IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

FMA 1263 of 2022
With
IA No.: CAN 1 of 2023

The Chandernagore Municipal Corporation and Ors.
Vs.
Dhanonjoy Das and Ors.

For the appellants	:Mr. Piush Chaturvedi, Advocate Mr. Suman Basu, Advocate Ms. Debanwita Pramanik, Advocate Ms. Debapriya Ghosh, Advocate
For the State	:Mr. Lalit Mohan Mahata, Ld. AGP Mr. Gagabandhu Ray, Advocate
For the private respondents	: Mr. Biswarup Biswas, Advocate Mr. Kajal Ray, Advocate Mr. Suman Nandi, Advocate
Heard & Judgment on	: September 9, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated July 8, 2022 passed in WPA 10145 of 2019.

2. By the impugned order, learned Single Judge construed Rule 4(11), 4(12) and Rules 63 and 64 of the West Bengal Municipal (Employees' Service)

Rules, 2010 and held that, employee of a municipality is entitled to "leave encashment" subsequent to his superannuation.

3. Aggrieved by such decision of the learned Single Judge, municipality and its functionaries are in appeal.

4. Learned Advocate appearing for the appellants submits that, service rules of an employee of the municipality does not permit "leave encashment". In support of such contention, he draws the attention of the Court to Rules 4(11), 4(12), 54, 62, 63 and 64 of the Rules of 2010. He submits that, although "leave encashment" is not provided for in such Rules of 2010, "accumulated leave" can be utilized by the employee during his employment in terms of Rule 54 of the Rules of 2010.

5. Learned Advocate appearing for the appellants submits that, the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003 are applicable for the death-cum-retirement benefits so far as the employees of the municipality are concerned in terms of notification dated April 21, 2009. He submits that, the DCRB Rules, 2003 also do not provide for "leave encashment". In absence of the service rules not providing for such benefits, private respondents are not entitled to "leave encashment".

6. Learned Advocate appearing for the appellants submits that, the private respondents approached the Writ Court earlier by way of a writ petition being W.P. No.9476 (W) of 2018 which was disposed of by an order dated July 3, 2018 requiring the authorities to decide on the claim for "leave

encashment". He draws the attention of the Court to the fact that, the private respondents made individual representations which were considered by the authorities. The claim for "leave encashment" was negated by the authorities by the writing dated August 29, 2018. Being aggrieved, the present writ petition was filed which gave rise to the impugned order.

7. Learned Advocate appearing for the appellants submits that, the impugned order was passed in absence of the learned Advocate appearing for the appellants. He relies upon ***2017 SCC OnLine Cal 21456 (Satpalsa High School and Others vs. Krishna Ram Bhattacharya and Others)*** and contends that the opportunity to file an affidavit was not granted to the appellants. According to him, the appellants were not heard prior to the impugned order being passed.

8. Learned Advocate appearing for the private respondents submits that, "leave salary" is part of the salary component of the employee concerned. Therefore, money component is involved. Consequently, unexpired and unutilized period of the leave accumulated over the period of time which an employee worked, was encashable. He submits that, the private respondents worked without taking leave and, therefore, allowed such leave to accumulate. On their superannuation, the private respondents are entitled to the money component of the accumulated leave as "leave encashment".

9. Learned Advocate appearing for the private respondents draws the attention of the Court to the order dated July 3, 2018 passed in W.P. No. 9476(W) of 2018. He submits that, Court noted that "leave encashment" was not paid by the concerned municipality. He refers to the order dated August 29, 2018 passed by the authorities consequent upon the direction contained in the order dated July 3, 2018. He submits that, the authorities did not take into consideration Rule 63 and the other relevant Rules of the Rules of 2010. Rather, the authorities proceeded only on the basis of Rule 64 of the Rules of 2010. He draws the attention of the Court to Rules 4(11), 4(12), 4(21), 4(22), 63 and 64 of the Rules of 2010.

10. Learned Advocate appearing for the private respondents relies upon ***2005 10 SCC 346 (State of Rajasthan and Another vs. Senior Higher Secondary School, Lachhmangarh and Others) and 2022 LiveLaw (SC) 801 (Jagdish Prasad Saini & Ors. Vs. State of Rajasthan & Ors.)*** for the proposition that, "leave encashment" is payable and receivable by the private respondents. In support of such contention, he also relies upon ***2024 SCC OnLine Bom 1253 (Dattaram Atmaram Sawant and Another vs. Vidharbha Konkan Gramin Bank, through its Chairman).***

11. Learned Advocate appearing for the State refers to the written instructions submitted in Court. He submits that, private respondents are employees of the municipality and that they cannot claim the same

benefits as State Government Employees. According to him, the Rules of 2010 do not permit "leave encashment".

