



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13301 OF 2022

1. Kishor s/o Narayanrao Sawargaonkar, ... **Petitioner**
Age 60 years, Occu: Retired Manager,
R/o Ranisawargaon Tq. Gangakhed
Dist. Parbhani
2. Sudarshan s/o Bhaurao Patil
Age 59 years, Occu: Retired
R/o Flat No.9, Sharda Simran Park,
College Road, Patil Lane No.2
Nashik, Dist. Nashik
3. Shashikant s/o Kashinath Bargode,
Age 58 years, Occu: Retired (Chief
Manager), R/o D-203, CD-115, Shrirang
Unit No.15, CHS Ltd. Shrirang Society,
Thane (W), Tq. & Dist. Thane
4. Jayshree w/o Anilrao Wadikar,
Age 57 years, Occu: Retired
(Office Assistant), R/o Plot No. 25,
Shrisadan, Narhar Nagar, Wadk (Bk), Ring
Road, Taroda Road, Nanded
5. Anjali w/o Arun Bhalerao,
Age 60 years, Occu: Retired Manager,
R/o Flat no. A-01, Shrimohan Apartment,
Anand Vihar, Itkheda, Aurangabad
6. Sangeeta w/o Rajendra Kirve,
Age 54 years, Occu: Retired Manager,
R/o Building No.A-1/702, Sadguru Garden
Society, Near Vijay Garden Ghodbandar
Road, Kavesar, Thane (West), Dist. Thane

VERSUS

1. The Union of India

Department of Financial Services,
Ministry of Finance, Govt. Of India,
Jeevandeep Building, Parliament Street,
New Delhi (Through its Secretary).

2. National Bank for Agriculture and Rural Development (NABARD)
Through its General Manager
Plot No.C-24, G Block, Bandra Kurla Complex, Bandra (East), Mumbai.

3. Maharashtra Gramin Bank ... **Respondents**
Plot No. 43, Gat No. 33, (Part)
Village Golwadi Growth Center,
Waluj Mahanagar-4, CIDCO,
Aurangabad.
Through its General Manager.

4. The Board of Directors,
Maharashtra Gramin Bank
Plot No. 43, Gat No. 33, (Part)
Village Golwadi Growth Center,
Waluj Mahanagar-4, CIDCO,
Aurangabad. Through its Chief Manager.

Mr. U. B. Bilolikar, Advocate for the Petitioner.

Mr. R. B. Bhosale, Advocate for the Respondent No. 1.

Mr. P. L. Shahane a/w Mr. P. P. Sahane, Advocate for Respondent Nos. 2.

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRADE, JJ.

DATE : 27.06.2024

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 Petitioners, who are Ex-employees of the

Respondent No. 3/Maharashtra Gramin Bank have prayed for issuance of writ of mandamus directing the Respondent No. 3 for disbursement of amount of their leave encashment as per their entitlement with interest @ 18% p.a. with immediate effect.

3. In nutshell, the grievance of the Petitioner Nos. 1 to 6 is that they have joined the services with Respondent No. 3 Bank on different dates and they have voluntarily retired as under:

Sr. No.	Names of the Petitioners	Date of Joining	Date of voluntary retirement
1	Kishor Sawargaonkar	03.06.1982	07.04.2022
2	Sudarshan Patil	20.07.1990	30.09.2020
3	Shashikant Bargode	01.11.1988	01.06.2022
4	Jayshree Wadikar	24.09.1984	01.12.2020
5	Anjali Bhalerao	09.07.1990	10.12.2021
6	Sangita Kirve	01.02.1989	10.12.2021

4. According to the petitioners their services are governed by the Maharashtra Gramin Bank (Officers and Employees) Service Regulations, 2010 and Amendment Regulations, 2018. The Pension Regulations of the Respondent No. 3 Bank came into force w.e.f. 30/10/2018. The Regulations were formulated after consultation with Respondent No. 3 Maharashtra Gramin Bank being sponsored by the Respondent No. 2 NABARD with previous sanction of Respondent No. 1. On 10/10/2019, the Respondent No. 3 Bank issued a Circular bearing No. 238 and floated the scheme of Voluntary retirement for Officers and

Employees. As per Regulation No. 61, the employee held entitled for privilege leave accumulated in account of respective employee to the extent of 240 days. However, the Petitioner Nos. 1 to 6 are opted for voluntary retirement as per VRS Scheme as per Circular bearing No. 238 dated 10/10/2019 and privilege leaves were accumulated in thier account, however, the Respondent No. 3 Bank without any reason withheld their benefits of privilege leave. According to the petitioners privilege leave encashment granted to other similar 38 employees, who were voluntarily retired w.e.f. 30/09/2020 to the extent of 240 days, but no such benefits were granted to them. Therefore, action on part of the Respondent No. 3 is discriminatory.

5. The learned counsel for the Petitioners submits that the Petitioner Nos. 1 to 6 have served with the Respondent No. 3 Bank for the period of more than 30 years with no service gap until their voluntary retirement. Therefore, the Petitioners are entitled for their service benefits. The learned counsel for the petitioners 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.

6. It is further canvassed on behalf of the learned counsel for the Petitioners that, as per Government Resolution issued regarding pension to Maharashtra Gramin Bank Employee, Rule 29 (1) of 2018 is applicable to Petitioners. To substantiate his submissions, the learned counsel for the Petitioners 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.**

7. Respondent Nos. 3 & 4, by filing affidavit in reply, have admitted the facts about appointment of the Petitioner Nos. 1 to 6 and their voluntary retirement under the VRS Scheme as stated in Para No. 3 of the Petition. According to the Respondents, as per Circular dated 10/10/2019 the VRS Scheme was introduced for the Bank's Officers and Employees and after voluntary retirement these petitioners have already received all the retiral benefit without any protest. Petitioner Nos. 1 to 6 have voluntarily retired and the issue regarding payment of leave encashment to the employees like the petitioners is pending with the Department of Financial Services (DFS), Government of India, hence, prayed for dismissal of the petition.

8. We have considered strenuous submissions canvassed on behalf of both sides and we have gone through the petition paper book. It is undisputed that, Petitioner Nos. 1 to 6 have served the Respondent

No. 3 Bank for the period more than 30 years. The Service conditions of the petitioners are governed by the Maharashtra Gramin Bank (Officers and Employees) Service Regulations, 2010 and Amended Regulations, 2018.

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.”

9. 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.

10. In the case in hand, the question raised is as to whether the Petitioners who are voluntarily retired are 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.

11. 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 the Respondent No. 3 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.*

12. 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 Regulation Nos. 61 & 67, which provide for Privilege Leave and 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 India, 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."

13 Further, this Court, in case of **Vinayak s/o Anandrao Patil and Another vs The Chairman Maharashtra Gramin Bank Writ Petition No. 5870 of 2019** (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.

14. The case of the present Petitioners stands similar to the cases cited above. Therefore, considering the ratio of cases cited above as well as Regulation Nos. 61 (1) and 67 and decision of 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, it would be just and proper to direct the Respondent No. 3 Bank to pay the admissible amount of privilege leave encashment for 240 days being lawful entitlement of the Petitioners. In view of above discussion, we pass the following order:

O R D E R

1. **The Writ Petition is allowed.**
2. The Petitioner Nos.1 to 6 are entitled to receive the leave encashment for the period of 240 days only.
3. The Respondent No.3 is hereby directed to pay the leave encashment upto 240 days to the Petitioners within a period of 75 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 absolute in the above terms.
5. No order as to cost.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan