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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 16th February, 2023*

+ **W.P.(C) 6573/2016**

RAMESH KUMAR SEHGAL Petitioner
Through: Mr. Tripurari Ray and
Mr. Vivek Gupta, Advocates.

versus

CANARA BANK Respondent
Through: Mr. Rajesh Kr. Gautam,
Mr. Anant Gautam, Mr. Sumit Sharma and
Mr. Vidhur Ahluwalia, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed seeking the following reliefs:-

"i. direct the respondent bank to pay the leave encashment to petitioner with regard to 240 days privilege leave available to petitioner leave account along with interest @ 10% p.a. for the delayed period from the date of compulsory retirement to the date of actual payment.

ii. Impose exemplary cost and compensation upon respondent bank for undue harassment to the petitioner.

iii. pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. Facts to the extent relevant for deciding the present writ petition are that Petitioner was employed as a Manager with the Respondent Bank at the relevant time, when a charge sheet dated 07.05.2007 was issued against him, leading to initiation of a departmental inquiry

which culminated into punishment of ‘Compulsory Retirement’ by an order dated 26.05.2008 under Regulation 4(h) of the Canara Bank Officers Employees (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as the “Regulations, 1976”).

3. The grievance of the Petitioner, as articulated by his counsel, is limited to the grant of leave encashment for 240 days earned leave available to his credit. Petitioner is stated to have made several representations including the last one on 26.09.2015 but to no avail, which compelled the Petitioner to approach this Court.

4. It is the contention of the Petitioner that his claim to leave encashment has its genesis in Regulation 38 of Canara Bank (Officers’) Service Regulations, 1979 (‘Regulations, 1979’) and he cannot be deprived of the said benefit, even though he has suffered the penalty of compulsory retirement. Regulation 38 provides that all leave to the credit of an employee shall lapse on resignation, retirement, death, discharge, dismissal or termination for any reason, save as provided below in the various Provisos and the first Proviso stipulates that where an Officer retires from Bank’s service, he shall be eligible to be paid a sum equivalent to the emoluments of any period not exceeding 240 days of privileged leave that he had accumulated. The contention is that the word ‘retires’ will mean and include ‘compulsory retirement’, even by way of punishment, pursuant to a disciplinary inquiry.

5. Reliance is placed on the judgment of the Full Bench of Punjab & Haryana High Court in *UCO Bank and Others v. Anju Mathur, 2013 SCC OnLine P&H 5014*, wherein the Court has interpreted the Proviso to Regulation 38 and held that irrespective of the manner in which the Officer retires, he is eligible for leave encashment. It is stated that a Division Bench of this Court in *Deepak Sapra vs. Punjab*

National Bank, 2013 SCC OnLine Del 3724, has echoed that Officers compulsorily retired from the Bank's service even by way of penalty, will be entitled to benefits of leave encashment. This judgment was challenged before the Supreme Court in SLP(C) No.35937/2013, which was dismissed on 25.08.2015. It is, therefore, the case of the Petitioner that the relief claimed by him is covered on all four corners by the aforementioned judgments and there is no impediment in release of leave encashment benefits to him.

6. The next plank of the argument of the Petitioner is that initially, the Indian Banks' Association (IBA) had, vide Circular dated 27.11.2000, advised all Nationalised Banks that an officer whose services are terminated or who is compulsory retired as a punishment under Regulation 4 of Regulations, 1976, will not be entitled for leave encashment. However, subsequently the IBA by another Circular dated 11.05.2015 communicated that upon various representations received in the matter, the Managing Committee in its meeting held on 30.04.2015 decided that leave encashment will be payable to compulsorily retired employees/officers. Therefore, in view of Circular dated 11.05.2015, whereby the earlier decision was reversed, which was the reason for denial of leave encashment to the Petitioner, the writ petition should be allowed directing the Respondent to release the outstanding amounts towards leave encashment.

7. Petitioner also claims interest on leave encashment @ 10% p.a. on the ground that it is a settled law that interest on delayed payment of retiral dues is in the nature of indemnification of loss suffered by an employee on account of wrongful deprivation of financial enjoyment of dues to which he is otherwise entitled in law. [*Ref. Govt. of NCT of Delhi v. Nand Lal Singh, 193 (2012) DLT 133 (DB)*].

8. Responding to the contention of the Petitioner, Mr. Rajesh Gautam, learned counsel appearing on behalf of the Respondent, raises an objection to the maintainability of the petition on ground of delay and laches. It is submitted that Petitioner was awarded the penalty of compulsory retirement on 26.05.2008 and cause of action, if any, arose then, whereas the present writ petition has been filed in the year 2016, i.e. after 8 years and deserves to be dismissed on this ground alone. While conceding that Courts have been liberal in condoning delay and laches with respect to claims arising out of retirement benefits as also that leave encashment is a terminal benefit, it is urged that non-grant of leave encashment is not a continuing wrong unlike monthly pension etc. and therefore, strict view must be taken of the delay in approaching this Court.

9. Without prejudice to the preliminary objection, on merits, it is argued that Regulation 38 of Regulations, 1979 in the first part provides that all leave to the credit of an officer shall lapse on resignation, retirement/death/dismissal or termination for any reason and an exception is provided in the first Proviso thereto, but only in respect of an officer who 'retires' from Bank's service. Broadly understood, the argument is that there is a clear distinction in connotation of the words 'retires' and 'retired' and while the former connotes retirement in ordinary course of employment on superannuation, voluntary retirement etc., the latter envisages cases where employees are compelled to retire on account of punishment inflicted pursuant to disciplinary proceedings, resulting in truncating the service period. According to Mr. Gautam, only those officers who 'retire' will be entitled to leave encashment and this benefit cannot accrue to those whose relationship with the Bank is severed on account of punishment, including compulsory retirement and on this

score, Petitioner is not entitled to leave encashment. Argument of the Respondent is premised on the observation of the learned Single Judge of this Court in the judgment dated 18.07.2013 in ***W.P.(C) 4031/2012*** titled as ***Deepak Sapra v. Punjab National Bank*** (hereinafter referred to as 'Deepak Sapra-1' for the sake of convenience) which has been set aside by the Division Bench. On a pointed query by the Court as to how reliance can be placed on the said judgment, it is submitted by Mr. Gautam that no doubt, against the judgment of the Division Bench in ***Deepak Sapra (supra)***, SLP was dismissed, along with a batch of other SLPs, however, the Supreme Court has left the question of law open and the Bank can re-agitate the issue by relying on the analysis by the learned Single Judge in ***Deepak Sapra-1 (supra)***.

10. This Court has heard the learned counsels for the parties at length and examined their submissions.

11. The only issue this Court is in seisin of is whether the Petitioner is entitled to leave encashment in view of the punishment of compulsory retirement imposed on him pursuant to a disciplinary inquiry.

12. First and foremost, I may deal with the preliminary objection raised by the Respondent that the writ petition is barred by delay and laches as non-grant of leave encashment is not a continuing wrong. Indisputably, Petitioner was compulsorily retired on 26.05.2008 and filed this writ petition in 2016. This Court agrees with the counsel for the Respondent that non-grant of leave encashment is not a continuing wrong. The question, however, is whether Petitioner has been able to establish 'sufficient cause' for delay in approaching the Court in the year 2016 and, in my view, the answer is in the affirmative.

13. As the events unfold, penalty of compulsory retirement was imposed upon the Petitioner on 26.05.2008 and when leave

encashment was not paid, he made representations. Petitioner explains that he did not immediately approach the Court as he had learnt that leave encashment was denied to him on account of the IBA Circular dated 27.11.2000, whereby all Nationalized Banks were informed that Officers who were terminated/compulsorily retired, would not be entitled to leave encashment. It was also a known fact at that time that several representations were being made by all stakeholders for reconsideration of this decision and the matter was under active consideration. Finally, after due deliberation, the Managing Committee of IBA, in its meeting held on 30.04.2015, recalled the earlier decision and based on this, a Circular was issued by IBA on 11.05.2015, permitting leave encashment to compulsorily retired employees/officers. In and around the same time, the Full Bench of Punjab and Haryana High Court and the Division Bench of this Court passed the verdict that leave encashment shall be paid to employees compulsorily retired as a measure of penalty. Encouraged by the decisions of the Courts and the IBA Circular, all in the year 2013, Petitioner made representations to the Respondent, including the last one on 26.04.2016, bringing to its attention the judgments and the Circular, but there being no response, Petitioner filed the present writ petition in the year 2016. This Court finds that the explanation rendered by the Petitioner is plausible and justified.

