2024:BHC-AUG:11312-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6712 OF 2019

1. Maroti s/o Mukundrao Waghmare, ... **Petitioner**
Age: 70 yrs, Occu. Retired service man
R/o R.M.R. Plot No.102 Shradha colony
Purna road Nanded, Dist. Nanded.

VERSUS

1. The Chairmen Maharashtra Gramin Bank
Head office Plot No:35, Sector G, Town
Center 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 Petitioner.
Mr. P. L. Shahane a/w Mr. Parag P. Sahane, Advocate for Respondent Nos. 1 and 2.

CORAM	:	**RAVINDRA V. GHUGE, & Y. G. KHOBRAGADE, JJ.**
RESERVED ON	:	**13.06.2024**
PRONOUNCED ON	:	**21.06.2024**

JUDGMENT (Per: Y. G. Khobragade, J.)

1. **Rule.** Rule made returnable forthwith and heard finally with the consent of the parties.

2. By the present Petition under Article 226 of the Constitution of India, the Petitioner, who is Ex-Officer of the Respondent

Maharashtra Gramin Bank, has put forth prayer clause (B), (C) and (D) as under:

"(B) Quash and set aside the order Dt. 11.04.2019 issued by chief administrator about pensioners benefits and it may be declare as illegal contrary to Law.

(C) Direction may be issue against the respondents, their agents and subordinates about giving "Leave Encashment Payments" and other retirement benefits and pension within 4 weeks to the Petitioner.

(D) Respondent No 01, the Chairmen Maharashtra Gramin Bank may be directed to deposit "Leave Encashment Payments" of the Petitioner in this Hon'ble High Court with 18% interest."

3. In nutshell, the grievance of the Petitioner is that, on 05.04.1977, he was initially appointed as a Clerk with the Respondent Bank and was posted at Panbhosi Branch Dist. Nanded. During his service tenure, he served at various branches of the Respondent Bank. On 20-06-1990, he was promoted to the post of Senior Manager, however, on 29.01.2005, he was suspended by leveling false and baseless charges against him. The charges were duly inquired through the Enquiry Officer and inquiry was held against him. In consequence of the same, on 20-11-2007, Respondent No. 1 passed an Order and thereby compulsory retired him without entitlement of monetary or other benefits, except subsistence allowance which was already paid to him and his salary was reduced by 5 stages in the time scale of

Rs.13,820/- to Rs.19,920/- with cumulative effect i.e. reduction of 5 annual increments with cumulative effects. So also, suspension period w.e.f. 29-01-2005 to 20-11-2007 was treated as suspension period.

4. According the Petitioner, during his service tenure, he received several congratulation letters which were issued by the Respondent Bank to him for his hard work. He served with the Respondent Bank for the period of 30 years 7 months, therefore, he is entitled to receive Rs. 11 Lakhs 59 thousand viz., Rs. 01,75,900/- toward E. P. F., Rs. 07,45,800/- toward Suspension Allowance, Rs. 02,37,300/- toward Leave Encashment. However, the Respondent Bank failed to give him service benefits. Therefore, on 14-01-2009, he issued demand notice under section 33-C of the Industrial Disputes Act, 1947 to the Respondents. On 16.01.2009, the Respondent Bank replied to the said notice and refused to grant service benefits on ground that he is not entitled for said benefits as per final order dated 20-11-2007.

5. The learned counsel for the Petitioner canvassed that the Petitioner submitted an application to Respondent No. 1 on 04.06.2018 contending that in similar circumstances, other employees from his department have been granted leave encashment, therefore, similarly, he is also entitled for said benefits. Further, on 25.02.2019, the Petitioner submitted details in a particular format and requested to

grant pensionary benefits, however, the Respondent replied vide communication dated 11.04.2019 stating that he is not entitled for said benefits.

6. The learned counsel for the Petitioner submits that the Petitioner has served Respondent Bank for the period of 30 years and 7 Months with no service gap until his suspension. Therefore, the Petitioner is entitled for service benefits. He has relied on Rule 61 (4) of the Maharashtra Gramin Bank (Officers and employees) Service Regulations, which provides that the Privilege leave may be accumulated up to 31/12/1989 for an aggregate period up to 180 days and from 01/01/1990, the privilege leave may be accumulated up to not more than 240 days.

