

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12161 OF 2019

- (1) Dattaram Atmaram Sawant ,
Age 57 years, Occ.: Retired,
- (2) Seema Dattaram Sawant,
Age 56 years, Occ.: Retired,
Both residing at 764, Vrindavan,
Shivshakti Nagar, Nardave Road,
At Post Taluka Kankavali,
District Sindhudurg ... Petitioners

Versus

Vidharbha Konkan Gramin Bank,
having its Head Office at Chandraprastha,
2nd and 3rd Floor, Plot No.6,
Deendayal Nagar, Ring Road,
Nagpur 440 022,
(Maharashtra State) through its Chairman ... Respondent

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Mr.Shailendra S. Kanetkar with Mr.Yash Dhawal for the Petitioners.

Mr.Bhavesb Wadhwani with Ms.Shrishti Shetty i/b. M/s. M.V.Kini
and Co. for the Respondent.

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**CORAM: NITIN JAMDAR, and
M.M. SATHAYE, JJ.**

DATE: 2 May 2024.

JUDGMENT (*Per: Nitin Jamdar, J.*)

Rule. Rule made returnable forthwith. The Respondent waives
service. Taken up for disposal.

2. The question to be considered in this Petition is whether the Petitioners have lost their right to encash privilege leave because they resigned from the services of the Respondent—Bank.

3. Petitioner No.1, Dattaram Atmaram Sawant, and Petitioner No.2, Seema Dattaram Sawant, were employees of the Respondent—Vidharbha Konkan Gramin Bank. Dattaram Sawant was appointed as an Assistant Manager on 8 December 1984. He worked with the Respondent – Bank for 30 years, 7 months, and 26 days. On 2 May 2015, he addressed a letter to the Respondent – Bank as resignation and advance notice of 90 days to relieve him from service from 2 August 2015. The Regional Manager, by letter dated 31 July 2015, accepted the resignation of Dattaram Sawant. On 9 March 2017, the Respondent-Bank issued an experience certificate to Dattaram Sawant for the period during which he worked with the Respondent-Bank as satisfactory.

4. Seema Dattaram Sawant was appointed on 6 August 1984 as a Cashier in the Respondent – Bank. She worked with the Respondent – Bank for 30 years, 1 month and 25 days. On 16 June 2014, she wrote a letter to the Respondent – Bank for voluntary retirement with effect from 1 October 2014, and she was informed by the Respondent – Bank that as per the Respondent- Bank's service regulations, there was no provision for voluntary retirement. She,

therefore, by letter dated 28 June 2014, requested the Respondent - Bank to treat her letter as resignation and advance notice of 90 days. The Respondent- Bank, by communication dated 30 September 2014, accepted her resignation and that she would be relieved from service on 30 September 2014. Thereafter, on 12 April 2018, the Respondent -Bank issued an experience certificate to her certifying that the period she worked with the Bank was satisfactory.

5. Wainganga Krishna Gramin Bank was amalgamated with the Respondent -Vidharbha Konkan Gramin Bank. In a meeting held on 17 May 2013, the Respondent- Bank adopted the service regulations which were in force in the erstwhile Wainganga Krishna Gramin Bank and framed its own service regulations named as Vidharbha Konkan Gramin Bank (Officers and Employees) Service Regulations, 2013 (for short Regulations of 2013). The Regulations of 2013 are identical to service regulations of the erstwhile Wainganga Krishna Gramin Bank. A notification was published in the official gazette on 28 October 2013 whereby the earlier service regulations of the Respondent- Bank came to be amended and replaced with the Regulations of 2013. As such the service conditions for officers and employees of the Respondent – Bank are now governed by the Regulations of 2013.

6. Under the Regulations of 2013, the employees are eligible for privilege leave computed at one day for every 11 days of service on

duty, and privilege leave would be accumulated up to 31 December 1989 for an aggregate period of up to 180 days and from 1 January 1990, it would be accumulated up to not more than 240 days.

7. The last drawn salary of Dattaram Sawant was Rs. 82,193/-. As per the privilege leave sanctioned form signed by the competent authority of the said Bank dated 22 April 2015, Dattaram Sawant had 229 days of privilege leave at his credit. Dattaram Atmaram Sawant was entitled to 21 days of privilege leave from January 2015 to July 2015; the privilege leave standing to his credit was 250. As per the Regulations of 2013, he was entitled to encashment of 240 days of privilege leave, and, according to him, it amounted to Rs. 6,57,554/-. The last drawn salary of Seema Sawant was Rs. 66,690/-. As per the privilege leave sanctioned form signed by the competent authority of the said Bank dated 19 April 2014, Seema Dattaram Sawant had 183 days of privilege leave at her credit. Seema Atmaram Sawant was entitled to 27 days of privilege leave for the period from January 2014 to September 2014, and she was entitled to 27 days of privilege. The privilege leave standing to her credit was 210 days. As per the Regulations of 2013, she was entitled to encashment of 210 days of privilege leave, and, according to her, it amounted to Rs. 4,66,830/-.

