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W.P. No. 13717 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No. 13717 of 2020

&

W.M.P. Nos. 17058 & 17060 of 2020

A. Thennarasu

..Petitioner

Vs.

1. The General Manager (Now Abolished),
UCO Bank, Chennai – 600 001.

2. The Deputy General Manager/Zonal
Head,
UCO Bank, Zonal Office,
No.328, 2nd Floor,
Thambu Street, Chennai – 600 001.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for an issue of a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned order passed by the 2nd respondent vide his proceeding in Ref.No. HRM/GEN/3060/2019-20 dated 07.01.2020 and



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quash the same as illegal, arbitrary, unreasonable, being violative of rules and principles of natural justice and thereby direct the respondents to disburse the earned leave encashment for 330 days (240 +90) days to the petitioner with interest at the rate of 18percentage per annum from the date of dismissal from service on 18.10.2016.

For Petitioner :: Mr.A.R. Suresh

For Respondents :: Mr.Srinath Sridevan

ORDER

The petitioner has challenged the rejection of his request seeking encashment of Earned Leave under the impugned order dated 07.01.2020 passed by the 2nd respondent.

2. The following facts are not in dispute:

(a) The petitioner was dismissed from the service of the respondent Bank pursuant to disciplinary proceedings initiated against him. The petitioner had also contested the disciplinary proceedings and only thereafter, final orders were passed dismissing him from service.



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(b) The petitioner was working as a Senior Manager in the respondent Bank when he was dismissed from service. The petitioner was proceeded with, for charges of misappropriation and disciplinary proceedings were initiated, which ultimately resulted in the order of dismissal being passed against the petitioner.

(c) The petitioner challenged the dismissal order by filing a writ petition in W.P. No. 21317 of 2017. No interim order was granted in the said writ petition. It is also stated in the affidavit filed in support of this writ petition that instructions were given by the petitioner to his counsel to withdraw the W.P. No. 21317 of 2017 to enable the petitioner to file a review petition before the Disciplinary Authority.

(d) The Criminal Court (Chief Judicial Magistrate, Pondicherry) has also convicted the petitioner for the offences under Sections 419, 420, 465, 468 & 471 IPC as per judgment dated 31.03.2022. The petitioner has filed an appeal in Criminal Appeal No. 15 of 2022 before the District and Sessions Court, Pondicherry and suspension of sentence has been granted.



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3. In the backdrop of the aforestated undisputed facts, this Court has to examine whether the petitioner is entitled for encashment of his Earned Leave or not.

4. In support of the petitioner's case that he is entitled to encashment of Earned Leave, learned counsel for the petitioner has relied upon the following judgments:

(a) A Division Bench judgment of Madras High Court in the case of *State of Tamil Nadu Vs. V.Mahalingam* reported in *2020 (1) CWC 43*.

(b) An unreported judgment of Single Bench of Madras High Court dated 17.09.2014 passed in W.P. No. 7986 of 2013 in the case of *V. Sundaresan Vs. The Joint Registrar of Co-operative Societies and Another*.

(c) A Single Bench judgment of Madras High Court in the case of *T. Veeravinothan Vs. Registrar of Co-operative Societies and Others* reported in *2016 -I-LLJ-730 (Mad)*.

Referring to the aforesaid judgments, learned counsel for the



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petitioner would submit that as held in the aforecited decisions, it is clear that if an employee has chosen to accumulate his Earned Leave to his credit, the encashment of the same cannot be deprived on his dismissal, since the Earned Leave to his credit is nothing but his property.

5. Per contra, Mr.Srinath Sridevan, learned counsel for the respondent Bank would submit that the judgments relied upon by the learned counsel for the petitioner has no applicability to the facts of the instant case. The judgments relied upon by the learned counsel for the petitioner pertain to Government Servants, whereas the petitioner, who is an employee of the respondent Bank is governed by UCO Bank Officer Employees' (Discipline & Appeal) Regulations, 1976. He would also submit that the charges levelled against the petitioner which have been proved in the disciplinary proceedings are serious in nature. The petitioner has also misappropriated money running to several lakhs by creating fraudulent mortgages when he was the Senior Manager of the respondent Bank. He also drew the attention of this Court to the judgment of the Division Bench of this Court dated 27.01.2015 in the case of ***D. Jagadeesan V. Bank of***



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Baroda and Others reported in **MANU/TN/0118/2015** and would submit that in identical circumstances involving a Nationalised Bank, after giving due consideration to Regulation 4 of the said Regulations 1976, which is relied upon by the respondent Bank, the Hon'ble Division Bench has held that a Bank employee is not entitled for leave encashment on account of his termination from service pursuant to initiation of disciplinary proceedings.

