HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5995 OF 2024

Thane District Central Co-Operative Bank Ltd. .. Petitioner
Versus
Dadasaheb Bapu Thorat .. Respondent

....

- Mr. Ajit Mahadev Savagave, Advocate for Petitioner.

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CORAM : MILIND N. JADHAV, J.
DATE : JUNE 19, 2025

P.C.:

1. Heard Mr. Savagave, learned Advocate for Petitioner.

2. The Writ Petition impugns judgment and order dated 30.10.2023 passed by Fourth Labour Court, Thane in Application (IDA) No.63 of 2021 filed under Section 33-C(2) of the Industrial Disputes Act, 1971 (for short '**the said Act**').

3. Briefly stated Respondent – employee of the Petitioner – Bank worked as an Accountant in its Ram Maruti Road Branch and retired on and from 31.05.2018.

4. Pursuant to his retirement he would undoubtedly be eligible for his retirement benefits as also leave encashment. The dispute in the present proceedings, *inter alia*, pertains to withholding of leave encashment dues to which Respondent was entitled to in view of 322 days of paid leave, 276 sick leave and 337 of half day leave standing to his credit. Petitioner – Bank however after a period of 15 months from the date of retirement of Respondent passed resolution dated 13.08.2019 withhelding his leave encashment and other benefits on the premise that while working as Branch Manager, he was instrumental in sanctioning loan to two individuals to the tune of approximately Rs.37,00,000/- and these two loan accounts had turned into Non-Performing Assets due to default committed by the borrowers.

5. The action of Petitioner – Bank was challenged by Respondent – employee in the aforesaid statutory proceeding filed under Section 33-C of the said Act. Before the Labour Court, Petitioner – Bank was not in position to prove its case, *inter alia*, with respect to Petitioner's role as Branch Manager in sanctioning the loan proposals as alleged and save and except the charge made against Respondent no incriminating material whatsoever was placed to indict the role of Respondent.

6. In so far as the retirement dues of Respondent are concerned, he was undoubtedly entitled to the same in accordance with law and Petitioner – Bank had no right whatsoever to withhold the said dues. The learned Labour Court while dealing with the aforesaid grievance of Respondent – employee in paragraph Nos.20, 22 and 25 returned findings that he was entitled to his paid leave amount, leave encashment amount on superannuation primarily on the basis of evidence which was placed on record by the Petitioner – Bank itself in its cross-examination.

7. For sake of brevity, paragraph Nos.20, 22 and 25 in the impugned order are reproduced below:-

> "*20) The applicant has claimed that he had 322 paid privileged leaves, 276 sick leaves and 337 half day leaves at the time of his superannuation. He is relying upon the letter dtd 04/09/2021 issued by the opponent and filed at Exh. U-8. So far, the opponent did not dispute this aspect. The applicant is claiming the encashment of these leaves and he claims Rs.9,56,018/- for paid privileged leaves, Rs.8,19,444/- for sick leave and Rs.5,01,761/- for half day leaves. This amount has been vehemently objected by the opponent and it has given its own figure of Rs.17,73,732/- as per its record of the applicant.*
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> *22) So far, there is no dispute about the balance of leaves and entitlement to encashment. The mode and calculations for encashment are disputed. Herein a reference is required to the evidence of applicant at Exh. U-7. He was cross-examined by the opponent on all aspects. At one point of time the applicant was asked about the gratuity and leave salary. He admitted that the amount towards gratuity is Rs.20,82,660/- and the amount towards leave salary is Rs.17,73,732/-. Now this answer to a particular question goes to show that the amount towards encashment of leave salary is Rs.17,73,732/- as stated by the opponent. The applicant did not himself reiterate his own amount and calculation of Rs.22,77,223/- to counter this question. This unequivocal statement in the cross-examination of the applicant goes to show that the calculation of encashment of leave salary comes to Rs.17,73,732/- only.*
>
> *23) …*
>
> *24) …*
>
> *25) There is absolutely nothing in section 33-C of the Act, which will entitle the opponent being an employer to withhold or forfeit at least the amount towards the encashment of leave salary. The letter at Exh. C-12 dtd 21/09/2021 goes to show that opponent indeed passed one resolution and decided to freeze the said amount and not to pay it to the applicant. The opponent has to demonstrate as to under what provision such right was exercised if the encashment of leave is concerned. There is no such power vested with the opponent for such withholding. Even if the opponent is having such power, there is no evidence on record to show the negligence and ignorance of the applicant in those loan proposals. On the contrary, the*

> *evidence on record shows that the applicant was exonerated. So basically, this objection does not survive.*"

8. In view of the findings returned in the aforesaid paragraphs based upon documentary evidence viz; Exhibit-U7 and U8 filed by the Bank before the Labour Court, *inter alia*, confirming encashment of leave salary of Rs.17,73,732/- due and payable to the Respondent, learned Labour Court came to the unequivocal conclusion that liability of Petitioner was duly proved by the witness of the Petitioner and the deposition of Petitioner's witness and in that view of the matter, Application under Section 33-C of the said Act was comprehensively decided in favour of the Respondent.

9. After perusing the order dated 30.10.2023, I find no reason to interfere with the cogent and reasoned findings which are explicitly clear on reading of the aforementioned paragraphs. The order dated 30.10.2023 deserves to be upheld. Petition fails. It is seen that bank has rushed to this Court only because it is now faced with the ignominy of the recovery certificate issued in favour of the Respondent for effecting recovery. This *prima facie* shows that Respondent – employee has suffered in order to get his statutory retirement dues which were stautorily due and payable to him by the Petitioner as a matter of his entitlement and right. Bank cannot be let of so easily. The Petitioner – Bank is therefore directed to pay simple interest @ 9 percent per annum on the due amount payable as per the impugned order from the date of retirement of the Respondent. The Petitioner – Bank is directed to pay the entire dues as directed hereinabove of the Respondent within a period of 2 weeks from today unfailingly.

10. The order dated 30.10.2023 is sustained and confirmed. With the aforesaid directions, Writ Petition is dismissed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

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