

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

117 WRIT PETITION NO.12639 OF 2018

ARJUN CHAITRAM VISAVE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Vijay Y. Patil, Advocate for the Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.

Mr. Anil S. Bajaj, Advocate for Respondent Nos.3
and 4.

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**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 1st JULY, 2019.

PER COURT:-

1. Mr. Patil, learned counsel for the petitioner submits that the petitioner had made claim for leave encashment. The petitioner had voluntarily retired from service. However, respondents denied that the petitioner is entitled for benefit of leave encashment. According to the learned counsel, in view of the provisions of MS&EDCL Employees Service Regulations, 2005, the petitioner would be entitled for the benefit of leave encashment. The learned counsel relies on the judgment of the Division Bench of this Court in Writ Petition No.5468 of 2012 dated 23.09.2014.

2. Mr. Bajaj, learned counsel for the respondents submits that the petitioner has resigned from service, as such is not entitled for benefit of leave encashment. The service regulation no.43(iii) as quoted should be read as it is. If the employee quits services of his own accord or is discharged as punishment he will not be entitled to any pay or allowances in lieu of the leaves not availed of.

3. We have considered the submissions canvassed by the learned counsel for the respective parties.

4. The issue agitated by the learned counsel for the petitioner has been considered by us in Writ Petition No.5468 of 2012 decided under judgment on 23.09.2014 to which one of us (Justice S. V. Gangapurwala) was a party. The Review was also filed by the present respondent bearing Review Application Stamp No.31214 of 2014. The same was also dismissed. We had interpreted in the said judgment the Regulation No.43(iii), so also Regulation No.40 of the MSEDCL Employees Service Regulations, 2005.

5. We need not enter into the debate as to whether the petitioner has taken voluntary retirement or had resigned from service. We have held that, even if, service of employee is

terminated for what so ever reason he will be eligible for the payment of his pay and allowances in lieu of the leave not availed of.

6. Considering the above, the impugned order / letter is quashed and set aside. The respondents shall consider the application of the petitioner for grant of benefit of leave encashment and if the leave is to the credit of the petitioner shall give the said benefit. The said exercise shall be done within a period of four months.

7. Writ Petition is disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE