondent erroneously refused to take the medical leave period as in service for computation of the earned leave on the ground that the petitioner was not actually in service during that period. Since the respondent did not pay the actual amount due to the petitioner towards the privilege leave and the gratuity, the petitioner submitted number of representations. On the previous occasion, the petitioner filed W.P.No.10433 of 2000 and this Court directed the respondent to dispose of the representation of the petitioner. Then, the respondent through the impugned letter informed that it is not possible to pay the privilege leave salary claimed by the petitioner. Hence, the petitioner filed this writ petition.

3. Heard the learned Counsel for the petitioner as well as the learned Counsel appearing for the respondent.

4. Learned Counsel for the petitioner contended that Para 9(B) of the Leave Rules contemplates that the quantum of privilege leave is to be reckoned at 1/11<sup>th</sup> of service on the date of application for leave and the leave so reckoned and accumulated shall not exceed the limit of 180 days at any time, except in cases when leave applied for is refused on account of exigencies of service. He further contended that the respondent erroneously refused to take the medical leave period as in service for computation of the earned leave on the ground that the petitioner was not in service during the period availed as medical leave, and that even though an employee goes on medical leave at any rate it cannot be considered that he is not in service during the leave period he availed, and that an employee can be considered to be not in service only when the

relationship of master and servant severs, but the respondent had altogether taken a different yardstick insofar as the petitioner is concerned. He further contended that as per the relevant rules and service conditions that the period of medical leave cannot be treated as if the petitioner was absent from duties and therefore, the action of the respondent is illegal and arbitrary.

5. The learned Counsel appearing for the respondent submitted that as per the clarification given by the Executive Director, A.P. Co-operative Banks' Association, the period of medical leave/earned leave availed by an employee could be reckoned for the calculation of leave account and that the respondent has rightly refused the request of the petitioner for payment of total privilege leave encashment amount claimed by the petitioner.

6. From the material on record, it is obvious that earlier the petitioner filed W.P.No.10433 of 2000 as his representations for release of actual amount due to him towards the privilege leave and the gratuity, were not considered by the respondent. On the direction given by this Court, the respondent disposed of his representations. From the letter dated 17.7.2000, it is clear that the respondent paid the interest for the delay caused in payment of gratuity. There is no dispute as regards the payment of gratuity. Now, the question that remains to be considered is that whether the period availed by the petitioner could be reckoned for calculation of the leave account.

7. It is the case of the petitioner that the respondent while calculating the amount payable to him towards the privilege leave had taken into consideration the length of service he put in before claiming the encashment of earned leave by excluding the 5 ½ months medical leave he

availed. It is the case of the petitioner that the medical leave period availed by him can be reckoned as per the leave rules and it cannot be excluded, whereas it is the case of the respondent that as per the clarification given by the A.P. Co-operation Banks' Association, the petitioner is not entitled to leave salary for the period he availed medical leave.

8. From the clarification dated 28.9.2000, it is apparent that no leave shall be accrued for the period of absence from duty either on medical or earned leave, except on casual leave and therefore, the petitioner is not entitled to privilege leave salary as claimed by the petitioner. In view of the said clarification, this Court is of the view that petitioner is not entitled to make a claim to count the medical leave as earned leave. The writ petition is devoid of merits and is liable to be dismissed.

9. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

(ABHINAND KUMAR SHAVILI, J)

Dated: 27.11.2017  
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**THE HON'BLE Mr. ABHINAND KUMAR SHAVILI**



WRIT PETITION NO.3954 OF 2001

27<sup>th</sup> November, 2017

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