IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.17150 of 2017

Atmesh Kumar Roy S/o Gupteshwari Charan Sinha, Resident of Janakpur Police Colony, P.O.- Buniadganj, P.s.- Mufasil Town and District- Gaya.

... ... Petitioner

Versus

1. Madhya Bihar Gramin Bank, H.O. Mina Plaza, South of Museum, P.O.- G.P.O. P.S.- Kotwali, Town & District- Patna through the Chairman, Board of Directors-cum-Disciplinary Authority at present H.O. at Sri Vishnu Commercial Complex, New Bye Pass N.H. 30, Ashochak, P.O.- Khachuara,P.S.- Zeromile, District- Patna
2. The Chief Manager, Madhya Bihar Gramin Bank, H.O. Mina Plaza, South of Museum, P.O.- G.P.O. P.S.- Kotwali, Town & District- Patna at present H. O. at Sri Vishnu Commercial Complex, New Bye Pass N.H. 30, Ashochak, P.O.- Khachuara,P.S.- Zeromile, District- Patna

... ... Respondent/s

---

with

Civil Writ Jurisdiction Case No. 17256 of 2017

Ravindra Kishore Sinha S/o Late Mahendra Kishore Sinha, resident of Taj Colony, Baribagh, Panchayati Akhara Road, P.O.- G.P.O., P.S.- Kotwali, Town and District- Gaya.

... ... Petitioner

Versus

1. Madhya Bihar Gramin Bank, H.O. Mina Plaza, South of Museum, P.O.- G.P.O. P.S.- Kotwali, Town & District- Patna through the Chairman, Board of Directors-cum-Disciplinary Authority at present H.O. at Sri Vishnu Commercial Complex, New Bye Pass N.H. 30, Ashochak, P.O.- Khachuara,P.S.- Zeromile, District- Patna
2. The Chief Manager, Madhya Bihar Gramin Bank, H.O. Mina Plaza, South of Museum, P.O.- G.P.O. P.S.- Kotwali, Town & District- Patna at present H. O. at Sri Vishnu Commercial Complex, New Bye Pass N.H. 30, Ashochak, P.O.- Khachuara,P.S.- Zeromile, District- Patna

... ... Respondents

Appearance :
(In Civil Writ Jurisdiction Case No. 17150 of 2017)
For the Petitioner/s : Mr.Kripa Nand Gupta, Advocate
For the Respondent/s : Mr.Suresh Prasad Singh-1, Advcoate
(In Civil Writ Jurisdiction Case No. 17256 of 2017)
For the Petitioner/s : Mr.Dhananjay Kumar Tiwary, Advocate
For the Respondent/s : Mr.Suresh Prasad Singh No.-1, Advocate

---

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT
Date : 16-09-2020

These two writ applications have been heard together and are being disposed of by this common judgment.

The facts are not at all in dispute. The two writ petitioners came in the service of the Madhya Bihar Gramin Bank, while the petitioner in C.W.J.C. No. 17150 of 2017 joined as a Clerk at the Tekari Branch of the Bank and later on got promoted to the Officer Grade, the petitioner in C.W.J.C. No. 17256 of 2017 joined the service of the Bank as an Officer and served in different capacities in different branches of the Bank.

The petitioners were due to retire from service on 31.07.2013 and 31.03.2014 respectively. Few days prior to their due date of retirement from service they were served with a chargesheet. The petitioner in C.W.J.C. No. 17150 of 2017 was served with a chargesheet dated 18.07.2013 (Annexure ‘1’). He was called upon to submit his defence to the charges within five days from the date of receipt of the letter. The disciplinary authority invoked Regulations 45(3) and 45(4) of the Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations 2010 (hereinafter referred to as the ‘Regulation of 2010’). By virtue of exercise of power under the Regulation of 2010 the petitioner was deemed to be in service till completion of the disciplinary proceeding but during pendency of disciplinary proceeding he was not entitled to claim salary and other emoluments, the retiral benefits save and except his own contribution to the contributory provident fund could not be withdrawn.

Similarly, the petitioner in C.W.J.C. No. 17256 of 2017 was served with a chargesheet on 12.03.2014 (Annexure '1'). He was directed to submit his defence within seven days from the date of receipt of the letter. In his case as well the provision as contained in Regulation 45(3) and 45(4) of the Regulations of 2010 were invoked. After completion of inquiry the disciplinary authority imposed punishment of compulsory retirement as prescribed under Regulation 39(1)(ख)(iii) of the RegulationS 2010. In case of petitioner in C.W.J.C. No. 17150 of 2017 the order of punishment was issued on 02.02.2015 whereas the same order was passed in respect of petitioner in C.W.J.C. No. 17256 of 2017 on 24.01.2015.

The departmental appeals preferred by both the petitioners were dismissed. Thereafter they submitted their respective applications for payment of gratuity and other retiral dues which were not replied to. Both the petitioners approached the controlling authority under the Payment of Gratuity Act 1972 and on contest the controlling authority directed the respondent Bank to pay the entire gratuity amount with interest to the petitioners. The orders of the controlling authority were complied with. Before the controlling authority the respondent Bank had taken a plea that in view of the imposition of punishment of compulsory retirement the petitioners would not be entitled for gratuity but the said contention was rejected by the controlling authority. Since the petitioners have not been paid their leave encashment amount, they have moved this Court in the present writ applications.

Their common prayer is to issue a writ in the nature of writ of Mandamus directing the respondent Bank to pay the amount due to the petitioner(s) against the leave encashment upon their retirement from service with interest thereon.

It is the contention of learned counsel for the petitioners that in terms of the Service Regulations of 2010, compulsory retirement is one of the punishments prescribed under Regulation 39. A punishment of compulsory retirement could not, however, forfeit the past services rendered by the petitioners to the Bank. Learned counsel has placed before this Court Annexure ‘3’ enclosed with C.W.J.C. No. 17150 of 2017 which is HRD Circular No. 730 dated 11.12.2015 issued by the General Manager Punjab National Bank, Human Resources Development Division. No doubt the HRD Circular is in respect of the Officers of the Punjab National Bank which is the sponsoring Bank of the Madhya Bihar Gramin Bank but it clarifies a similar issue which had arisen in respect of the Officers of the Punjab National Bank. The circular states that “the matter regarding the encashment of privilege leave to employees who were imposed punishment of compulsory retirement between 27.11.2000 and 30.04.2015 was examined. It has now been decided to extend the benefit of encashment of privilege leave also to all employees who were imposed the punishment of compulsory retirement between 27.11.2000 and 30.04.2015......".

The common submission of learned counsel for the petitioners is that in similar circumstance one Shri Arvind Mohan an Officer of the Bank was compulsorily retired from service by way of punishment, he has been allowed all the retiral benefits including the encashment of privilege leave.

Learned counsel has then taken this Court through Regulation 61 of the Regulations 2010 which reads as under:-

"privilege leave may be accumulated after 31st December, 1989 for an aggregate period up to 280 days and from 1st January, 1990, the privilege leave may be accumulated upto not more than 240 days".

In course of submissions the respondent Bank came with a stand that in terms of Regulation 67 of the Regulations of 2010 all leave shall lapse on the cessation of the petitioner(s) in service of the Bank, hence he would not be entitled for privilege leave encashment.

Learned counsel for the petitioners has placed on record judicial pronouncements of the Hon'ble Punjab and Haryana High Court, Chandigarh in the case of **Umed Singh vs. Sarva Haryana Gramin Bank and another (**CWP No. 16233 of 2014); judgment of the Hon'ble Supreme Court in the case of **State of Jharkhand and Ors. Versus Jitendra Kumar Srivastava & Anr. (2013(3)PLJR SC 458)** and **Bank of Baroda versus S.K. Kool (D) through LRS**

and Anr. and has also relied upon a judgment of the Hon'ble Division Bank of this Court in the case of the **Indian Bank through CMD and Ors. Versus Kaushal Kishore Thakur** (LPA No. 580 of 2016). It is his categorical submission that Regulation 67 is being thoroughly misconstrued by the Bank in order to debar the petitioner(s) from getting their leave encashment benefits which they have earned by virtue of their hard work during their service time.

Learned counsel has submitted that in similar circumstance a contention with regard to Regulation 67 of the Haryana Gramin Bank (Officers and Employees) Service Regulations 2010 was rejected by Hon'ble Punjab and Haryana High Court (Annexure '4' to the writ application). It is pointed out that in the case of **S.K. Kool (D)** (supra) the Hon'ble Apex Court was considering a case of imposition of penalty of 'removal from service with superannuation benefits as would be due otherwise and without disqualification from future employment'.

