



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2670 OF 2021

Manohar Nathuji Shendre .Vs. State of Mah., Ministry of Education and
Employment Mantralaya, Mumbai and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.S. Sundaram, Advocate for petitioner.

Shri N.R. Patil, A.G.P. for respondent Nos.1 and 2/State.

Shri Atul Pande, Advocate for respondent No.3.

CORAM : ANIL S. KILOR, AND
SMT.M.S. JAWALKAR JJ.

DATED : 04/03/2024

1. In the present matter, the petitioner is seeking quashing and setting aside communication dated 08.09.2020 issued by the respondent No.3 – Registrar, Rashtrasant Tukadoji Maharaj Nagpur University, not permitting encashment of Earned Leave. The petitioner is further praying for quashing and setting aside Clause-2 of the office order dated 06.02.2015 to the extent that, it refused to grant leave the petitioner during suspension period and further encashment on superannuation. The petitioner is also seeking grant of promotion on the post of Upper Division Clerk, Special Grade Pay and promotion on the post of Office Superintendent on the respective dates when his next junior Devidas Jagnanth Paunikar has been promoted, along with pay fixation in the respective

promotional posts on the deemed date. The petitioner is further asking for grant of pension on superannuation w.e.f. 01.09.2016.

2. It is the case of the petitioner that, he was appointed as Class-IV employee on 18.07.1987 and thereafter, appointed as Lab Attendant on 23.10.1991 and while he was working as Lower Division Clerk in Examination Section, he was suspended on 04.07.1999 in view of a criminal case registered against him for the offences punishable under Sections 420, 468, 479 read with Section 34 of the Indian Penal Code.

3. The petitioner was acquitted in the said case and thereafter, appeal preferred by the State was dismissed confirming the acquittal of the petitioner.

4. Thereupon, the petitioner was reinstated in service with the backwages and benefits.

5. The petitioner got superannuated on 31.08.2016 and vide order dated 12.04.2017, the petitioner was granted 122 days leave encashment against 300 days credited to his account. Therefore, the petitioner made an application for leave encashment of remaining 178 days,

which was denied by the respondent no. 3 and hence, this petition.

6. Shri Sundaram, learned counsel for the petitioner has pointed out the orders passed by this Court in the petitions filed by the similar situated employees namely Vitthal Damodhar Hedau and Dr. Prakash Mistri. It is submitted that, in the case of both the above referred employees similar order of reinstatement was passed as was passed in favour of the petitioner and on denial of benefits of earned leave they approached to this Court whereupon, the petitions were disposed of with certain directions to the University.

7. Shri Sundaram, learned counsel for the petitioner is praying for similar orders as passed in the above referred orders.

8. On the other hand, Shri Pande, learned counsel for the University opposes the writ petition. However, he is not disputing the fact that, the cases of the Vitthal Damodhar Hedau and Dr. Prakash Mistri, are similar. He submits that, a communication was issued to the Government for guidance in the matter at hand and the University is awaiting reply from the government as regards the benefits claimed by the petitioner.

9. Whereas, the learned Assistant Government Pleader has pointed out that, already the Government has issued a communication informing that, since the petitioner is the employee of the University, the University shall take the decision.

10. In the above referred backdrop, we have perused the record and the impugned order.

11. The Division Bench of this Court while deciding the Writ Petition No.7395 of 2018 on 04.06.2018 filed by Vitthal Damodhar Hedau, has observed thus:

“2. On considering the facts of this case, we find that they are squarely covered by the issue taken up by this Court in another matter involving similar fact situation. This other matter is the Writ Petition No.2632 of 2005 decided on 4th August, 2016. It has been held in that case that when suspension has been unconditionally withdrawn and the petitioner has been reinstated to his original post with all consequential benefits, there is no reason to withhold some of the benefits.

3. Accordingly, in the present case also the reinstatement has been withdrawn and the consequential benefits have been restored to the petitioner. We therefore allow this petition in terms of prayer clause (1) and (2) along with interest on the arrears at the rate of 7% per annum for the due period, within eight weeks from the date of the order.”

12. Similarly, the Division Bench of this Court while deciding the writ petition No.2632 of 2005 on 04.08.2016 filed by Dr. Prakash Mistri, has observed thus :

“3. We have perused the provisions of Rule 65 and Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 and find the reason incorrect and not in accordance with law. The suspension has been unconditionally withdrawn and the petitioner was reinstated on his original post with all consequential benefits. In this situation, we direct respondent No.1 to pass fresh orders on the entitlement of the petitioner to said benefit of leave encashment within a period of three weeks from today. If necessary, an opportunity of hearing shall be given to the petitioner.”

13. Since the case of the petitioner is similar to the cases of Vitthal Damodhar Hedau and Dr. Prakash Mistri, we are of the opinion that, the same course as adopted by this Court in the above referred matters, shall be adopted in the present matter. As such, we pass the following order :

- i) The writ petition is **partly allowed**.
- ii) The communication dated 08.09.2020 and 06.02.2015, are hereby quashed and set aside and direct the University (Respondent No.3) to pass the fresh order on the entitlement of the petitioner to the benefits as claimed in the present petition, within period of **four weeks** from today. If necessary, an opportunity of hearing, shall be given to the petitioner.

Writ Petition is **disposed of** accordingly. No order as to costs.

(SMT. M.S. JAWALKAR, J)

(ANIL S. KILOR, J)