



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3686 OF 2022

Justice Ashok Pitambar Bhangale (Retired)
Aged 68 years, Occupation – Retired,
R/o Flat No. 003, 3rd Floor, 212,
Creation Villa Apartments, Bhausahab
Parbhure Marg, Opp. NIT Ground,
Ram Nagar, Nagpur – 440 010.

....PETITIONER

VERSUS

- 1) State of Maharashtra, through Chief Secretary,
Mantralaya, Mumbai – 400032.
- 2) Food, Civil Supply & Consumer Protection
Department, through its Secretary, Mantralaya
Extension, Mumbai – 400 032.
- 3) Law and Judiciary Department,
through its Principal Secretary,
Mantralaya, Mumbai – 400032.
- 4) State Consumer Disputes Redressal Commission,
through its Registrar, Old Secretariat Building,
Ground Floor, Near Jahagir Art Gallery, M.G. Road
Behind Elphinstone College, Mumbai – 400032.

RESPONDENTS

Mr. A.R. Deshpande, Counsel for the petitioner,
Mr. A.S. Fulzele, Addl.G.P for respondent Nos. 1 to 3.

CORAM : NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.
DATED : 11th JANUARY, 2024

ORAL JUDGMENT : (Per : N.W. SAMBRE, J.)

Heard. **RULE.** Rule made returnable forthwith by consent of the
learned counsel for the parties.

2. The issue which is sought to be canvassed in the present petition, is as regards the entitlement/grant of leave encashment to the petitioner, who is a retired Judge of the High Court of Bombay and was appointed on the post of the President of the Maharashtra State Consumer Dispute Redressal Commission, Mumbai.

3. The facts, as are necessary for deciding the petition, are as under :

The petitioner, after having retired as a Judge of the High Court of Bombay, *vide* State Government decision dated January 06, 2016 came to be appointed as the President of the Maharashtra State Consumer Dispute Redressal Commission, Mumbai. After having completed the 67 years of his age, the petitioner stood retired from the said post on which 142 days earned leave was to his credit.

Since he was entitled for leave encashment as per the Maharashtra Civil Services (Leave) Rules, 1981 (for short “Leave Rules of 1981”), he approached the respondent-State Authorities for encashment of the same, which was not granted. As such, the petitioner was prompted to approach this Court.

4. In the interregnum, when the petition was pending, by virtue of interim order passed by this Court, the respondent-State Government was directed to reconsider their decision as only for a limited period the respondents have granted leave encashment i.e. for a period from July 20, 2020 to

September 18, 2020. As such the leave encashment for a period from the date of appointment till July 19, 2020 came to be refused which has prompted the petitioner to pursue this petition.

5. The contentions of Mr. A.R. Deshpande, learned Counsel for the petitioner are, the petitioner is entitled for leave encashment can be inferred from very decision of the respondent-State Government. So as to substantiate his claim, he would invite our attention to the Government Resolution dated January 24, 2022 whereby the petitioner was granted leave encashment only for a limited period from July 20, 2020 to September 18, 2020. According to him, once the State Government is of the opinion that the petitioner is entitled for leave encashment, there is no justifiable reason on record to infer that the petitioner is not entitled for the benefit as has been prayed. In addition to above, he would urge that the respondent-State is treating the petitioner discriminatory in violation of Articles 14 and 16 of the Constitution of India. As the earlier President of State Consumer Disputes Redressal Commission were granted said benefit in exercise of powers under sub-rule (2) of Rule 65 of the Rules of 1981 referred above, he has drawn support from Government Resolution dated June 06, 2009 to that effect. In addition, his contention are the opinion given by the Law and Judiciary Department in categorical terms substantiates the claim of the petitioner for grant of leave encashment. As such prayer of the petitioner is within the ambit/four corners of the Leave Rules of 1981 referred above.

6. While countering the aforesaid submissions, Mr. A.S. Fulzele, learned Additional Government Pleader would urge that the grant of benefit in favour of the erstwhile President of the State Consumer Disputes Redressal Commission was having regard to the prevailing circumstances at the relevant time. According to him, the State might have committed a mistake in granting/extending such benefit to the then President. However, such benefit cannot be extended to the petitioner, particularly when the new Consumer Protection Act, 2019 and the Model Rules of 2020 framed thereunder came into effect from 2019 and 2020. His further contentions are whatever was due and admissible to the petitioner has been duly granted by the State Government vide order dated January 24, 2022 that to having regard to the opinion tendered by the Law and Judiciary Department. As such, he would urge that the present petition is liable to be dismissed.

7. We have considered these submissions.

8. The following admitted facts can be borne out of record that,

(a) On June 06, 2009 in exercise of powers under sub-rule (2) of Rule 65 of the Leave Rules of 1981 the leave encashment benefit was granted in favour of the then President of the State Consumer Disputes Redressal Commission Mr. B.B. Vagyani.

(b) The petitioner was appointed on the very same post with effect from January 06, 2016 and has retired on September 18, 2020.

(c) Pursuant to request of the petitioner, the case was referred to the Law and Judiciary Department and the opinion tendered by it on December 15, 2021 in categorical terms spells out that the petitioner is entitled for the benefit of leave encashment and the respondent-State Government has already granted the same in favour of the petitioner thereby holding that he is entitled to such benefit, however, restricted the same from a period from July 20, 2020 to September 18, 2020.