The employer Bank had also declined to pay the leave encashment amount to the employee on the ground that 'where cessation of service takes place on account of employee's resignation or his dismissal/termination/compulsory retirement from Bank's service, all leaves to his credit lapse'. In the aforesaid context the dispute was referred to the Industrial Tribunal and the learned Industrial Tribunal passed an award in favour of the employee. The employee was held entitled for the superannuation benefits like pension, leave encashment, gratuity and commutation of pension subject to the adjustment of any amount paid under these heads. A challenge to the award of learned Tribunal failed in the Hon'ble High Court whereupon the matter went to the Hon'ble Supreme Court. It was contended before the Hon'ble Apex Court on behalf of the Bank that in terms of Regulation 22(1) of the Service Regulation of the Bank, removal of an employee from service of the Bank would entail forfeiture of the entire past service and consequently he shall not be entitled to pensionary benefits. The Hon'ble Apex Court found that there was a bipartite settlement and clause 6(b) thereof provided that an employee found guilty of gross misconduct may be removed from service with superannuation benefits i.e. pension, provident fund and gratuity.

The Hon'ble Apex Court rejected the contention of the employer by holding that the employees who are otherwise eligible for superannuation benefit but are removed from service in terms of clause 6(b) of the bipartite settlement shall be entitled to superannuation benefits. The Special Leave Petition of the employer Bank was, thus, dismissed with a direction to make payment of superannuation benefits to the employee with interest at the rate of 6 per cent per annum and a cost of Rs.50,000/-(fifty thousand).

Learned counsel for the respondent Bank has submitted that the mandate of Regulation 45(3) and 45(4) read with Regulation 67 does not permit the petitioners to get the benefit of privilege leave because the petitioners have been visited with a major punishment of 'compulsory retirement' in terms of the 2010 Regulations. It is his submission that the Regional Rural Bank is not a member of the Indian Bank Association (IBA) and is not bound to give effect to the provisions of the bipartite settlement. The Government of India is the only authority who may determine the terms and conditions of service of the employees of the Regional Rural Banks which includes pay and other financial compensations. It is submitted that the Regulations of 2010 has been amended by Regulations of 2018 published on 12.12.2018 with effect from 1st day of April 2018 but even under the 2018 Regulations, the relevant clause that in case of compulsory retirement employees/officers of Regional Rural Bank prior to the effective date will be entitled for encashment of privilege leave is still not included and unless it is so included in the Regulations no such benefit could be accorded to the petitioner.

CONSIDERATIONS

Having heard learned counsel for the parties, this Court finds that the issue which has fallen for consideration in the present case is as to whether the punishment by way of compulsory retirement imposed upon the petitioners in terms of Regulation 39(1)(b)(iii) of the Regulations of 2010 would entail forfeiture of their past services which would make them disentitled for the leave encashment benefits and/or by virtue of Regulation 67 of the Regulations 2010 all the privilege leave accumulated to the credit of the employee compulsorily retired from service would lapse. So far as Regulations 2010 is concerned, it is not the case of the employer Bank that the Service Regulations 2010 specifically provides for any debarment of an employee compulsorily retired from getting his leave encashment benefits. There is no provision saying that in case of punishment such as compulsory retirement the concerned employee shall forfeit his entire past service.

The whole case of the employer bank is that by virtue of Regulation 45(3) and 45(4) read with Regulation 67, the petitioners would not be entitled for the leave encashment benefits. These regulations are, thus, extracted hereunder for a ready reference:-

> "**45. Disciplinary proceedings after retirement.** - (3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.
> (4) The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).
>
> *Explanation:* For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority."
>
> **61. Privilege leave.** - (1) An officer or employee shall be eligible for privilege leave computed at one day for every 11 days of service on duty:
>
> Provided that no privilege leave shall be availed of

before the completion of 11 months of service on duty at the joining of his service.

(2) The period of privilege leave to which an officer or employee is entitled at any time shall be the period which he has earned less the period availed of.

(3) An officer or employee on privilege leave shall be entitled to full emoluments for the period of leave.

(4) Privilege leave may be accumulated up to 31st December, 1989 for an aggregate period upto 180 days and from 1st January 1990, the privilege leave may be accumulated upto not more than 240 days.

(5) An application for privilege leave shall be submitted by an officer or employee one month before the date from which such leave is required.

(6) The application which does not satisfy the requirement of sub-regulation (5) may be refused without assigning any reason:

Provided that if the Competent Authority is satisfied that such requirement was not possible, he may, at his discretion, waive the requirement.

