

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 304 OF 2018

Diwakar S/o Madhukar Malkapure
..VS..

Maharashtra State Road Transport Corporation, Division Officer, Wardha

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.A. Nerkar, Advocate for petitioner.
Mr. V.H. Kedar, Advocate for respondent.

CORAM : SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED : 10.10.2022

Heard.

2. We find that the demand of grant of benefit of leave encashment was not made by the petitioner and consequently, there is no formal decision taken on this aspect of the matter by the employer of the petitioner i.e. the respondent. This is the reason why the order passed on 27.12.2016 by Industrial Court, Wardha under Section 33-C(2) refuses to issue any direction for payment of amount of leave encashment. The reason recorded in this order is that there is no adjudication made by any of the authorities regarding entitlement of the petitioner to receive the amount of Rs.1,86,357/- by way of his right of leave encashment. In fact, according to the learned counsel for the petitioner, this finding recorded by the

Industrial Court is correct which is - there has been no adjudication whatsoever made by any of the authorities much less the employer of the petitioner regarding entitlement of the petitioner to receive benefit of leave encashment. If this is so, entitlement of the petitioner, if any, and the amount to which the petitioner would be entitled, if any, are the issues which would have to be decided. But, there can be no decision, if there is no demand made to the employer by the employee. Here, the employee i.e. petitioner has not made any demand to the respondent in this regard.

3. In such circumstances, we are of the view that it is better that the petitioner makes an application to the respondent seeking grant of benefit of leave encashment to him as per his right and entitlement.

4. The learned counsel for the petitioner, on instructions, makes a submission that the petitioner would make a such representation to the respondent.

5. Considering the readiness shown by the petitioner to make a representation, we grant liberty to the petitioner to make a representation in the matter within a period of two weeks from the date of the order.

6. We direct that if any such representation is received by the respondent, the same shall be considered and decided by it in accordance with law, as early as

possible and preferably within a period of eight weeks from the date of receipt of the representation. Needless to say, while deciding this representation, the respondent shall bear in mind the findings recorded by the Industrial Court Maharashtra, (Nagpur Bench) Nagpur in Complaint (ULPN) No. 262 of 2006 dated 06.09.2011, in particular the findings relating to the entitlement of a disable person to be absorbed in an alternate employment in view of the benchmark disability suffered by him and his entitlement to get the wages of the post held by him till he attained the age of superannuation.

7. The Writ Petition is disposed of in above terms. No costs.

JUDGE

JUDGE

Kirtak