



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5870 OF 2019

1. Vinayak s/o Anandrao Patil
age 67 years, occ. Retired service man
r/o Sonali, Tq. Himayatnagar
Dist. Nanded.
2. Pramod s/o Vyankatrao Deshpande
age 68 years, occ. Retired service man
r/o Akhadabalapur, Tq. Kalamnuri
Dist. Hingoli .. Petitioners

Versus

1. The Chairman Maharashtra Gramin Bank
Head Office Plot No. 35, Sectoro G
Town Centre CIDCO
Aurangabad 431003.
2. General Manager
Bank of Maharashtra R.R. B. Cell
Lokmangal Shivajinagar
Pune 5 .. Respondents

Mr. S. K. Adkine, Advocate for the Petitioners.
Mr. P. L. Shahane and Mr. P. P. Shahane, Advocates for both the
Respondents.

**CORAM : RAVINDRA V. GHUGE
AND
R. M. JOSHI, JJ.**

RESERVED ON : 3rd APRIL, 2024.
PRONOUNCED ON : 19th April, 2024

JUDGMENT : (Per R. M. Joshi, J.)

1. Rule. Rule made returnable forthwith and heard finally by consent of both the sides.

2. The Petitioners are the Ex-Officers of Maharashtra Gramin Bank. This is Petition is preferred for seeking leave encashment of 240 days. Petitioner No. 1-Vinayak, after completion of 33 years of service tendered resignation on 9th March, 2011, which came to be accepted on 8th June, 2011. Whereas Petitioner No. 2-Pramod, tendered his resignation on 25th September, 2009 which was accepted on the same day. It is the case of the Petitioners that they resigned from the service of the bank and their resignation is accepted but thereafter they are denied the benefit of leave encashment citing Regulation No. 67 of the Maharashtra Gramin Bank (Officers and employees) Service Regulation, 2009 (for short 'the Regulation of 2009').

3. Respondents opposed the Petition by filing the affidavit-in-reply of Sanjay Sitaram Wagh, Chief General Manager, Maharashtra Gramin Bank. The Petition is objected on the ground of availability of alternate remedy i.e. proceeding under the Industrial Disputes Act, 1947 and delay in approaching the Court. The period

of employment of both the Petitioners and their dates of resignation are not disputed. It is claimed by the Respondents that no right is conferred upon the Petitioners for claiming leave encashment merely because they have worked for 33 and 26 years respectively. It is specifically claimed that in view of the Regulation No. 67 of the Regulation of 2009, the Petitioners having resigned from the service are not entitled to seek leave encashment.

4. We have extensively heard the learned Advocates for both the sides. The learned Advocate for the Petitioners for substituting the claim of leave encashment, placed reliance on the judgment of Coordinate Bench of this Court in **Writ Petition No. 1347/2016** (Ashok s/o Munjappa Potphale & others vs. Chief Secretary, Union of India & others) wherein the Petitioners who were terminated/compulsorily retired were held to be entitled for receiving leave encashment. The said judgment was assailed before the Hon'ble Supreme Court unsuccessfully in SLP No. 19888/2017.

5. The learned Advocate for the Respondents opposed the said contention by stating that the facts in the present case totally differs from one involved in the case of Ashok Potphale (supra) and

hence, the same has no application to the present case. He placed reliance on judgments in the case of Gurjit Singh Late Gopal Singh vs. Coal India Limited & another, **AIIOonline 2021 Bom 52** and Project Construction Corporation Workers Association vs. State of Jammu and Kashmir, **AIR Online 2023 J and K 825**. He drew our attention to the policy introduced by the bank w.e.f. 23rd February, 2018 by which, even the employees who resigned from the service after 20 years of qualifying service, are entitled to receive leave encashment. It is submitted that this clearly indicates that at the relevant time, the Petitioners were not entitled to get said benefit as this policy cannot be applied retrospectively.