62. Sick Leave and Additional sick leave. - (1) The sick leave or medical leave account of every officer or employee shall be credited with medical leave in advance, in two installments of fifteen days each on the first day of January and July of every calendar year.

(2) (a) The leave shall be credited to the said leave account at the rate of 5/2 days for each completed calendar month of service, which he is likely to render, in the sick leave or medical leave of the calendar year in which he is appointed,

(b) The credit for the sick leave or medical leave in which an officer or employee is due to retire or resign from the service shall be allowed at the rate of 5/2 days per completed calendar month up to the date of retirement or resignation,

(c) When an officer or employee is removed or dismissed from service or dies while in service, credit of sick leave or medical leave shall be allowed at the rate of 5/2 days per completed calendar month up to the end of the calendar month preceding the calendar month in which he is removed or dismissed from service or dies in service,

(d) Where a period of absence or suspension of an officer or employee has been treated as `dies non' in a sick leave or medical leave, the credit to be afforded to his sick leave or medical leave account at the commencement of next sick leave or medical leave shall be reduced by one eighteen of the period of `dies non' subject to a maximum of ten days:

Provided that sick leave or medical leave can be accumulated during his entire service subject to the following conditions, namely –

(i) An officer or employee shall be eligible to receive one month's full emoluments during the period of sick or medical leave:

Provided that if an officer or employee so desires, the Bank may permit him to draw full emoluments in respect of any portion of sick leave granted to him and the twice the amount of such period on full emoluments shall be debited against his sick or medical leave account for this purpose.

(ii) The sick or medical leave shall be granted on pro rata basis during the first year of service;

(iii) The sick or medical leave may be availed of only on production of medical certificate issued by a recognized medical practitioner acceptable to the Bank;

(iv) Any officer or employee desirous of resuming duty on expiry of sick or medical leave shall produce medical certificate issued by a recognized medical practitioner acceptable of the Bank stating that he is fit for duty.

Explanation: For the purposes of this regulation,-

1. Till the 1st day of September, 1987 an officer or employee is eligible for 20 days sick or medical leave for each completed year of service and such leave can be accumulated up to 180 days.

2. From the 1st day of September, 1987 till October 18, 2005, an officer or employee shall be eligible for 20 days of sick or medical leave for each completed year of service.

3. From October 19, 2005, an officer or employee shall be eligible for 30 days of sick or medical leave for each completed year of service subject to a maximum of 18 month during the entire service and such leave can be accumulated up to a period of 540 days during the entire service and may be availed of only on production of medical certificate issued by a

medical practitioner acceptable to the Bank or at the Bank's discretion nominated by it at its cost.

4. From October 19, 2005, where an officer or an employee who has completed 24 years of service shall be eligible for 30 days additional sick leave for each completed year of service subject to a maximum of 90 days.

63. Extraordinary Leave. - (1) Extraordinary leave may be granted to an officer or employee when no other leave is due to him and when having regard to his length of service, sick leave is not considered justified by the Competent Authority.

(2) The duration of extra ordinary leave to be granted to an officer or employee shall not exceed 90 days on any occasion and 360 days during the entire period of his service:

Provided that in the exceptional circumstances, the Chairman may, with the approval of Board, grant extraordinary leave upto a total period of 720 days to an officer or employee:

Provided further that in case of chronic sickness of an officer or employee, the Chairman may, with the approval of the Board grant extra ordinary leave in excess of 720 days to him and the Board, while according such approval, shall record the specific reasons therefore in writing.

(3) Save as otherwise provided in these regulations, the Competent Authority may grant extraordinary leave in combination with or in continuation of any other kind of leave admissible to the officer or employee.

(4) No pay and allowances are admissible during the period of extra ordinary leave and the period spent on such leave shall not count for increment:

Provided that where the Competent Authority is satisfied that sanction of extra ordinary leave was necessitated on account of illness or any other reason beyond the control of officer or employee, he may direct that the period of extraordinary leave would count for increment.

64. Special casual leave and special leave. - An officer or employee may be granted special casual leave and special leave for sports, donation of blood, family planning, defending another officer or employee in an enquiry, or for joining civil defence services or any other purposes as may be decided by the Board in accordance with the guidelines of the Central Government.

65. Maternity Leave. - (1) Leave upto a period of six months at a time may be granted by way of maternity leave including in respect of post natal period or at the time of miscarriage or abortion or medical termination of pregnancy, so however, that not more than 12 months of such leave shall be available during the entire period of service of a female officer or employee.

