



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 7500 OF 2022

PETITIONER: Iqbal s/o Noor Hasan Sheikh,
Aged about : 64 years, Occu: Retired,
R/o Plot No. 4-B-1, Sharda Complex,
Near Friends Colony, Katol Road, Nagpur.

...V E R S U S...

RESPONDENTS

1. Maharashtra State Warehousing Corporation, Plot No.B, Survey No.583/B, Market Yard, Gultekdi, Pune, through its Chairman and Managing Director.
2. Senior Regional Manager, Maharashtra State Warehousing Corporation, Nagpur Region, 4th Floor, NIT Complex, West High Court Road, Gokulpeth, Nagpur.

Mr. P.D. Meghe, counsel for petitioner.
Mr. N.R.Saboo, counsel for respondent Nos. 1 and 2.

CORAM : **ANIL S. KILOR AND RAJNISH R. VYAS, JJ.**
DATE : **17/12/2025**

JUDGMENT : (Per Anil S. Kilor, J)

1. Heard. **Rule.** Rule made returnable forthwith. By consent of the parties, petition is taken up for final hearing at the stage of admission.

2. A dismissed employee, who was working as a Assistant Storage Superintendent under Respondent No.1, faced a departmental inquiry on charges relating to improper maintenance of stock, gross negligence in performing in discharge of duties, failure to maintain proper accounts of depositor's stock, keeping unaccounted stock in the godown, and serious irregularities in godown operations, which resulted in damage to the image of the Corporation.

3. In the inquiry, the charges were held to be proved, and it was found that a loss had been caused to the respondent-Corporation, inasmuch as 100 cotton bales were found missing from the godown. Consequently, a financial liability of Rs. 20,58,000/- was imposed jointly upon the petitioner and a co-employee. Accordingly, half of the said amount, i.e. Rs. 10,29,000/-, was recovered from the petitioner's Provident Fund, as well as from leave encashment, gratuity, etc.

4. In the present petition, the petitioner has challenged the said recovery and has also assailed the validity of Regulation 15(3) of the Maharashtra State Warehousing Corporation Employees' Provident Fund Regulations, which provides for

forfeiture of the employee's contribution in cases where an employee is dismissed for gross misconduct or removed from service pursuant to disciplinary action.

5. The challenge to Regulation 15(3) is raised on the ground that under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, there is no provision permitting recovery of such amounts from the Employees' Provident Fund. It is, therefore, submitted that Regulation 15(3) is violative of Article 14 of the Constitution of India.

6. The third prayer made in the present petition is seeking subsistence allowance. According to the petitioner, upon initiation of the inquiry and during suspension, he was paid subsistence allowance at the rate of 50% for the first 90 days. Thereafter, though he was entitled to 75% from the 91st day to the 180th day, and 100% beyond 180 days, he was paid only 62.5% from the 91st day onwards. According to the petitioner, the said amount became due in the year 2010 and has not been paid till date.

7. In reply, Shri Saboo, learned counsel for the Corporation, submitted that the amount recovered from the

Employees' Provident Fund was recovered under Regulation 15(3) of the EPF Regulations. It is submitted that as it was contended by the petitioner that such recovery was effected without following due procedure, i.e. without the recommendation of the Executive Committee, this Court, by order dated 16/04/2025, directed the Corporation to take a decision through the Executive Committee in accordance with Regulation 15(3). It is submitted that, pursuant thereto, a decision has been taken by the Executive Committee and, therefore, the alleged procedural defect in the recovery has been cured.

8. Shri Saboo, learned counsel for the Corporation has pointed out that vide order dated 16/04/2025, the petition has been restricted now to the extent of deduction from leave encashment. He points out that as per the Maharashtra State Warehousing Corporation Service Regulations, particularly Regulation 110, which says that all matters for which specific provisions have not been made in the regulations shall, as far as possible and to the extent as may be considered appropriate by the Corporation it can be regulated in the same manner as in the case of employees of the Government of Maharashtra. Thus, the

Maharashtra Civil Services Leave Rules 1981 are applicable to the Corporation. He submits that since Rule 22 of the 1981 Rules permits recovery from leave encashment and no illegality has been committed by the Corporation.

9. In the light of rival submissions, we have perused the record and the relevant provisions.

10. The challenge to Regulation 15 of the Maharashtra State Warehousing Corporation Employees' Provident Fund Regulations deserves to be rejected. There is no prohibition under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 against recovery of the employee's contribution in cases where the employee is dismissed for gross misconduct or removed from service pursuant to disciplinary action. In the absence of any such prohibition under the Act of 1952, Regulation 15(3) cannot be said to be contrary to the said Act. Accordingly, the challenge to Regulation 15 is rejected.

11. As regards the claim for subsistence allowance from the 91st day onwards, which admittedly became due in the year 2010, the same cannot be granted as the claim is barred by limitation. The present petition has been filed in the year 2022, i.e. after a

lapse of 12 years from the date on which the claim arose.

12. As far as the recovery from leave encashment is concerned, record shows that an amount of Rs,. 1,52,839/- was recovered from the petitioner's leave encashment. Regulation 110 provides that all matters for which specific provisions have not been made in regulation shall, as far as possible and to such extent as may be considered appropriate by the Corporation, be regulated in the same manner as in the case of employees of the Government of Maharashtra.

13. The language of Regulation 110 makes it evident that the Corporation has to consider to what extent the services regulated in the case of employees of the Government of Maharashtra shall be made applicable to the Employees of the Corporation.

14. In the present matter, no decision of the Corporation has been produced on record to show that it has adopted the Leave Rules of 1981 to the extent of recovery from leave encashment in cases where an employee is dismissed for gross negligence or misconduct or removed from employment pursuant to disciplinary action. In absence of such decision by the

Corporation, we do not accept the argument of the learned counsel Mr. N.R.Saboo for the Corporation that Rule 22 of the Leave Rules 1981 will apply in this case. In the circumstances, we passed the following order:

ORDER

- a] The writ petition is **partly allowed**.
 - b] The recovery of Rs. 1,52,849/- from the petitioner's leave encashment is hereby quashed and set aside. The Corporation is directed to refund the said amount to the petitioner within a period of four months from today.
 - c] The amount of leave encashment shall be refunded to the petitioner with simple interest at the rate of Rs. 6% per annum, from the date of recovery till the date of its realization.
15. Rule is made absolute in above terms. No order as to costs. Pending Application(s), if any, stand(s) **disposed of**.

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)