BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

Orders reserved on 18.07.2022	Orders pronounced on 27.07.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.15990 of 2012

P.Vishvanathan ... Petitioner

Vs

The Chairman,
Tamil Nadu Grama Bank,
Head Office,
No.6, Yercaud Road,
Hasthampatty,
Salem – 636 007. ... Respondent

(Respondent cause-title amended vide order dated 08.02.2022 in W.M.P(MD)No.12785 of 2021)

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in PAD/162/2012-13, dated 19.10.2012 issued by the respondent herein, quash the same and consequently direct the respondent to settle the privilege leave encashment standing to the credit of the petitioner with interest at 12% per annum.

For Petitioner : Ms.D.Geetha

For Respondent : Mr.M.P.Senthil
for Mr.N.G.R.Prasad

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the respondent in PAD/162/2012-13, dated 19.10.2012 and consequently direct the respondent to settle the privilege leave encashment standing to the credit of the petitioner with interest at 12% per annum.

2. Learned counsel appearing for the petitioner submitted that the petitioner joined in the service under the respondent in Clerical Grade on 07.01.1981. He was promoted to the post of Officer in April, 2000 and then as Officer Scale-II in the year 2008. He resigned his service after giving due notice to the respondent and was relieved by the respondent on 01.09.2012. On the date of relieving, he had completed 31 years and 8 months of service. His last pay drawn was Rs.50,549/-. As per the Rules applicable, he is entitled to encash privilege leave standing to the credit to a maximum of 240 days. However, the respondent failed to settle his privilege leave credit at the time of settling his terminal benefits. Hence, the petitioner sent a representation to the respondent, dated 15.10.2012 with regard to privilege leave encashment. However, he received a reply from the respondent,

dated 19.10.2012 stating that encashment of privilege leave is applicable only to the staff, who has retired from service or to the legal heirs of the employee in the event of death of the employee while in service. Therefore, this Writ Petition is filed.

3. Learned counsel appearing for the respondent submitted that the petitioner resigned his job. Rule 67 of the Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010, stipulates 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. It also provides that if an officer or employee dies in service, 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 will be paid to his legal representatives. Similarly when the staff retires from service, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to Regulation 61(4). As per Regulation 61(4) of the Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010, privilege leave may be accumulated upto 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. There is no provision

made for encashment of privilege leave by an officer or employee who resigned the job. Thus, learned counsel appearing for the respondent submitted that the petitioner is not entitled to claim privilege leave encashment.

4. In reply, learned counsel appearing for the petitioner submitted that Regulation 78 of Reserve Bank of India (Staff) Regulations, 1948, provides encashment of ordinary leave at his/her credit as on the date of resignation, subject to a maximum of five months ordinary leave. Regulation 38 of Indian Bank (Officers') Service Regulations, 1979, has also similar provisions. Learned counsel appearing for the petitioner pressed into service the order of the ***Patna High Court in Civil Writ Jurisdiction Case No. 12921 of 2019, dated 05.10.2020 (Shrinath Upadhyay Vs. Union of India)***, for the proposition that even an employee, who was compulsorily retired was permitted to encash privilege leave accumulated to his credit.

5. Relying on these provisions and order of the ***Patna High Court in Civil Writ Jurisdiction Case No.12921 of 2019, dated 05.10.2020 (Shrinath Upadhyay Vs. Union of India)***,

learned counsel appearing for the petitioner submitted that though there is no specific regulation in Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010, this Court in exercise of power under Article 226 of the Constitution of India can order encashment of privilege leave benefit available to the credit of the petitioner's account on the date of his resignation.

6. In response, learned counsel appearing for the respondent relied on the Judgment reported in ***(2010) 2 LLJ 66 (K.G.Krishnan Vs. Indian Overseas Bank)*** for the proposition that an employee's resignation from employment cannot be treated on par with employee's retirement from service. In the case beforehand, the petitioner resigned from his post and therefore, he reiterated that the petitioner is not entitled to encash privilege leave.

7. Considered the rival submissions and perused the records.

8. On considering the submissions made by learned counsel for the parties and records produced, it is seen that the petitioner sent a letter, dated 01.06.2012 stating that he resigns his

post due to health problems. He had again sent a letter dated 04.06.2012 reiterating his resignation with a request to deduct the dues payable by the petitioner. On 01.09.2012, the respondent sent a communication to the petitioner permitting him to relieve from the Bank's service on 01.09.2012 on his resignation. His gratuity amount of Rs.9,04,057/- was settled to him. The petitioner sent a representation, dated 15.10.2012 seeking encashment of privilege leave. The respondent sent a letter, dated 19.10.2012 stating that encashment of privilege leave is applicable only to the staffs, who retired from service on attaining the age of superannuation or to the legal heirs of the employees in the event of death of the employee while in service.