7. It is further canvassed on behalf of the learned counsel for the Petitioner that, as per Government Resolution issued regarding pension to Maharashtra Gramin Bank Employee, Rule 29 (1) of 2018 is applicable to Petitioner. To substantiate his submissions, the learned counsel for the Petitioner has placed reliance on the judgment of this Court in **Writ Petition No. 1347 of 2016** ***Ashok Munjappa Potphale & ors. vs. Chief Secretary, Union of India & Ors.***

8. The Respondents, by filing affidavit in reply, have admitted the facts about the Petitioner's appointment, promotion, transfer, suspension and compulsory retirement. However, the Respondents have denied the Petitioner's claim to receive due salary, retirement and pensionary benefits because of the Petitioner's misconduct during his service tenure. Further it was emphasized by the Respondents that working for more than 30 years does not automatically confer any right in favour of the employee for entitlement of pensionary benefits unless his service record is unblemished and the employee who awarded punishment for serious charges is not entitled for pensionary and retiral benefits.

9. It was further contented on behalf of Respondents that, the Petitioner has already availed remedy under section 33-C of the Industrial Disputes Act, 1947 by issuing notice dated 14-01-2009 and the Respondent Bank already replied to the said notice. Therefore, the Petitioner is having alternate remedy, hence, prayed for dismissal of the Petition.

10. At the outset, it is submitted that the Respondent Bank raised an objection about maintainability of the Petition as the Petitioner has issued Notice dated 14-01-2009 under section 33-C of the Industrial Dispute Act, 1947 thereby claiming retiral benefits. The Respondent Bank replied to the said Notice on 16-01-2009 and denied said benefits

as per final order of the Disciplinary Authority. At the time of issuance of order dated 20.11.2007 ordering compulsory retirement, the Petitioner was serving as an Area Manager, which does not fall within the ambit of "workman" as defined under section Section 2(s) of the Industrial Disputes Act. Therefore, merely because the Petitioner issued notice under section 33-C of the Act, it cannot be said that present Petition is not maintainable. We are, therefore, not inclined to accept the objection raised by Respondents with regard to the tenability of the Petition.

11. We have considered strenuous submissions canvassed on behalf of both sides and we have gone through the petition paper book. It is undisputed that, on 05-04-1977, the Petitioner was initially appointed as a Clerk with the Respondent Bank and was posted at Panbhosi Branch Dist. Nanded. On 20-06-1990, the Petitioner was promoted to the post of Senior Manager. According to the Respondents, while serving as a Area Manager at Parbhani the Petitioner committed serious acts of misconduct. As a result, he was served with the charge sheet on 25.05.2005, citing breaches of several Regulations of the Marathwada Gramin Bank (Officers and Employees Service Regulations, 2001). Thereafter, an enquiry was conducted by Shri. B. M. Gaikwad, during which the Petitioner was represented by his defence representative. After hearing, the enquiry officer submitted it's Report

on 13.10.2007, finding the Petitioner guilty of the charges. Following this, the Disciplinary Authority issued a show cause of punishment on 14.11.2007, proposing removal from service and reduction of 5 annual increments with cumulative effect for the proved acts of misconduct.

12. After a personal hearing, the disciplinary authority issued the order of punishment dated 20.11.2007, ordering compulsory retirement of the Petitioner for the proved acts of misconduct and confirming the suspension period from 29.01.2005 to 20.11.2007 as 'suspension' only. Said order specifically disentitled the Petitioner from claiming any monetary or other benefits from the Respondent Bank and, therefore, the Petitioner is not entitled to any relief as prayed for in this Petition. The provision of the Maharashtra Gramin Bank Employees Service Regulations, 2010 does not provide for grant of leave encashment benefits, post retiral benefits to employees who have committed serious misconduct and compulsorily retired being a punishment.

13. It is undisputed that, service conditions of the Petitioner are governed under the Maharashtra Gramin Bank (Employees) Regulations, 2009. Regulations 61 & 67 provide as under:

> "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 up to 31st December, 1989 for an aggregate period up to 180 days and from 1st January, 1990, the privilege leave may be accumulated up to not more than 240 days.

