THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NOS.11523 AND 27438 OF 2017

COMMON ORDER

The petitioners in both the writ petitions worked as officers in the respondent – Andhra Bank in the cadre of Middle Management-3 and Junior Management Grade-1. They were imposed with punishment of compulsory retirement vide orders dated 13.1.2009 and 26.9.2006 respectively. As their request for grant of pension was rejected, they filed writ petitions in W.P.Nos.14847 and 14881 of 2014 and this court by orders dated 9.11.2016 allowed the writ petitions and directed the respondent – Bank to grant compulsory retirement pension to them. As they have privileged leave to their credit, made representations for encashment of the said leave. By the impugned proceedings dated 3.3.2017 and 6.7.2017, their claim was rejected on the ground that as they were made to retire compulsorily by way of punishment prior to 30.04.2015 i.e., the date on which the Indian Banking Association issued clarification for encashment of earned leave, they are not entitled for any leave encashment. Aggrieved by the same, the present writ petitions have been filed.

The learned counsel for the petitioners submit that this issue involved in the present writ petitions is squarely covered by the judgment of the Apex Court in ***STATE OF JHARKHAND v. JITENDRA KUMAR SRIVASTAVA***[1] and also by a Division Bench of this court in ***ANDHRA BANK v. YSHIVAJI***[2]. The learned counsel also relied on a judgment of a Division Bench of the High Court of Judicature at Bombay Bench at Aurangabad in ***ASHOK vs. CHIEF***

[1] (2013)12 SCC 210
[2] W.A.NO.502 OF 2016 Dated 12.08.2016

SECRETARY AND OTHERS[3]. The learned counsel submits that in view of the law laid down in the said judgments, the claim of the petitioners for encashment of earned leave, may be allowed.

The learned Standing Counsel for the respondent – Bank, while not disputing the proposition of law laid down in the judgments relied on by the learned counsel for the petitioners, opposed the grant of relief in writ petitions.

The only issue that arises for consideration in these writ petitions is whether the respondent – Andhra Bank is justified in denying the benefit of leave encashment to the petitioners, who suffered penalty of compulsory retirement?

The impugned order in both the writ petitions is on same lines. For better appreciation, the relevant portion of the impugned order dated 3.3.2017 in W.P.No.11523 of 2017, is extracted as under:

> "We refer to your letter dated 06.02.2017 requesting the Bank for payment of leave encashment on your exit. You have exited from Bank on 13.01.2009 by way of compulsory retirement.
>
> In this regard, we inform that as per IBA clarification to the Banks, leave encashment is being permitted to Officers who are compulsorily retired by way of punishment on or after 30.04.2015. As you are compulsorily retired prior to the said date, you are not eligible for any leave encashment.
>
> Hence, we decline sanction of leave encashment."

The only reason for declining the claim of the petitioners is that their compulsory retirement was prior to 30.04.2015, from which date the Indian Banks' Association guide lines were modified permitting the encashment of privilege leave by the compulsorily retired employees/officers.

---

[3] W.P.NO.1347OF 2016 dated 17.02.2017

In principal, the Apex Court in State of Jharkahdn case (1 surpa), while considering the question *"Whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/criminal proceedings"*, held as under:

16. . . 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."

A Division Bench of this court in Andhra Bank case (2 supra), considering the grievance of an employee of the present respondent – Bank, who suffered penalty of compulsory retirement, was denied encashment of privilege leave, held that when the service regulations do not provide for specific denial of encashment of privilege leave of an employee who suffered compulsory retirement, such a denial, is *ultra vires* the regulations. The facts of the said case reveal that compulsory retirement of the petitioner therein was prior to 30.4.2015 and before conclusion of the above judgment, the respondents brought to the notice of this Court, the minutes of the Managing Committee dated 30.04.2015 accepting the recommendations of the HR Committee and deciding to permit encashment of privilege leave by the compulsorily retired employees/officers. The Division Bench while holding that the denial of leave encashment benefit to compulsorily retired employees as *ultra vires* of the regulations, also took notice of the proceedings dated 30.040.2015, and allowed the claim of the claimants therein. The relevant excerpts are as under:

"12. It is trite that an employee earns Privilege Leave while in service. When the Service Regulation provides for encashment of Privilege Leave, a right in respect thereto comes to be vested in an employee. Unless the Regulations governing the service conditions of the employee either expressly or by necessary implication takes away such vested right, he cannot be denied such right. While the Service Regulations per se do not expressly deny this right to an employee who suffered punishment of compulsory retirement, the plain language of the Regulations discussed above also does not leave this Court to the conclusion that even by implication the employee is denied of this right.

16. . . In the absence of any such a dichotomy created by the Regulations, the appellants cannot on their own create a separate category of employees to deny them the benefit which they have earned. Such an action is not sanctioned by and therefore needs to be termed as *ultra vires* the Regulations.

17. Moreover, as rightly observed by the learned single Judge, the disciplinary authority has not forfeited the right of the respondent to encash the Privilege Leave. Thus, neither under the Regulations nor under the order of the disciplinary authority, the respondent is deprived of his right to encash the Privilege Leave.

18. Before concluding, here is an icing on the cake! Almost at the fag end of the hearing, learned counsel for the respondent placed before us letter dt.11.5.2015 of the Deputy Chief Executive of the Indian Banks' Association wherein it was stated that based on various representations received from the banks, the decisions of the Courts, that of the Government of India, and the HR Committee, the Managing Committee at its meeting held on 30.4.2015 accepted the recommendations of the HR Committee and decided to permit encashment of Privilege Leave by the compulsorily retired employees/officers. This decision of the Indian Banks' Association was approved by the Board of appellant No.1 bank in its Fourth Meeting held on 8.7.2015 at Hyderabad. When this material was placed before us, we have called upon appellant No.2 to explain their conduct in contesting the appeal, and he has sought to justify the same based on an earlier Circular dt.27.11.2000 as per which the compulsorily retired employees were held not entitled for leave encashment and that when the punishment of compulsory retirement was imposed on the respondent the said Circular was in force. Though in stricto sensu the benefit of the Board's Resolution dt.8.7.2015 cannot be made applicable to the respondent, what is pertinent is that Indian Banks' Association has yielded to the preponderance of the judicial opinion on the interpretation of Regulation 38 of the Service Regulations and veered round to the reality that the Regulations do not deny a compulsorily retired employee of his right to encash the Privilege Leave. Thus, our view derives strength from the aforementioned decision of the Indian Banks' Association and also the Resolution of the Board of Directors of appellant No.1.

19. For the aforementioned reasons, the writ appeal fails and the same is accordingly dismissed."

In another judgment, a Division Bench of High Court of Bombay, Aurangabad bench considering similar facts and circumstances and relying on the judgment of the Apex Court in Jitendra Kumar Srivastava's case (1 supra) held as under:

"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. Respondents 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."

In view of the above judgments, the impugned orders in both the writ petitions are set aside and the respondents are directed to process the representations of the petitioners for encashment of the privileged leave to their credit and making payments in accordance with law.

The writ petitions are accordingly allowed. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

A.RAJASHEKER REDDY,J

DATE:07—09—2017

AVS