(2) Maternity leave may be combined with any other kind of leave but any leave applied for in continuation of the former may be granted only if the request is supported by certificate issued by a recognized medical practitioner acceptable to the Bank.

(3) The Maternity leave may also be granted once during the entire service period to a female officer or employee who has no living child, for legally adopting a child who is below 1 year of age till the child reaches the age of 1 year subject to a maximum period of 2 months subject to the following terms and conditions, namely, –

(a) leave shall be granted for adoption of only one child;

(b) the officer or employee shall adopt a child through the due process of law for the time being in force and produce the adoption deed to the Bank for sanctioning such leave.

66. Paternity Leave. - (1) The male officer or employee who having less than two surviving children, may be granted paternity leave for a period of 15 days, during the confinement of his wife for childbirth, i.e. up to 15 days before, or up to six months from the date of delivery of the child.

(2) During such period of 15 days, the male officer or employee shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(3) The paternity leave may be combined with leave of any other kind.

(4) The paternity leave shall not be debited against any other leave account of the male officer or employee.

(5) If paternity leave is not availed of within the period specified above such leave shall be treated as

> lapsed.
>
> **67. Lapse of leave. -** All leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank:
>
> Provided that where an officer or employee dies in service, there shall be payable to his legal representatives, sums which would have been payable to the officer or employee as if he has availed of the privilege leave that he had accumulated at the time of his death subject to sub-regulation (4) of regulation 61.
>
> Provided further that where a staff retires from the service of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to sub-regulation (4) of regulation 61:
>
> Provided also that in respect of the employee where his services are terminated owing to retrenchment, he shall be paid pay and allowances for the period of privilege leave at his credit.

A reading of the aforesaid provisions would make it clear that so far as Regulation 45(3) and 45(4) are concerned, those are the enabling provisions whereunder the employer may extend the date of retirement of an employee who has been chargesheeted prior to his retirement but whose disciplinary proceeding is not going to be concluded by the date of his retirement, the employer may for the purpose of those employees extend the period of retirement only for the purpose of conclusion of the disciplinary proceeding. It is for this reason that even though the date of retirement is extended by a legal fiction, the employee would not be entitled for any pay or emoluments for the extended period and during the continuation of the disciplinary proceeding until it’s conclusion the employee would not be entitled to get his post retiral dues save and except his own contribution to the provident fund. These two provisions have no application for deciding the issue raised in the present writ applications.

The relevant Regulation 67 on which learned counsel for the employer Bank has made all submissions simply states that all leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank. This provision no where states that all the accumulated leave to the credit of an employee prior to his death or cessation in service shall lapse. The three proviso to Regulation 67 carve out some exceptions and make the things clear. According to the first proviso where an officer or employee dies in service, there shall be payable to his legal representatives, sums which would have been payable to the officer or employee as if he has availed of privilege leave that he had accumulated at the time of his death subject to sub-Regulation (4) of Regulations 61. The first proviso, therefore, makes it clear that the death of an officer shall not result in any disadvantage to him in respect of the privilege leave that he had accumulated at the time of his death. Similarly, the second proviso states that where a staff retires from the service of the Bank he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to sub-regulation (4) of Regulation 61.

The second proviso is also very clear as it confers a positive right on the staff who retires from service of the Bank to receive the emoluments for the period of privilege leave that he had accumulated subject of course to sub-regulation (4) of Regulation 61. The word ‘retires’ nowhere distinguishes between a normal retirement and a case of ‘compulsory retirement’. Had the intention of the rule makers been to debar an employee like the present petitioners who have been made to compulsorily retire from service, the rule maker would have definitely made it clear that the word ‘retires’ should be save and except those who retired by way of ‘compulsory retirement’. In fact in absence of there being any such exception in the second proviso it is not possible for this Court to accept the submission of the employer Bank that an employee like the present petitioners who have been made to compulsorily retire from the service would not be entitled to get the benefits of privilege leave which they have accumulated in accordance with Rules. Any such reading of the second proviso to Regulation 67 would amount to reading something in between the lines which is not there.

Here, it is also to be kept in mind that in fact both the petitioner(s) continued in service till the date of their superannuation and the imposition of punishment of compulsory retirement had virtually not curtailed their service period.

The third proviso to Regulation 67 states that in respect of the employees where their services are terminated owing to retrenchment, they shall be paid pay and allowances for the period of privilege leave at their credit. The petitioners are not concerned with the third proviso to Regulation 67 in the present case.