8. After tendering resignations, the Petitioners requested the Respondent – Bank for encashment of their privilege leave. First,

there was no response. Then, on 30 January 2018, the General Manager of the Respondent Bank addressed a letter to the advocate for the Petitioners informing that the facility for encashment of privilege leave for those who have resigned came into existence on 14 September 2015, after the Petitioners had resigned from service. Aggrieved by the refusal by the Respondent – Bank of their prayer for encashment of privilege leave, the Petitioners have sought a writ of mandamus to direct the Respondent – Bank to pay the amounts of privilege leave standing to their credit with interest at Rs.8% per annum. The Respondent – Bank has filed a reply affidavit.

9. Heard Mr.Shailendra Kanetkar, the learned Counsel for the Petitioners and Mr.Bhavesh Wadhwani, the learned Counsel for the Respondent -Bank.

10. Chapter -V of the Regulations of 2013 deals with pay and allowances. Chapter- VI is regarding leave and joining time. Under Regulation 55 of Chapter -VI, an officer or employee of the Respondent – -Bank is eligible for casual leave, privilege leave, sick leave, extraordinary leave, special casual leave and special leave, maternity leave and paternity leave. Privilege leave is provided under Regulation 61 of Chapter -VI, 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 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”.

According to the Petitioners, once under the Regulations of 2013, the facility of encashment of privilege leave was provided merely because the Petitioners resigned; they do not lose their right which has already accrued. According to the Respondent – Bank, only those who have given resignation after 14 September 2015 are entitled to leave encashment as from that date the entitlement for resigned employees was provided. It is contended that Dattaram Atmaram Sawant has given resignation on 2 August 2015 and Seema Dattaram Sawant has given resignation on 1 October 2014 and therefore, they are not entitled to claim leave encashment. These are the basic rival stands of the parties before us.

11. The concept of privilege leave and encashment thereof is governed by the statutory Rules. It is not in dispute that both the Petitioners have completed 30 years of qualifying service. Had the Petitioners retired from service on superannuation on the date of their resignation, they would have been entitled to encashment of privilege leave. The question, therefore, is whether their resignation would take away their right to claim leave encashment.

12. Regulation 67 of Chapter-VI of the Regulations of 2013 deals with lapse of leave. Regulation 67 reads as follows:

“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.”

13. The Petitioners have relied upon various decisions to show the different contingencies of cessation of service where a right of earned leave encashment has been upheld, which are as follows: (i) *T. Veeravinothan Vs. The Registrar of Cooperative Societies, Kilpauk, Chennai & Ors.*¹; (ii) *Atmesh Kumar Roy Versus Madhya Bihar Gramin Bank and Another*²; (iii) *Shrinath Upadhyay Versus Union of India, through its Secretary Ministry of Finance and Others*³; (iv) *Mohanlal Gupta Versus Madhyanchal Gramin Bank, Sagar and Another*⁴; (v) *Gopalkrishna Varadaraj Acharya Versus The Chairman, PHRD Division, Karnataka Vikas Grameen Bank and Another*⁵; (vi) *State of Jharkhand and Others Versus Jitendra Kumar Srivastava and Another*⁶; (vii) *Buddhadeb Ruidas and Others Versus State of West Bengal and Others*⁷; (viii) *Ashok s/o. Munjappa Potphale and Others vs Chief Secretary, Union of India, Banking Division and Others*⁸; (ix) *Managing Committee, K.D.Jain Shikshan Parishad & Anr. Versus Smt. Mamta Gangwal & Anr.*⁹; (x) *Omprakash s/o. Jiwandas Miglani vs Coal India Ltd., Kolkata and another*¹⁰; (xi) *Siyaram Basanti Versus Chhattisgarh Rajya Gramin Bank, through Its Chairman and Others*¹¹; (xii) *The Karnataka Vikas Grameena Bank, Dharwad-8 and Another versus*

1 2016 0 Supreme (Mad) 868

2 2020 SCC OnLine Pat 1367

3 2020 SCC OnLine Pat 1546

4 2022 SCC OnLine MP 5814

5 High Court of Karnataka in Writ Petition No. 102049 of 2022 dated 8 September 2023

6 (2013) 12 SCC 210

7 (2013) 12 SCC 221

8 2017 (3) Mh. L.J. 540

9 2021 (1) RLW 231 (Raj.)