9. Admittedly Regulation 67 of Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010, does not provide for encashment of privilege leave to the employee, who resigned from the posts he/she held. It is relevant to extract the relevant Regulation 67 of Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010 and it reads 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 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."

10. Learned counsel appearing for the petitioner relied on the regulation of Reserve Bank of India (Staff) Regulations, 1948 and the order of the ***Patna High Court in Civil Writ Jurisdiction Case No.12921 of 2019, dated 05.10.2020 (Shrinath***

Upadhyay Vs. Union of India) and submitted that the petitioner may be given the benefit of encashing the privilege leave.

11. Regulation 78(b) of the Reserve Bank of India (Staff) Regulations, 1948, reads as follows:-

> *"78.Leave earned by an employee lapses on the date on which he ceases to be in service, except Ordinary Leave in the following circumstances:-*
>
> *(a) On retirement from Bank's service, in terms of Staff Regulation 26(4), accumulated Ordinary Leave, at credit as on the date of retirement, subject to a maximum of 10 months, can either be availed of as leave preparatory to retirement or encashed, at the employee's option, in which case the employee will be paid, in one lump sum, pay as defined in Staff Regulation 3(f), drawn as on the date of retirement and all allowances normally admissible thereon during Ordinary Leave.*
>
> *(b) In the case of a confirmed employee of the Bank, resigning from the service after giving proper notice of resignation in terms of Staff Regulation 25(1), encashment will be permitted to the extent of half of the Ordinary Leave at his/her credit as on the date of resignation, subject to a maximum of 5 months Ordinary Leave, in which case the employee*

will be paid in one lump sum. Pay as defined in Staff Regulation 3(f), drawn as on the date of resignation and all allowances normally admissible thereon during Ordinary Leave.

........"

12. Regulation 38 of Indian Bank (Officers') Service Regulations, 1979, reads as follows:-

"38.Lapse of Leave:-

Save as provided below, all leave to the credit of an Officer shall lapse on resignation, retirement, death, dismissal or termination for any reason;

Provided that where an officer retires from the Bank's service, he shall be eligible to be 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 leaves or discontinues his services by resignation on or after 1st April, 2011 after giving due notice under

> sub-Regulation (2) of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of the privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to maximum of 120 days."

13. The regulation of Reserve Bank of India (Staff) Regulations, 1948 and Indian Bank (Officers') Service Regulations, 1979, may be invoked if there is no regulation governing the service regulation on employees working in Pandyan Grama Bank. Pandyan Grama Bank has its own service regulations of officers and employees. When Pandyan Grama Bank has no specific regulation entitling an employee / staff resigning from job to get the privilege leave encashed, in the considered view of this Court, this Court cannot rely on the regulation of other Banks. The order of the **Patna High Court in Civil Writ Jurisdiction Case No.12921 of 2019, dated 05.10.2020 (Shrinath Upadhyay Vs. Union of India)** cited by learned counsel appearing for the petitioner, deals with the case where the staff member was compulsorily retired. It is not a case of compulsory retirement, but it is a case of resignation. Therefore, the order of the Patna High Court relied on by the learned counsel appearing for the petitioner is not applicable to the facts and circumstances of this case.

14. On the other hand, the Judgment relied on by the learned counsel appearing for the respondent in ***(2010) 2 LLJ 66 (K.G.Krishnan Vs. Indian Overseas Bank)*** shows that the words 'resignation' and 'retirement' carry different meanings in common parlance. When an employee can resign at any point of time, even on the second day of his appointment, but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. Pension regulations disqualify an employee, who has resigned, from claiming pension. Therefore, an employee / officer, who resigned, cannot seek benefits on par with an employee / officer retired from service.

15. In the absence of specific regulation in Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010, permitting an employee / officer who resigned from the job to encash the privilege, this Court is of the view that the petitioner's prayer cannot be granted.

16. In this view of the matter, this Court finds that there is no merit in the Writ Petition. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

27.07.2022

Internet :Yes / No
Index :Yes / No

ps

To

The Chairman,
Tamil Nadu Grama Bank,
Head Office,
No.6, Yercaud Road,
Hasthampatty,
Salem – 636 007.

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

G.CHANDRASEKHARAN, J.

ps

Pre-Delivery Order in
W.P(MD)No.15990 of 2012

27.07.2022