In fact, it is also the case of the employer Bank that because the petitioners were made to compulsorily retire from service, the employer took a stand that they would not be entitled for gratuity but their plea did not stand the test of law and in terms of Regulation 72 of the Regulations 2010 these petitioners were found eligible for gratuity on their retirement. The employer Bank has already paid the gratuity amount to the petitioners.

In the present case this Court need not go into the issue of Bipartite Settlement which was the subject matter for consideration in the case of **S.K. Kool(D)**(supra). In the said case the Hon'ble Apex Court had to go through the Bipartite Settlement particularly clause 6(b) thereof because under Article 22 of the Regulations 1995 of the Bank 'removal' from service was inviting forfeiture of the past service, therefore, the contention of the Bank in the said case was that Mr. **S.K. Kool (D)** having been removed from service by way of punishment, he would forfeit his past service but then the Hon'ble Apex Court found that removal from service with superannuation benefits had been agreed on terms of bipartite settlement and **Mr. S.K. Kool** was awarded the punishment of removal from service with superannuation benefits, therefore the employer Bank was not correct in contending that he would forfeit all his past services by virtue of Article 22 of the Regulations of 1995.

In the present case these petitioners are not standing in the category of those employees who have either been terminated, dismissed or removed from service and as stated above no provision has been brought to the notice of this Court by learned counsel for the Bank under the Service Regulations 2010 to show that in case of 'compulsory retirement' the employee would forfeit his entire past service. This Court has already examined the second proviso to Regulation 67 which is also not distinguishing the case of a compulsorily retired employee.

In the case of **Umed Singh** (supra) the Hon'ble Punjab and Haryana High Court was considering an identical question. There also Regulation 67 of the Haryana Gramin Bank (Officers and Employees) Service Regulation 2010 was provided as follows:-

> "67. Lapse of Leave.- All leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank:
>
> - Provided that where an officer or employee dies in service, there shall be payable to his legal representatives, sums which would have been payable to the officer or employee as if he has availed of the privilege leave that he had accumulated at the time of his death subject to sub-regulation (4) of regulation 61:
>
> - Provided further that where a staff retired from the service of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to sub regulation (4) of regulation 61:
>
> - Provided also that in respect to the employee where his services are terminated owing to retrenchment, he shall be paid pay and allowances for the period of privilege leave at his credit."

An identical submission was made on behalf of the respondent Bank which were dealt with in the following terms:-

> "(10) Respondent rejected claim of the petitioner for grant of leave encashment on the sole contention that

> Regulation 67 of the Haryana Gramin Bank (Officers and Employees) Service Regulations, 2010, prohibits for grant of leave encashment to such employees who have been retired compulsorily as a measure of penalty and held that petitioner is not entitled for leave encashment. Perusal of Regulation 67 shows that there is no bar for denial of leave encashment benefit to those employees/officers who were retired compulsorily as a measure of penalty. Therefore, denial of leave encashment benefit with reference to Regulation 67 is rejected. Reliance on Regulation 45 (4) read with explanation of Haryana Gramin Bank (Officers and Employees) Service Regulations, 2010, do not assist the contention of the respondent to deny leave encashment benefit to the petitioner for the reasons that the said clause has to be taken note of by the competent authority where an officer/employee was subjected to disciplinary proceedings and he attained the age of superannuation and retired from service during pendency of the disciplinary proceedings. In the present case, the disciplinary proceedings ended in imposing compulsory retirement as a measure of penalty. Therefore, the aforesaid regulation is not relevant for the purpose of denial of leave encashment benefit where the disciplinary proceedings is concluded.
>
> (11) In the absence of specific provision that if an employee/officer is retired compulsorily as a measure of penalty, in such cases, employee/officer is not entitled to leave encashment, the benefit of leave encashment cannot be denied to the employee/officer. For all the aforesaid reasons, the impugned communication dated 11.7.2013 (Annexure P-2) issued by the Regional Manager of the respondent – bank, is set aside.
>
> (12) The respondents are directed to disburse leave encashment, which is due to the petitioner alongwith interest @ 9% per annum, within a period of four months from today."

