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

WRIT PETITION NO.6198 OF 2018

Sangli District Central Co-operative

Bank Ltd.

.. Petitioner

Vs.

Madhukar M. Patil

.. Respondent

Mr. Tushar Khairnar i/b. Umesh Mankapure for the petitioner.

None for the respondent.

CORAM : A.K. MENON, J.

DATED : 5TH FEBRUARY, 2019.

P.C. :

1. The petitioner bank challenges an order dated 17th November, 2017 passed by the Presiding Officer, Labour Court, Sangli on an application under Section 33 (C)(2) of the Industrial Disputes Act claiming payment of bonus and leave encashment. The case of the bank is that the respondent was not a workman and he was engaged in a supervisory capacity and therefore not entitled to payment of unused leave and bonus. Firstly, the aspect of whether he was a workman or not was framed as the main issue which has been answered in the affirmative i.e. in favour of the respondent. The second issue was whether the applicant/respondent was entitled to bonus and leave wages which has been answered partly in the affirmative while declining the claim for bonus. The third issue is whether he establishes

that demand is based on a pre-existing right and benefit as provided under Section 33(C)(2). This has been answered in the affirmative.

2. The learned counsel for the petitioner submitted that the order impugned in this petition is faulty inasmuch as it failed to take into consideration the fact that the respondent was not a workman and was not therefore entitled to claim the bonus. However, it is not possible to agree with the submission in view of the fact that the petitioners' contentions have been dealt with in the judgment in paragraph 7 wherein the finding of fact recorded is that the petitioner had not brought on record the duties of the respondent in order to enable the Court to consider whether the duties of the respondent were of a supervisory or a managerial nature especially when the respondent had deposed on oath that his task was only clerical. Despite this deposition on oath, the petitioner bank was found to have failed to elicit anything to the contrary in the cross examination that would help them to establish their case.
3. The only other ground for declining payment towards leave encashment is on the basis that the services of the respondent had been terminated and therefore he is not entitled to claim the monetary value or entitled to seek leave encashment or bonus. The impugned judgment records that leave encashment is a vested right and relied

upon the judgment of Supreme Court in *State of Jharkhand and others v/s. Jitendra Kumar Shrivastav (AIR 2013 SC 3383)* and to that extent directs the petitioner to pay a sum of Rs.1,16,958/- as against the amount claimed in a sum of Rs.1,75,437/-. The difference is the amount of bonus which the Court declined to grant to the respondent.

4. I am unable to find any reason to fault the impugned judgment which has taken into consideration all the contents of the petitioner bank before finding that the respondent was a workman and nothing has been shown that he performed supervisory or managerial tasks. On the aspect of bonus which has been rightly declined there is no occasion to find fault with the order. It merely directs payment of leave encashment as something which was already approved. In my view the fact that the finding of fact and the conclusion cannot be faulted. The petitioner is clearly liable to comply with the impugned order. In the circumstances, I pass the following order;

- (i) Writ petition is dismissed.
- (ii) There will be no orders as to costs.
- (iii) The Advocate for the petitioner is directed to provide the respondent a copy of this order.

(A.K.MENON,J.)