14. The matter can be examined from another aspect. The Full Bench in *UCO Bank (supra)* and the Division Bench in *Deepak Sapra (supra)* interpreted Regulation 38 and laid down that compulsorily retired employees of the Banks would be entitled to leave encashment. These are judgments in *rem* and were intended to give benefit to all similarly situated persons whether they approached the Court or not and therefore, the obligation was on the Respondent

to extend the benefit to all equally placed, including the Petitioner. Viewed from this angle, it cannot be said that the petition is barred by delay and laches and in this context, I may refer to the judgment of the Supreme Court in ***State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others*, (2015) 1 SCC 347**, wherein the Supreme Court has held that the principle of delay and laches would not apply in cases where the judgment pronounced by the Court is a judgment in *rem*. Relevant passages are as follows:-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721; 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment

shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

15. Coming to the merit of the issue, since both sides have relied upon Regulation 38, I may extract the same hereunder for 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 termination for any reason.

Provided that where an Officer retires from the services of the Bank, 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 representative, 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 the 1st April, 2001 after giving due notice under 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 cessation of service, subject to a maximum of 120 days.”

16. Regulation 38 provides that all leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or termination for any reason. However, this provision is controlled by the three Provisos thereunder. The first Proviso provides that where an officer ‘retires’ from the Bank’s service, he shall be eligible to leave encashment. Mr. Gautam has articulated that there is a distinction between ‘retires’ and ‘retired’ and an officer will be entitled to leave encashment only when he ‘retires’ and not when his service tenure is truncated by intervention of an event such as compulsory retirement

and is 'retired'. The argument though ingenious and may appeal at the first blush, cannot be accepted. Division Bench of this Court in *Deepak Sapra (supra)* has interpreted the word 'retiree' in the first Proviso and held that no distinction can be drawn between one class of retiree and another. I may refer to the relevant passages from the judgment as follows:-

"7. As noted previously, the Calcutta High Court was much influenced by the enacting part of Regulation 38 of the 1979 Regulations. What requires to be noticed, however, is that the regulation opens with the expression "Save as provided below". This in turn means that in the eventualities specifically enumerated, i.e. resignation, retirement, death, discharge, dismissal or any other kind of termination, the leave standing to the credit of an officer is to lapse. This rule is further controlled by three provisos. The most important - and to this Court's mind, relevant proviso - is the first one. It states that, "Provided that where an officer retires from the Bank's service", he would be eligible to be paid the extent of accumulated privileged leave. The second proviso preserves the right of legal representative of a deceased officer to receive such benefit. The third proviso provides for a specific contingency of resignation of employee after 01.04.2001 and his entitlement to secure proportionate emoluments in lieu of privileged leave.

8. Thus, in respect of all categories of retirees, the first proviso states that such employees would be eligible to payment of leave encashment benefits. Advisedly, the regulation which was framed after prior consultation with and approval of the Central Government made no distinction between one class of retirees and another. Indeed there is no dispute about the fact that the cessation of service as a result of retirement can be on the occurrence of three contingencies-attainment of superannuation; option by the employee to voluntarily retire from the service, and the third, retirement of an employee upon imposition of a penalty or exercise by the employer of an option to compulsorily retire the employee on this attaining a certain age or having served for a certain number of years, in public interest. The first proviso makes no distinction between one class of retirees and another. In other words, each one of them, in terms of Regulation 38 of the 1979 Regulations is entitled to leave encashment benefit. In the case of those imposed with penalty of compulsory retirement, there is no dispute that pension - as applicable and other terminal benefits are given. In these circumstances, to single-out one class of retirees, i.e. those imposed with compulsory retirement and deny them the benefit of leave encashment would be contrary to plain intent of Regulation 38 of the 1979 Regulations. This Court is clear that the first part of the