The case before the Hon'ble Division Bench in LPA No. 580 of 2016 had arisen out in respect of an employee of the Indian Bank but there also by virtue of the Regulation '38' of the Indian Bank (Officers) Service Regulations 1979 the Bank took a plea that the employee would not be entitled for leave encashment benefit because he was inflicted with the punishment of compulsory retirement which would amount to termination of his service. The Hon'ble Division Bench of this Court rejected the said contention. Regulation '38' of the Indian Bank Service Regulations has been quoted by the Hon'ble Division Bench and the same is being extracted hereunder for a ready reference:-

> "**38. Lapse of Leave**
>
> Save as provided below, all leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or terminate: Provided that where an officer retires from the Bank's service, he shall be eligible to paid a sum equivalent to the emoluments of any period, not exceeding 240 days of Privilege Leave that he had accumulated.
>
> Provided further that where an officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period not exceeding 240 days of Privilege Leave to his credit as on the date of his death.
>
> Provided also that where an officer resigns from service on or after 1stApril 2001after giving due notice as in sub-regulation (2) of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of Privilege Leave to the extent of half of such leave to his credit on the date of cession of service, subject to maximum of 120 days."

It may be seen that under Regulation '38' also the first proviso states that where an officer retires from the Bank service, he shall be eligible to be paid a sum equivalent to emoluments of any period, not exceeding 240 days of privilege leave that he had accumulated. Here also the word 'retires' was sought to be read as excluding a case of compulsory retirement but the said interpretation was not accepted by the Hon'ble Division Bench. The Hon'ble Division Bench referred the Full Bench judgment of the Hon'ble

Punjab and Haryana High Court rendered in **UCO Bank and Ors vs. Anju Mathur [(2013)1 Law Herald 849/(2013)0 Supreme (P&H) 260]**. For brevity sake, this Court is not reproducing the same. The Hon'ble Full Bench of Punjab and Haryana High Court had taken a view that the cases where retirement comes by way of penalty of compulsory retirement are not excluded from Regulation '38'.

The Hon'ble Division Bench of this Court has also referred a Division Bench judgment of the Hon'ble Delhi High in **LPA No. 693 of 2013 (Deepak Sapra vs. Punjab National Bank)** wherein a similar view has been taken with respect to Regulation '38' of the Service Regulation.

This Court is conscious of the fact that Regulation '38' which has been discussed at length by the Hon'ble Division Bench of this Court in LPA No. 580 of 2016 is in respect of the employees of the Indian Bank, still this Court finds that what has really been considered by the Hon'ble Division Bench is as to whether the word 'retires' within the meaning of Regulation 38 of the Service Regulation of the Indian Bank would exclude a case of compulsory retirement. Similar issue had fallen for consideration before the Hon'ble Division Bench, though, Regulation may be different but the reasoning and rational which are flowing from the judgment of the Hon'ble Division Bench of this Court would definitely guide the interpretation of Regulation 67 of Service Regulations 2010 in the present case as well.

In view of the discussions made hereinabove, this Court is of the considered opinion that the petitioners in both the writ applications are able to demonstrate that petitioners would be entitled for the benefit of privilege leave accumulated to their credit subject to sub-Regulation (4) of Regulation 61 of the Service Regulations 2010.

This Court need not go into much discussions on the various judicial pronouncements of the Hon'ble Apex Court in which it has been held that the payment of post retiral dues are not a bounty or charity to the employees. These benefits are the properties of the employee(s) and in this connection suffice is to take note of the Hon'ble Supreme Court judgment in the case of **D.S. Nakara and Ors. Vs. Union of India** reported in **AIR 1983 SC 130**, **Madhaorao Phalke vs. State of Madhya Bharat** reported in **AIR 1961 SC 298**, State of **Madhya Pradesh vs. Ranojirao and Anr.** reported in **AIR 1968 SC 1053** and **Deokinandan Prasad vs. State of Bihar & Ors.** reported in **AIR 1961 SC 1409.**

In result, both the writ applications are allowed. The respondent Bank and its authorities are directed to pay the leave encashment amount to the petitioner(s) in both the writ applications as admissible to them with interest at the rate of '6' per cent per annum from the date beginning three months after the passing of final order of punishment in the disciplinary proceeding against the petitioners till the date of payment. The respondent Bank shall also pay a cost of Rs.10,000/- to each of the petitioners as litigation cost.

The entire payments shall be made within 30 days from the date of receipt/production of a copy of this judgment.

(Rajeev Ranjan Prasad, J)

avin/-sushma

AFR/	AFR
CAV DATE	10.09.2020
Uploading Date	18.09.2020
Transmission Date	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.