IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.3557 of 2020

A.Thomas Balan ... Petitioner

Vs.

1.Indian Overseas Bank,
Rep by its Chief Executive Officer/
Managing Director,
Central Office, 763, Anna Salai,
Chennai 600 002.

2.General Manager (HRM),
Indian Overseas Bank,
Central Office, 763, Anna Salai,
Chennai 600 002. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to settle and pay the Leave Encashment for 240 days due and payable to the petitioner as claimed by him in his representations dated 15.11.2017, 20.01.2018, 15.05.2019 and 07.11.2019 within a time frame.

For Petitioner : Mr.K.M.Ramesh, Senior Counsel for
Mr.V.Subramani

For Respondents : Mr.K.Srinivasa Murthy

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus, to direct the respondents to settle and pay the Leave Encashment for 240 days due payable to the petitioner as claimed by him in his representations dated 15.11.2017, 20.01.2018, 15.05.2019 and 07.11.2019 within a time frame.

2. Heard Mr.K.M.Ramesh, learned Senior Counsel for the petitioner and Mr.K.Srinivasa Murthy, learned Standing Counsel for the respondents.

3. The petitioner was working as a Clerk in the respondent Bank and dismissed from service due to the alleged misconduct. The petitioner submitted representations to settle and pay his encashment of leave for 240 days. The said representations have not been disposed and they were kept pending. Hence, the petitioner is before this Court.

4. The learned Standing Counsel for the respondents submitted that the dismissed employee is not entitled to get the benefit of leave encashment. The attention of this Court was drawn to the bi-partite settlement dated 14.12.1966. Clause 12.7 of the above rule is extracted as under:

> *"12.7 Leave earned by an employee lapses on the date on which he ceases to be in service. Where an employee's services are terminated owing to retrenchment he shall be paid his pay and allowances for the period of privilege leave at his credit."*

5. By stating the above rule, it is claimed by the learned Standing Counsel for the respondents that the encashment of leave can be allowed only in case of retrenchment, death or retirement. In substance, the petitioner who has been removed from service is not entitled for leave encashment.

6. However, the learned counsel for the petitioner submitted that the rule does not explicitly mention about the disentitlement of leave encashment for those employees who were removed from service. In support of the above contention, he also relied on the Judgment of the

Constitution Bench of the Hon'ble Supreme Court held in the case of ***Deokinandan Prasad Vs. State of Bihar, reported in (1971) 2 SCC 330***. In the said Judgment, it is held as under:

> *"32. The question whether the pension granted to a public servant is property attracting Art. 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India (1). It was held that such a right constitutes "property" and any interference will be a breach of Art. 3 1 (1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh (2)approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Art. 3 1 (1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held*

that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority."

7. In the above judgment, it is held that the pension and gratuity are considered as 'property' under Article 31(1) of the Constitution of India and hence, that cannot be denied by the respondents. He also relied on the Judgment of the Hon'ble Supreme Court in the case of ***Siyaram Basanti Vs. Chhattisgarh Rajya Gramin Bank and Others reported in 2022 SCC Online 1798***. The relevant paragraph is extracted hereunder:

"15. In the present case, there is no prohibition for releasing the leave encashment of privileged leaves as reflected from dismissal order dated 05.05.2015, if the submission made by the bank in their return as well as in their oral and written submission with regard denial of leave encashment then the Regulation 45 of the Regulation 2013 shall become a dead letter. Such construction of the bank cannot be considered and deserves to be rejected by this Court. Therefore, the inaction of the bank in releasing the leave encashment is also without any

legal foundation and the bank deserves to be directed by this Court to release leave encashment to the petitioner forthwith. The respondent Bank in their return has referred to the Chhattisgarh Rajya Gramin Bank (Employees) Pension Regulations, 2018 and would submit that this provisions entail for feitures of his entire past service in case of cessation of service of employee either by resignation not amounting voluntary retirement or dismissal or termination, meaning thereby that petitioner's service having come to its end and his entire past service stands forfeited for the purposes of consideration of pension and therefore, claim of the petitioner for grant of pension does not bear any substance at all. This submission is not relevant for considering the petitioner's claim with regard to gratuity and leave encashment of privilege leave as there is separate statutory provisions governing the leave encashment and gratuity. Even otherwise, while passing the order of dismissal dated 05.05.2015 there was no whisper about non releasing of leave encashment and gratuity, as such, subsequent stands taken by the bank that in view of the Regulation 22 the Regulation 2018 the past service of the petitioner stands forfeited, is not acceptable as