learned Single Judge's reasoning that he preferred and relied upon the bank's circular of 18.01.2001 is clearly erroneous. That circular flies in the face of the first proviso to Regulation 38 of 1979 Regulations and could not have added words as it sought to, in the present instance. Another reason which persuades us to hold as we do, i.e. to say that compulsory retirees would be entitled to leave encashment benefits is that singling-out such class of employees for denial for one specific type of retirement benefit is also arbitrary and furthers no rationale, having regard to the express terms of Regulation 38 of the 1979 Regulations.

9. *This Court is, therefore, of the opinion that the reasoning embodied in the Full Bench judgment of the Punjab and Haryana High Court in UCO Bank v. Anju Mathur [LPA 566/2012, decided on 07.03.2013], which specifically dealt with Regulation 38, is the correct one. The effect and purport of the decision in Jitendra Kumar Srivastava (supra) is the same with one superadded reason that leave encashment benefits are property, being vested rights, which cannot be deprived of without authority of law. The conclusion that this Court is reaching is identical to that reached by the Supreme Court, i.e. that in the absence of specific regulation, depriving one class of retirees (such as those imposed with penalty of compulsory retirement) leave encashment benefits is unwarranted and unsupported in law.*

10. *In the light of the above discussion, the appeal has to succeed and is accordingly allowed. The impugned judgment and order of the learned Single Judge is set aside. The respondent is directed to release leave encashment benefits to the appellant within four weeks from today."*

17. Division Bench had set aside the judgment of the learned Single Judge and it would be useful to highlight hereunder the view of the learned Single Judge in **Deepak Sapra-1 (supra)**, which did not find favour with the Division Bench:-

"6. No doubt an ordinary reading of Regulation 38 seems to show some amount of ambiguity in the main part and proviso of the regulation inasmuch as whereas in the main/ first part it is stated that the leave encashment would not be available on the retirement of a person however the first proviso allows leave encashment of 240 days on the retirement of a person. The question is that whether there should be a literal interpretation of the proviso of Regulation 38 or there should be purposive and/or contextual interpretation taken alongwith clarification given by the respondent-bank under Circular 4 of the 2001 and which clarification was given in fact on the advice of the Indian Bank Association and the recommendations of which body are accepted across the board by all the banks.

7. *In my opinion, the interpretation given by the respondent with respect to Regulation 38 in terms of clarification by Circular 4 of 2001 must prevail. This is for the reason that the first part of Regulation 38 basically deals with denial of leave encashment whenever there is actually termination of services of an employee or his death. The subjects which falls under the first part of Regulation 38 are actually resignation or dismissal or termination for any reason (of course noting that death is also included alongwith retirement). So far as death of the employee is concerned, there is a specific second proviso which allows leave encashment for 240 days. The first proviso allows leave encashment for 240 days for retirement however this retirement will naturally have to be natural retirement in the ordinary course of events and not compulsory retirement which is in fact a termination of services by the employer. The object of Regulation 38 is to deny benefit of leave encashment and lapsing of the leaves in case there is a termination of the services of an employee. This becomes clear from the main part of Regulation 38. Once the intention of Regulation 38 is to deny benefit of leave encashment when there is termination of services of an employee then there is no reason why leave encashment should be granted to a person who is compulsorily retired from services because compulsory retirement is a termination from services. Whereas in the main part of Regulation 38 leave encashment lapses in case of retirement and death, however in these cases the first two provisos of Regulation 38 make it clear that with respect to ordinary retirement and death, leave encashment of 240 days is permissible. Quite clearly there has to be an instructive, contextual and purposive construction of the entire Regulation 38 viz the main part of the regulation alongwith both first and second proviso and which if so done can leave no manner of doubt that for compulsory retirement leave encashment is not permissible.*