(5) An application for privilege leave shall be submitted by an officer or employee one month before the date from which such leave is required.

(6) The application which does not satisfy the requirement of sub-regulation (5) may be refused without assigning any reason :

Provided that if the Competent Authority is satisfied that such requirement was not possible, he may, at his discretion, waive the requirement".

"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."

14. On a bare perusal, Regulation No. 67 provides that when an officer or employee dies while in service, the monetary benefits of privilege leave shall be payable to his legal representatives 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 No. 61.

15. In the case in hand, the question raised is as to whether the Petitioner, who was compulsorily retired as punishment after holding disciplinary proceedings against him, is entitled to get encashment of his privilege leave? Said question is no more res-integra as per the view expressed in the case of ***Ashok Munjappa Potphale & Ors. vs Chief Secretary, Union of India, Banking Division; [2017 (3) Mh.L.J. 540],*** Co-ordinate bench of this Court by considering the case of ***State of Jharkhand & Ors. vs Jitendra Kumar Srivastava & Anr, (2013) 12 SCC 210,*** has held that, the Petitioners who were terminated/compulsorily retired are entitled for receiving leave encashment.

16. Needless to say that, the issue involved in present case has already been considered by this court in **Writ Petition No. 619/2018 Padmakar Trimbakrao Mule vs The Chairman Maharashtra Gramin Bank & Anr.** the co-ordinate bench of this Court [Coram: Shri P. B. Varale (as his lordship then was) and N. W. Sambre JJ.] has observed in Paragraph Nos. 10 to 13, as under:

> "10. In the aforesaid backdrop, if this Court proceeds to appreciate the claim put forth by the petitioners, it cannot be inferred from the provisions of the Regulations of 2010 that in law the respondent employer is authorised to deny the relief claimed by petitioners in the instant petitions.
>
> 11. Identical issue fell for consideration before this Court in Writ Petition No. 1347/2016 in which, the Division Bench of this Court pronounced judgment on 17.02.2017. In the said case, the Division Bench had an occasion to consider the provisions of Regulations 61(1) and 67 of the aforesaid Regulations which governs the service conditions of petitioners and the Division Bench was pleased to allow the petitions thereby directing respondent employer to pay the amount of privilege leave encashment as per the lawful entitlement of petitioners considering the privilege leave standing to the credit of the petitioners. It was also directed to pay interest at the rate of 8% per annum on the amount to which the petitioners therein were held to be entitled to.
>
> 12. Once it is not in dispute that in a similar factual position, pursuant to the law which governs the dispute brought before this Court, this Court has granted relief, the judicial discipline warrants us to follow the same path. As such, all these petitions need to be allowed and are allowed accordingly.
>
> 13. We accordingly direct respondent-employer to forthwith process the prayer of the petitioners for grant of leave encashment payment upto 240 days, of course, upon

> calculating their entitlement to the aforesaid effect. Needless to say that, the amount to which the petitioners will be held entitled shall carry interest at the rate of 8% per annum."

17. Further, in **Writ Petition No. 12161 of 2019; Dattaram Atmaram Sawant & Anr. vs Vidharbha Konkan Gramin Bank**, the Co-ordinate bench of this court (Coram: Nitin Jamdar and M.M. Sathaye JJ) by Judgment dated 2nd May, 2024 has considered Regulations 61 & 67, which provide Privilege Leave, Lapse of Leave and observed in Paragraph Nos. 14 to 18 as under:

> "14. From the review of the decisions cited by the Petitioners, the following position of law emerges. Regulation 61 stipulates that an employee earns one day of privilege leave for every 11 days of duty, with the entitlement being the accumulated days earned minus those already utilised. Additionally, Regulation 61 specifies that an employee on privilege leave shall receive full emoluments for the duration of the leave. Consequently, the right to leave is a statutory entitlement granted to employees as per the provisions of the law. This privilege leave, as defined in Regulation 61, is available to employees upon fulfilling the prescribed duty period. Regulations states that during this period, employees are entitled to full emoluments as if they were on duty.
>
> 15. Leave encashment is akin to a salary, which is property. Depriving a person of his property without any valid statutory provision would violate Article 300 A of the Constitution of India. Leave encashment paid on account of unutilised leave is not a bounty. If an employee has earned it and the employee has chosen to accumulate his earned leave to his credit, then encashment becomes his right. The Hon’ble Supreme Court, in the case of the State of Jharkhand and Others, held that a person could not be deprived of his right to pension without the authority of law, which is the constitutional mandate enshrined

in Article 300 A of the Constitution of India. The Supreme Court, in the case of D.S. Nakara and Others v. Union of India14, has established the legal position that pension is a statutory right, not subject to the whims of the authorities, but is governed by statutory rules. In the case of Jitendra Kumar Srivastava, the Apex Court emphasised that the right to property cannot be infringed upon without due process of law. Thus any attempt to deprive an employee of pension, gratuity, or leave encashment without a statutory provision, is untenable.

16. Consequently, leave encashment which was acquired by the Petitioners constitute their property once earned. Deprivation of such property without statutory backing will not be permitted. Leave encashment is recognised as a right by the courts, accruing to employees upon fulfillment of statutory conditions, and can only be restricted by another statutory provision empowering the employer to withhold it. Regulation 67 when it states 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 cannot take away the right to the Petitioners which has already accrued. All the decisions that the Petitioner has cited referred to above have analyzed different form of cessation of service, including dismissal, and have held accordingly.

17. Once there is no such specific regulation that takes away the accrued right to encash privilege leave on resignation, then without there being any specific regulation, the right already accrued cannot be forfeited. Though Regulation 67 states that all leave shall lapse, it does not mean the right already accrued for encashment will lapse.

18. The Division Bench of this Court in the case of Ashok s/o. Munjappa Potphale and Others considered the provisions of the Maharashtra Gramin Bank (Officers and Employees) Service Regulations, 2010, which are identical to the Regulations of 2013. In this case, the Petitioners therein who were penalised with removal from service after holding up the disciplinary enquiry, had claimed entitlement to their privilege leave. The employer -bank opposed the petition, stating that the petitioners therein were found guilty of the charges, they were

compulsorily retired by way of punishment, and they were not entitled to leave encashment. The Division Bench found that there was no provision for withholding leave encashment on the grounds that they have been penalised and directed to pay the amounts of privilege leave encashment to the petitioners as per their entitlement, considering the privilege leave standing to their credit."

18. Further, this Court, in **Writ Petition No. 5870 of 2019** ***(Vinayak s/o Anandrao Patil and Another vs The Chairman Maharashtra Gramin Bank)*** (Coram: Ravindra V. Ghuge and R. M. Joshi JJ.) has held that, the employees who have been terminated by way of punishment, after conducting a disciplinary enquiry, is entitled for leave encashment.

19. The case of the Petitioner stands similar to the cases cited supra. Therefore, considering the ratio of cases cited above as well as Regulations 61 (1) and 67 and decision of the two Division Benches in similar set of facts wherein directions were already issued to the Respondent/Bank Employer to pay the amount of privilege leave encashment according to the lawful entitlement of the petitioners in cases cited supra, it would be just and proper to direct the Respondents/Bank herein to pay the admissible amount of privilege leave encashment for 240 days being lawful entitlement of the Petitioner. However, the Petitioner would not be entitled for the pensionary benefits as the Petitioner has not challenged the order dated 20-11-2007 by which he came to be compulsorily retired, after charges

of misconduct were proved against him, and his service benefits were denied. The Petitioner approached this Court in the year 2019 after lapse of 12 years. However, the Petitioner has not offered any explanation about approaching this Court after lapse of 12 years. Therefore, taking into consideration the delay and laches, the Petitioner is not entitled for any interest.

20. In view of above discussion, we proceed to pass the following order:

O R D E R

1. **The Writ Petition is partly allowed.**
2. The Petitioner is entitled to receive leave encashment for the period of 240 days, without interest.
3. The Respondent 1 & 2, are hereby directed to pay leave encashment upto 240 days to the Petitioner within a period of 60 days from the date of this order, failing which said amount shall carry interest at the rate of 6% per annum till its realisation.
4. **Rule is made partly absolute** in the above terms.
5. No order as to cost.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

JPChavan