Pension Regulation, 2018 made effective from the date it was published in the Gazette i.e on 26.09.2018, on that date, the petitioner was not an employee as defined in the Regulation, 2018. Similar issue in Bank of Baroda v. S.K. Kool reported in (2014) 2 SCC 715 has come up for consideration before the Hon'ble Supreme Court, wherein, Hon'ble the Supreme Court has held in paragraphs 13 and 14 as under:

13. Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

"22. Forfeiture of service:

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits." From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as

would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

14. The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6 (b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise."

8. The above judgment states that there cannot be any prohibition for leave encashment of an employee happens to be removed from service. However, it is submitted by the learned Standing Counsel for the respondents that entitlement of leave encashment is governed only by the above mentioned clause (12.7) and the said rule does not say about the entitlement of encashment of leave for an employee removed from service and hence, the benefit can be extended to the petitioner. The learned Standing Counsel tried to distinguish by stating that if the leave encashment rule is a general rule, then the non-mentioning of persons removed from service can be taken to their advantage.

9. According to Clause 12.7 of Bi-partite Settlement, it is mentioned that the leave earned by the employee would lapse on the date on which he ceases to be in service. The employee who ceased to be in service on the date when he attained superannuation. In case he is removed from service or sent out on compulsory retirement or in any other contingency, his services would come to a closure. The rule itself states that those leave represent the ones an employee earned during his service. If a person is no more in service, no leave can be earned by him. In fact, the nomenclature "earned leave" itself denotes that it is the leave allowed to be earned by an employee on completion of a particular time of service.

10. However, the maximum limit of such leave cannot exceed 240 days. It is at the option of the employee either to avail this leave or to encash it as and when it can be done. Either by surrendering the leave if surrender leave is available for every year or two or by encashing them at the termination of service. In case of those employees who removed from service, if they had availed the earned leave while they were in service, on their subsequent removal, the earned leave availed by him cannot be charged. Obviously because, it was the leave earned by him and he had the entitlement to avail it. If the same employee opted to invest his leave without availing it with an idea that he can encash them later, can the employer deny it to him?

11. So, "earned leave" is something earned and invested by an employee by depositing it in his leave account. It is at the option of the employee either to liquidate it at the end of his career or to avail in terms of leave by re-purchase during the service itself. So the employer cannot claim ownership over an investment made by his employee and deny it to him, in case he is removed from service and hence it is rightly called as a 'property' earned by the employee within the meaning of the Judgment of the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar, reported in (1971) 2 SCC 330***.

12. In the instant case, the petitioner who got removed from service had earned leave and kept in his account for encashing at the end of his service. The earned leave of the employee remains intact irrespective of the nature of the termination of service. It has to be either given to him by releasing encashment or he should be allowed to avail those leave. Since the second possibility has come to closure due to the termination of service. So the only option is to encash the leave. Hence, there cannot be any rule which can say the earned leave of the employee would cease to become available for encashment. Even if any such rule exist, in the language of the Supreme Court, it is only a 'dead letter'. Since earned leave invested by the petitioner with an intention to encash them at the closure of his service, has to be duly encashed and released to this petitioner. As the earned leave meant for encashment, when such benefit is available, the employer cannot deny the same by citing that the employee is removed from service and not retired. Since the earned leave invested for encashment by the petitioner is nothing a property, within a meaning of Article 31(1), the respondents cannot deny the same to the petitioner.

13. In view of the above stated reasons, this Writ Petition is allowed and the respondents are directed to release the Leave Encashment for 240 days to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.

16.11.2023

Index : Yes
Internet : Yes/No
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To

1.The Chief Executive Officer/
Managing Director,
Indian Overseas Bank,
Central Office, 763, Anna Salai,
Chennai 600 002.

2.The General Manager (HRM),
Indian Overseas Bank,
Central Office, 763, Anna Salai,
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R.N.MANJULA, J.

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