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9. *I would respectfully follow the reasoning of the Division Bench of the Calcutta High Court more so for the reason that surely the respondent bank was entitled to issue a clarificatory circular dated 18.1.2001 because the circular is clarificatory in nature and not an amendment of the Regulation 38. If there is an ambiguity in the language surely there can be issued a clarificatory circular and for such clarification there is no requirement for any amendment of Regulation 38 as is sought to be suggested on behalf of the petitioner. The judgment of the Punjab and Haryana High Court gives only the following cryptic reason and with which I respectfully cannot agree:*

“8. A perusal of above shows that Clause (e) of Regulation 46 above which has been relied upon by learned counsel for the appellants cannot apply to the case of compulsory retirement. Similarly, First Proviso to Regulation 38 clearly shows that on retirement, an officer is entitled to leave encashment. There is no provision for withholding gratuity and leave encashment in the case of compulsory retirement.”

18. The Full Bench of Punjab & Haryana High Court in *UCO Bank (supra)* has also held that compulsory retirement by way of penalty is not excluded from the Proviso to Regulation 38 and answered the Reference as follows:-

“RE: WHETHER THERE CAN BE FORFEITURE OF LEAVE ENCASHMENT AMOUNT OF A PERSON WHO HAS BEEN GIVEN THE PUNISHMENT OF COMPULSORY RETIREMENT:

(25) At the outset, we are forced to remark that reasons given in Ashwani Kumar Sharma (supra) are not legally correct, as the compulsory retirement by way of punishment is also treated as ordinary termination of service on which we have already given our decision hereinabove.

(26) We have also reproduced Regulation 38 of the Officers Regulations, which deals with leave encashment. This regulation states that leave shall lapse in certain circumstances. Proviso thereto, however, provides an explanation and makes a provision for leave encashment in those cases where an officer “retires” from service. The question is as to whether this retirement would mean retirement on attaining the age of superannuation or retirement caused by other modes as well, including compulsory retirement. It cannot be disputed that compulsory retirement occasioned otherwise than by way of penalty would be covered by the proviso and leave encashment would be admissible as in that eventuality also, the officer “retires” from service. However, unlike Regulation 46 of the Officers' Regulations, the cases where the retirement comes by way of penalty of compulsory retirement, are not excluded. Therefore, when an officer “retires” from service, in whatever manner, he is eligible for leave encashment. In the case of O.P. Garg (supra), this issue was specifically dealt with by this Court in the following manner:

“The petitioner in the present case had been wrongly denied encashment of leave through a careless mis-interpretation of Regulation 38 and without considering its proviso. From the Regulation 38 it would be revealed that all leave lapses on resignation, retirement, death, discharge, dismissal or termination. What this means is that on the happening of any of the above events an officer cannot insist that he should be permitted to continue in service to the extent of leave which still stood to his credit. Since leave lapses, the concerned officer must leave service. Funnily leave of an officer who dies while in service also lapse. It seems the framers of regulation probably thought that a dead person may continue on leave till the expiry of the leave to his credit, unless a regulation was framed.

Be that as it may, it is the proviso to Regulation 38 which applies to the petitioner's case and has been actually discussed

in Ashwani Kumar Sharma's case (supra). As regards payment of gratuity made to the petitioner of Rs. 2,17,351/- on August 16, 2001, learned counsel submitted that these amounts had been paid without interest and referred to the order Annexure P/7 dated December 29, 2003 regarding payment of simple interest @ 10% for the period July 27, 1999 to August 15, 2001 on the aforesaid gratuity amount. Although interest was not paid to the petitioner at the time of release of the principal amount of gratuity on August 16, 2001, a sum of Rs. 20325/- was the second installment received by the petitioner on November 17, 2004 but the second installment was paid without interest. Therefore, the petitioner is entitled to 10% interest on this amount from the due date (July 17, 1999) till the actual payment made on November 27, 2004.

In view of the above discussion, this petition is allowed. The petitioner shall be entitled to payment of emoluments for the period of privilege leave that he had earned (leave encashment) alongwith interest @ 10% from July 26, 1999 till date of payment.”