12. Private respondents before us are superannuated employees of a municipality governed by the provisions of the West Bengal Municipal Act, 2006. Service Condition of the private respondents were governed by the West Bengal Municipal (Employees' Service) Rules, 2010 which was promulgated in exercise of powers conferred under Section 417(1) read with Section 57 of the West Bengal Municipal Act, 1993.

13. Rules 4(11), 4(12), 4(21), 4(22), 54,62,63 and 64 which the parties before us refer to are as follows:

> *"4(11) "earned leave" means leave credited under rule 64;*
> *4(12) "earned leave due" means the amount of earned leave to the credit of an employee on the date immediately preceding the date of effect of this rule under the regulation in force on that day plus the amount of earned leave calculated as prescribed in rule 70, as the case may be, diminished by the amount of earned leave taken after the introduction of these regulation;*
> *4(21) "leave" includes "earned leave", "half-pay leave", "commuted leave", "leave not due" and "extra-ordinary leave";*
> *4(22) "leave salary" means the salary paid by the Local Body to an employee on leave;*
> ***54. Leave preparatory to retirement.**- (1) An employee of a Local Body may be permitted by the authority competent to grant leave to take leave preparatory to retirement to the extent of earned leave due not exceeding 240 days together with half-pay leave due, subject to the condition that such leave extends up to, and includes, the date of retirement.*
> ***Note:** The leave granted as leave preparatory to retirement shall not include extra-ordinary leave.*
> *(2) No leave shall be granted beyond the date on which an employee must compulsorily retire on superannuation.*
> *(3) Where an Employee who is on foreign service in or under any local authority or in a Corporation or Company wholly or substantially owned or controlled by the Government or a body controlled or financed by the Government (hereinafter referred to as*

the Local Body) applies for leave preparatory to retirement, the decision to grant such leave shall be taken by the foreign employer with the concurrence of the lending authority.

62. Leave account.*-(1) An employee to whom the rules apply is entitled to credit to his leave account all the earned and half-pay leave due.*

(2) The amount of leave debited against an employee's leave account is actual period of earned leave and half-pay leave taken (excluding special disability leave).

63. Leave salary.*- An employee during earned leave is entitled to leave salary at the rate specified below:-*

(a) during earned leave-pay (substantive or officiating) which would have been admissible had he not proceeded on leave and such leave salary shall include increment of pay which falls due during such leave and dearness and other allowances sanctioned from time to time during the period of leave,

(b) during half-pay or leave not due-half the pay admissible on earned leave as per clause (a) above and dearness and other allowances admissible as per order issued by the State Government from time to time, Dearness Pay, if any, will be calculated on the basis of leave salary actually drawn,

(c) during extra-ordinary leave – No leave salary is admissible.

64. Amount of earned leave.*- (1) An employee shall be credited with 15 days' earned leave at the commencement of each calendar half year to be reduced by $1/10^{th}$ of the period of extra-ordinary leave availed of during the previous half year, subject to the condition that such reduction shall not exceed 15 days :*

Provided that if an employee is appointed during the course of a particular calendar half year, earned leave shall be credited at the rate of two and half days for each completed month and the fraction of a day will be rounded off to the nearest day.

Provided further that the credit for the half year in which an employee is due to retire or resign from service shall be at the rate of two and a half days for each completed month of service in that half year up to the date of retirement or resignation. In the case of an employee who resigns from service, necessary adjustment shall have to be made in respect of leave salary overdrawn, if the leave already availed of is more than leave due to him.

(2) An employee shall cease to earn such leave under sub-rule (1) when the earned leave due amounts to 240 days.

> *(3) Subject to the provisions of rules 55, 58 and sub-rule (1), the maximum earned leave that may be granted at a time shall be 120 days."*

14. 4(11) defines "earned leave" to mean leave credited under rule 64.
15. 4(12) defines "earned leave due" to mean the amount of earned leave to the credit of the employee on the date immediately preceding the date of effect of the Rules of 2010 plus under the regulation in force on that day plus the amount of earned leave calculated as prescribed in Rule 70, as the case may be, diminished by the amount of earned leave taken after the introduction of the Rules of 2010.
16. 4(21) specifies that "leave" includes "earned leave", "half-pay leave", "commuted leave", "leave not due" and "extraordinary leave".
17. 4(22) defines "leave salary" to mean the salary paid by the Local Body to an employee on leave.
18. Rule 54 of an employee of the municipality is dealt with under Chapter VIII Rules of 2010.
19. Rule 54 is the first rule under such Chapter and it speaks about "leave preparatory to retirement". It allows accumulated leave to be enjoyed by the employee concerned prior to his retirement.
20. Rule 62 speaks of maintenance of a "leave account" in respect of every employee of a municipality.
21. Rule 63 specifies the rate at which, an employee of a municipality is entitled to "leave salary".

22. Rule 64 speaks about the amount of earned leave that an employee is entitled to receive during his tenure of employment.