6. Though an objection is sought to be raised with regard to the maintainability of the Petition on the ground that the Petitioners have alternate efficacious remedy, a bare perusal of the record indicates that the Petitioners were working with the Respondent-bank as 'Officers'. The question would always remain for consideration as to whether the Petitioners were workmen, within the definition of Section 2(s) of the Industrial Disputes Act, 1947. We are, therefore, not inclined to accept the said objection with regard to the tenability of the Petition.

7. The admitted facts on record show that both the Petitioners had worked for 33 years and 26 years respectively and their resignation was accepted on 9th March, 2011 and 25th September, 2009 without any conditions by the bank. The Respondent-bank is seeking to place reliance on the Regulation No. 67 of the Regulation of 2009 which reads thus :-

“.....67. Lapse to 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.....”

8. A bare perusal of the said regulation shows that when the officer or employee who dies while 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. Proviso to this regulation shows 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 the Regulation 61.

9. At this stage it would be relevant to consider Rule 61 which reads thus :-

61. Privilege leave, - (1) An officer or employee shall be eligible for privilege leave computed at one day for every 11 days of service on duty:

Provided that no privilege leave shall be availed of before the completion of 11 months of service on duty at the joining of his service.

(2) The period of privilege leave to which an officer or employee is entitled at any time shall be the period which he has earned less the period availed of.

(3) An officer or employee on privilege leave shall be entitled to full emoluments for the period of leave.

(4) 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.

(5) x x x

(6) x x x

10. Rule 61(4) permits accumulation of privilege leave upto 240 days. Thus, it is within the right of an employee to accumulate privilege leave upto 240 days. Once such right is granted in favour of an employee, unless there is specific provision that on voluntary resignation, he would not be entitled for leave encashment, it would not be open for Bank to claim so. Rule 67 provides for leave encashment in case of death or retrenchment. There is however no embargo created for leave encashment to an employee resigning from service. In our view, unless there is specific prohibition made in the rules, denial of the benefit of leave encashment to the Petitioners is not permissible.

11. In the case of Ashok Potphale (supra) one of the Petitioners was removed and two others were compulsorily retired from the service and therefore, his right to claim leave encashment was forfeited. The Division Bench, after taking into consideration regulation 61(4) read with regulation 66 of the Regulations of 2009, has held that there is absolutely no provision in the Regulation of the Bank for withholding or forfeiting the claim of the employees of the bank for leave encashment on the ground that they are penalised. This judgment was assailed before the Hon'ble Supreme Court in Special Leave Petition (C) No. 19888/2017. The Special Leave Petition is dismissed on 11th August, 2017. We find that the employees who have been terminated by way of punishment after holding disciplinary enquiry, are held to be entitled for leave encashment by this Court and the case of the present Petitioners stands on much better footing than those Petitioners involved in the said case. We, therefore, find no reason or justification to take any different view than the one taken by the Coordinate Bench in case of Ashok Potphale (supra). In the result, the Petitioners herein are held to be entitled to leave encashment of 240 days on the date of their resignation from service.

12. So far as judgments sought to be relied upon by Respondents are concerned, in case of Gurjit Singh (supra) the employee on account of his dismissal consequent to conviction recorded by Special Court, was held to be not entitled to any relief in view of provision of Rule 7.2 of Relevant Service Rules. We, therefore, do not find this judgment coming to aid of Respondents in any manner.

13. We, however, notice that though the Petitioners have resigned from service on 8th June, 2011 and 25th December, 2009, respectively, the Petition has been filed on 25th March, 2019. In our view, since the Petitioners did not initiate the proceeding immediately, Respondent-bank cannot be penalised with the interest for the inaction on the part of the Petitioners in filing the Petition after lapse of some time. We are, therefore, not inclined to grant any interest to the Petitioners till the date of disposal of this Petition on the amount of leave encashment entitled to them.

13. In view of the above, **this Writ Petition is allowed**, with the following order :-

(a) The Petition stands allowed in terms of prayer clause 'B', to the extent of leave encashment of 240 days without interest.

(b) Respondents are directed to pay the leave encashment upto 240 days to the Petitioners within a period of 60 days, failing which, the said amount shall carry interest at the rate of 6% per annum, till realisation.

14. Rule is made partly absolute in the above terms.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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