19. Thus this Court is unable to accept the argument of the Respondent that a distinction is carved out in Regulation 38, between those who ‘retire’ i.e. superannuate at the age of retirement, voluntarily retire etc. and those who are ‘retired’ i.e. whose services are brought to an end by a penalty of compulsory retirement, for the purpose of leave encashment.

20. An additional factor that weighs in favour of the Petitioner is the understanding of the Respondent itself on grant of leave encashment to compulsorily retired employees of the Bank by way of penalty and this is reflected in the Circular issued by IBA on 11.05.2015. It is undisputed that on 27.11.2000, IBA had issued a Circular advising the Banks not to grant leave encashment to those officers whose services were terminated or those who were compulsorily retired as a punishment. Perhaps, this was the reason why Petitioner was denied the benefit of leave encashment. However, it is an admitted fact that on 11.05.2015 another Circular was issued by IBA, communicating to all the Banks that leave encashment shall

Circular shows that this was not a hasty decision and was taken after due deliberations. From the Circular itself, it is evident that when some of the affected officers approached various High Courts and got reliefs and numerous representations were received from the stakeholders, including the decision of Department of Personnel and Training, Government of India, vide O.M. on 13.02.2006, permitting leave encashment to compulsorily retired employees, the matter was placed before the Managing Committee for re-consideration and in the meeting held on 30.04.2015, a decision was taken to grant leave encashment to employees/officers compulsorily retired as punishment. While this Court is conscious of the fact that the Circular will have a prospective effect, but the reason to refer to the Circular is to highlight the fact that whether it was the Government of India or the IBA, it was a unanimous opinion of the stakeholders that compulsory retirement of an employee does not put him on a pedestal, different from an employee retiring on superannuation. Consciously, the Banking Sector reversed its earlier decision taken in 2000 and this falls in place and is in consonance with the first Proviso to Regulation 38, as interpreted by the Division Bench of this Court and Full Bench of the Punjab and Haryana High Court. The Circular issued on 11.05.2015 only reinforces the stand of the Petitioner and furthers his cause.

21. Mr. Gautam has placed heavy reliance on the judgment of the learned Single Judge in *Deepak Sapra-1 (supra)*. It is correct that while dismissing the Special Leave Petition against the judgment of the Division Bench, the Supreme Court has left the question of law open, however, this does not entitle the Respondent to place reliance on a judgment of the Learned Single Judge, which stands set aside by the Division Bench.

22. Examined independently also, in my view, there is merit in the contentions raised by the Petitioner. First part of Regulation 38 only provides that when an officer's service comes to an end by any one of the modes mentioned therein, his leave lapses. This does not deal with grant or otherwise of leave encashment. First Proviso entitles an officer to leave encashment on 'retirement'. An employee dismissed from service forfeits his past service and is therefore disentitled to pensionary benefits for the service rendered by him. However, on compulsory retirement, there is no forfeiture of past service and as a corollary, the benefits that arise on account of the service rendered by him cannot be taken away. It is for this reason that 'dismissal' cannot be equated with compulsory retirement, either as a penalty or otherwise, where the employee remains entitled to service benefits and the effect is only to cut short the length of service. Leave encashment is the amount of money that an employee is entitled to in exchange for leave capable of being encashed and not availed by him or her. Therefore, at the time of retirement, the unutilized balance leaves get accumulated and the employer by way of leave encashment, compensates the unutilized paid leaves of the employee. Since on compulsory retirement, the service is not forfeited, there is no reason why the benefit of unutilized balance leaves be not granted to such an employee by way of encashment. Learned counsel for the Respondent has not been able to persuade the Court to hold to the contrary. For all the aforesaid reasons, this Court finds merit in the grievance ventilated by the Petitioner and holds him entitled to leave encashment benefits.

23. Accordingly, the writ petition is allowed, directing the Respondent to release the benefits of leave encashment to the Petitioner, in accordance with first Proviso to Regulation 38 of Regulations, 1979, within three months from today, along with

interest calculated @ 6% p.a. from the date of filing the writ petition till actual payment.

24. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

FEBRUARY 16, 2023/rk/kks/shivam