23. None of the Rules of the Rules of 2010 converts the "earned leave" accumulated by an employee over a period of time of his employment into money or leave encashment on superannuation or at any point of time prior thereto. There is no specific provision to such effect in the Rules of 2010 nor does the Rules of Rules of 2010 noted above allowed the same. The Rules of 2010 does not allow "leave encashment".

24. An employee of the municipality is governed by the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003 which also does not provide for "leave encashment".

25. In ***Senior Higher Secondary School, Lachhmangarh and Others (supra)***, Hon'ble Supreme Court considered the rules governing teachers of an aided State Government educational institution. It found that the service condition of such teacher was same as that enjoyed by teachers of State Government educational institution where, leave encashment was permissible. In such context, the service conditions of teachers of State Government aided educational institutions were found to permit "leave encashment".

26. In ***Jagdish Prasad Saini & Ors.*** *(supra)* similarly, a teacher at the establishment concerned was found to be entitled to "leave encashment" in view of the parity of the service conditions with other teachers who are entitled thereto.

27. ***Dattaram Atmaram Sawant and Another*** *(supra),* concerns an employee of a bank. The service conditions of the employees of the bank were construed to mean that the employee concerned was entitled to "leave encashment".

28. In the facts and circumstances of the present case, we quoted the rules governing the service conditions of the private respondents concerned. We repeatedly invited the learned Advocate appearing for the private respondents to draw our attention to any provision which allows the "leave encashment". Our attention was not drawn to any provision of the Rules of 2010 or any other provisions which permits "leave encashment" of an employee of the concerned municipality.

29. The Coordinate Bench in ***Satpalsa High School & Ors.*** (supra) considered the Writ Rules applicable to this High Court. Their Lordships held as follows:-

> *"11. Although the Writ Rules provide otherwise, the practice that has developed over the years in the writ courts is to enlist writ petitions at the first instance under the caption Motion/Listed Motion/New Motion. Seldom, fresh writ petitions are listed under the caption "For Admission". However, irrespective of the caption under which a writ petition is listed for the first time, this does not detract from the fact that writ petitions virtually come up 'for admission' on the first day. Should a litigant as writ petitioner pray for rule nisi and at the same time seek an interim order in aid of the final relief claimed in the writ petition upon service of the writ petition on the respondents, the concerned Bench having determination fixed by the Hon'ble the Chief*

Justice bearing in mind Rule 26, may adopt either of the following courses : dismiss the writ petition for default in case of non-appearance of any advocate for the petitioner; or, adjourn hearing and fix a further date for securing the ends of justice if either a party to the litigation is unrepresented or for some other valid reason; or, refuse to admit the writ petition in view of an efficacious alternative remedy being available to the petitioner; or, reject the writ petition on merits holding that it does not raise any triable issue deserving admission; or, admit the writ petition by issuing rule nisi with or without interim relief for reasons recorded and fix a returnable date of the rule notwithstanding absence of the respondent(s); or, admit the writ petition and require the parties to exchange their affidavits, with direction for service of notice on the respondents if they are not represented, and grant/refuse interim relief for reasons recorded; or, dispose of the writ petition with directions, provided the parties to the litigation are present and consent, either expressly or impliedly, to disposal thereof without affidavits; or, even dispose of the writ petition in the absence of the respondents recording the reasons for which the writ petition need not be kept pending. In case of the last course, it would be a sound exercise of discretion if the merits of the rival claims are not decided and all questions are left open so as not to affect the right of an absentee respondent, who is a necessary party to the proceedings. The Bench, in exceptional cases, in the presence/absence of the respondents, may also pass an ad-interim/interim order which, in effect, results in granting the principal relief claimed in the writ petition, if it is of the considered opinion that but for such ad-interim/interim order, the writ petition would be rendered infructuous."

30. In the facts of the present case, none appeared for the appellants despite service when the writ petition was taken up for hearing by the learned

Single Judge. Learned Single Judge proceeded to dispose of the writ petition on merits.

31. We are of the view that the learned single Judge was entitled to do so. The appellants were served and they chose not to appear before the learned Single Judge.

32. ***Satpalsa High School & Ors.*** (supra) also notes that the learned Single Judge can dispose of such writ petition in absence of the respondents recording the reasons for which the writ petition need not be kept pending.

33. In view of the discussions above, we are unable to sustain the impugned order. Order dated July 8, 2022 passed in W.P.A. 10145 of 2019 is set aside.

34. W.P.A. 10145 of 2019 is dismissed.

35. **F.M.A. 1263 of 2022** and the connected application being **CAN 1 of 2023** are **allowed**.

(Debangsu Basak, J.)

36. I agree.

(Md. Shabbar Rashidi, J.)

Signed By :
ABHIJIT DAS
High Court of
Calcutta
11 th of
September 2024
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(AD/ SD)