10 2012 (5) Mh. L.J.

11 2022 SCC OnLine Chh 1798

*Chandrashekhar*¹² and (xiii) *Jagdish Prasad Saini and Others Versus State of Rajasthan and Others*¹³.

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

12 2021 SCC OnLine Kar 15842

13 2022 SCC OnLine SC 1298

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*¹⁴, 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 fulfilment 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

14 (1983) 1 SCC 305

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.

19. In the case of *The Karnataka Vikas Grameena Bank, Dharwad-8 and Another*, the Division Bench of the High Court of Karnataka considered the issue of encashment of privilege leave in the case of a resignation. Regulation 64 of the Karnataka Vikas Grameena Bank (Officers and Employees) Service Regulations, 2005 is the identical clause regarding lapse of leave where similar

provisions as per the Regulations of 2013 have been made, that is, when an officer or employee dies in service; when a staff retires from the Bank's services; and when the services of the officer or employee are terminated owing to retrenchment. The Division Bench held that there was no distinction between the one who was retired and resigned since the benefit had already accrued. This decision supports the Petitioners.

20. The Respondent – Bank relied upon the decisions of the Hon'ble Supreme Court in the case of *BSES Yamuna Power Ltd. Versus Sh.Ghanshyam Chand Sharma & Anr.*¹⁵ and in the case of *Senior Divisional Manager, Life Insurance Corporation of India Ltd. & Ors. Versus Shree Lal Meena*¹⁶ to argue that the resignation would stand on a different footing. In the case of *BSES Yamuna Power Ltd*, the first Respondent therein, who worked as a daily rated mazdoor, was denied the pensionary benefits on the ground that he had not completed 20 years of service and subsequently, by resigning, he had forfeited his past service. In this case, Rule 26 of the Central Civil Service Pension Rules, 1972, which was made applicable, specifically stated that upon resignation from service or post, an employee forfeits past service. Therefore, the Court held that even if he had completed 20 years of service under Rule 26 of the Central Civil Service Pension Rules, 1972, his past service stood forfeited upon resignation. In the case of *Shree Lal Meena*, Rule 23 of the Life

¹⁵ Civil Appeal No. 9076 of 2019 @ SLP (C) No. 6553 of 2018 dated 5 December 2019

¹⁶ Civil Appeal No. 14739 of 2015, dated 15 March 2019

Insurance Corporation of India (Employees) Pension Rules, 1995 clearly stated that resignation and other forms of termination shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. In this context, the Hon'ble Supreme Court looked at the aspect of resignation and observed that there is a difference between resignation and voluntary retirement. These two decisions of the Hon'ble Supreme Court arise in different circumstances and will not support the Respondent- Bank.

21. The second contention of the Respondent is that the Bank, while issuing a Circular dated 17 November 2015, extended the facility of leave encashment for the first time to even those who have resigned and therefore, those who resigned earlier are not entitled to this benefit. This Circular dated 17 November 2015 states that even those who have resigned will be entitled to leave encashment. However, even if the Circular dated 17 November 2015 was not issued, right of leave encashment for the employees who had resigned, had already accrued and the right for encashment of privilege leave existed even without the Circular of 2015. Therefore, the Circular dated 17 November 2015 did not bring about any new situation but only reiterated the existing position of law, and the Respondents cannot contend that it is only after 17 November 2015 that the right accrued to the resigned employees. Further, this Circular, which is issued by the HR Department of the Respondent - Bank can not be contrary to the Regulations of 2013, as interpreted, which confers the right on the resigned employees.

22. As a result of the discussion, the Petitioners are entitled to succeed. Their accrued right of encashment of privilege leave could not have been rejected by the Respondent -Bank. In the cases arising out of similar Regulations, the position of law has been recognized in favour of the Petitioners. The refusal by the Respondent -Bank to extend the benefit of encashment of privilege leave is arbitrary and cannot be sustained.

23. Thus, it is declared that the Petitioners are entitled to leave encashment as prayed for. The Respondent – Bank is directed to calculate the amounts payable towards encashment to the Petitioners along with interest at the rate of Rs.6% per annum and pay the same to the Petitioners within six weeks from today. Rule is made absolute in above terms.

24. The Writ Petition is disposed of as above.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)