6. Heard the learned counsels on either side.

7. Admittedly, the petitioner is not a Government Servant. He is an employee of the respondent Bank, which is a Nationalised Bank. He was the Senior Manager when the alleged incidents of misappropriation took place, which form the basis for the charges framed against him by the respondent Bank. Disciplinary proceedings were initiated by the respondent Bank against the petitioner in terms of UCO Bank Officer Employees' (Discipline & Appeal) Regulations, 1976. The petitioner was also aware of the allegations levelled against him. He had also participated in the disciplinary proceedings, which were initiated pursuant to the said



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allegations. Admittedly, the charges framed against the petitioner are serious in nature and they pertain to misappropriation of funds while he was in service as a Senior Manager. According to the respondent Bank, the petitioner had created fraudulent mortgages and had misappropriated funds running to several lakhs belonging to the respondent Bank. The charges framed against the petitioner were also found to be proved in the disciplinary proceedings, consequent to which he was also dismissed from service. Though a writ petition has been filed challenging the dismissal order, no interim stay of punishment was granted. In fact, as seen from the affidavit filed in support of this writ petition, instructions have been given by the petitioner to withdraw the said writ petition and in accordance with the instructions, the writ petition has also been withdrawn. Admittedly, the review petition filed before the Disiplinary Authority by the petitioner seeking to review his dismissal order was also dismissed on 29.05.2020.

8. Further, as could be seen from the affidavit filed in support of this writ peititon, it is also not known as to whether the order dismissing the review petition has been challenged before any Court of Law. Learned



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counsel for the petitioner is also not aware of the same. Therefore, on a *prima facie* consideration, it can be presumed that the order of the Disciplinary Authority has attained finality. When disciplinary proceedings has been initiated against the petitioner only in accordance with UCO Bank Officer Employees' (Discipline & Appeal) Regulations, 1976, the petitioner is bound by the same. He cannot rely upon judgments which pertain to Government Servants when the respondent Bank is having its own service regulations. Regulation 4 of the said Regulations 1976 empowers the Disciplinary Authority of the respondent Bank to impose minor and major penalties. In the case on hand, the major penalty of dismissal from service has been imposed as per Regulation 4(j) of the said regulations. The very same Regulation 4 was the subject matter of consideration before the Division Bench of this Court in the case of **D. Jagadeesan (MHC/74/0118/2015)** (*mentioned supra*) relied upon by the learned counsel for the respondent Bank wherein it was held that eventhough there is no express provision in Service Regulations qua grant of Privilege Leave in respect of a compulsorily retired person, the respondents are empowered to refuse encashment of leave, the benefit of Privilege Leave, pay and



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allowances for 6 months and also the relief of treating the suspension period as duty period. When a major penalty has been imposed on the petitioner on the culmination of the Disciplinary proceedings, that too, when the Criminal Court has also convicted the petitioner and sentenced him to 2 years rigorous imprisonment, this Court is of the considered view that in view of the same, the respondents have rightly refused to grant permission to the petitioner to encash the Earned Leave by the impugned order as per the respondent Bank's regulations. The judgments relied upon by the learned counsel for the petitioner have no applicability to the facts of the instant case as those judgments deal with Government Servants and do not deal with cases where separate Service Regulations are available for the respondent Bank.

9. For the foregoing reasons, this Court does not find any merit in the writ petition and the same is dismissed. No costs. Connected W.M.Ps are closed.

24.11.2022

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ABDUL QUDDHOSE,J.

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To

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UCO Bank, Chennai – 600 001.
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