9. In the backdrop of the above admitted position, we observe that the respondent-State Government is not disputing that the benefit of the Leave Rules of 1981 is very much available/applicable to the case in hand and the petitioner as such was granted benefit for a period of two months i.e. from July 20, 2020 to September 18, 2020 in favour of the petitioner.

10. The fact remains that though the State Government has taken shelter of the new Consumer Protection Act, 2019 and the Model Rules, 2020 framed thereunder, nothing is brought to the notice of this Court so as to infer that the petitioner cannot claim benefit of the Leave Rules of 1981. Rather since the State Government (Law and Judiciary Department) was of the opinion that the petitioner is entitled for such benefit, the respondent-State Government has proceeded to grant/extend the benefit of leave encashment vide impugned decision dated January 24, 2022 for a restricted period from July 20, 2020 to September 18, 2020.

11. We are unable to understand or there is no justification on record as to why the State Government has taken a decision to extend the benefit only for a period from July 20, 2020 to September 18, 2020, particularly when the fact remains that earlier President of the State Consumer Disputes Redressal Commission were extended the same benefit, which has been sought by the petitioner. Even otherwise, the respondent-State Government has already accepted that the petitioner is entitled for the benefit, however, has restricted the same only for a short period.

12. A similar issue had cropped up at the Principal Seat in **Writ Petition No. 9868 of 2014** [*Chandrakant B. Pandharpatte & Others Versus State Consumer Dispute Redressal Commission & Others*]. The Division Bench of this Court in the judgment pronounced on September 11, 2015 has observed in paragraph 6 as under :-

‘6. In the case of State of Rajasthan and another Vs. Senior Higher Secondary School and others, the Apex Court held that the term “salary” includes all allowances. Relying upon the said decision, the Karnataka High Court held that as the Petitioner before it who was appointed as the President of a District Forum was extended the benefit of monthly salary, he is also entitled to leave encashment. In paragraph 5 of the Karnataka High Court decision it is held thus :-

“5. It is not in dispute that a District Judge appointed as President of the Consumer Forum is entitled for the benefit of leave encashment. There is no justification for denial of this leave encashment benefit to an Advocate who is appointed as President of Consumer Forum. This is nothing but discrimination and violative of Article 14 of Constitution of India. Section 10(1)(A) specifies that an

Advocate who is qualified to be appointed as District Judge is eligible to be appointed as President of Consumer Forum. In the circumstances, denial of leave encashment benefit to the petitioner is bad in law.”
(underline supplied)

13. This Court is required to be sensitive to the The Consumer Protection (Salary, Allowances and Conditions of Service of President and Members of the State Commission and District Commission) Model Rules, 2020 which were notified on July 15, 2020. Rule 4 of the said Rules reads thus :-

*“4. Salaries and allowances payable to President and members of the State Commission.— (1) President of the State Commission shall receive the salary and other allowances as are admissible to a sitting judge of the High Court of the State.
(2) A Member of the State Commission shall receive a pay equivalent to the pay at minimum of the scale of pay of an Additional Secretary of the State Government and other allowances as are admissible to such officer.
(3) The pay of a person appointed as President or member, who is in receipt of any pension, shall be reduced by the gross amount of pension drawn by him.
(4) There shall be an annual upward revision of the pay of a member at the rate of 3%.”*

In the aforesaid Rule, since it is expressly provided that the President of the State Commission is entitled for the salary and other allowances as are admissible to the sitting Judge of the High Court of the State, it cannot be said that the petitioner who was the President of the State Commission is not entitled for the leave encashment. There is no embargo in the aforesaid Rule to the entitlement of the petitioner to leave encashment.

14. This Court is required to be sensitive to the cause for which the provision of leave encashment is made. Leave encashment envisages the payment of a certain amount to the employees in lieu of their unused leave days. The nature of this payment is beneficial and pro-employee. Entitlement of leave encashment can be said to be an integral part of the service conditions of the employee. Rather the very approach of the respondents as reflected from the observations made hereinabove prompts this Court to believe that the respondents are engaged in entangling the petitioner into a litigation so as to frustrate his lawful claim. This Court is required to be sensitive to the observations of the Jharkhand High Court in *Mariyam Tirkey Versus The State of Jharkhand & Others* [MANU/JH/0002/2014]. It was observed in paragraph 12 of the said judgment that the benefit of encashment of leave is nothing but payment of salary for the leave not availed by an employee and which is to his credit.

15. In the case in hand, the approach of the respondent-State Government, in our opinion, does not stand to the scrutiny of the test provided under Article 14 and Article 16 of the Constitution of India. That being so, the impugned decision of the State Government dated 24-1-2022 which is further confirmed by the State Government vide communication dated 30-1-2023 thereby denying the leave encashment for a balance period i.e. the period other than 20-7-2020 to 18-9-2020, cannot be sustainable in law.

16. As such, the said decision to the aforesaid extent is hereby quashed and set aside. It is held that the petitioner shall be entitled for leave encashment in accordance with the Leave Rules of 1981 for the entire period of his tenure as a Chairman/President of the State Consumer Disputes Redressal Commission, State of Maharashtra. Considering the prayer made by the petitioner for interest, we deem it appropriate to grant interest at the rate of 9% per annum from the date the amount was due and same is paid to the petitioner. We make it clear that the request of the petitioner for grant of leave encashment be processed expeditiously and the benefit, in any case, be paid to the petitioner by April 30, 2024.

17. Rule is made absolute in aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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