IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7256 OF 2024

The Chief Engineer, Maharashtra State Electricity Distribution Company Ltd., & Ors. ***...Petitioners***

: Versus :

Nandkumar Ramdas Patil ***...Respondent***

Mr. Vikrant Khare *a/w. Mr. Kushal Shah i/b. Dr. Kshitija Wadatkar and Associates, for the Petitioners.*

Mr. A.S. Rao, *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 1 OCTOBER 2026.

P.C.:

1) The petition challenges order dated 2 December 2022 passed by the Presiding Officer, Labour Court, Pune partly allowing Application (IDA) No. 12/2017 filed by the Respondent under the provisions of Section 33C-2 of the Industrial Disputes Act, 1947 **(I.D. Act)** and directing the Petitioners to pay to the Respondent amount of leave encashment of Rs.5,27,371/- alongwith interest and costs of Rs.5,000/-.

2) Perusal of the letter dated 17 October 2015 sent by the Petitioner clearly indicates that he has tendered 'resignation'. The Respondent thus did not apply for voluntary retirement. What was accepted on 16 November 2015 is also resignation and not retirement. Respondent himself described his action/letter dated 17 October 2015 as 'resignation'. While producing the said letter through list of documents, Petitioner again described the same as 'resignation'.

3) The Labour Court has unfortunately conflated the concept of 'resignation' and 'voluntary retirement' by holding in para-20 of the judgment as under :

> 20] Considering the ratio of all the above judgments, the common principle laid in the above matters that for applying under section 33C(2) of the Act the applicant had pre existing right. It is undisputed right. Now turning to the present facts, the opponents in this matter had admitted that the employee whose is retired is entitled for the leave encashment. The opponent relied on General Order No.114(P) dated 23/08/19982 specifically laid down that an employee shall be eligible to leave encashment at the time of his retirement on superannuation/voluntary retirement/compulsory retirement but not on resignation/dismissal or discharge as a matter of punishment. The opponent specifically admitted that the applicant had taken voluntary retirement and it was not a punishment. It was further clarified by the opponent in is Correction slip No.34 dated 03/06/2016 the SR No.43(iii) that if services of an employee are terminated for whatever reasons before he has taken the entire leave to which he is eligible or having applied for and having been not granted he will be eligible to payment of his pay and allowance in lieu of the leave not availed of. Provided that if the employee quit service of his own accord or is dismissed or terminated or removed from service of MSEDCL as a punishment in disciplinary action, he will not entitle to any kind of leave encashment balance at his credit at the time of his dismissal or termination or removal of service. So, it is crystal clear that the leave encashment is the right of employee who had given voluntary resignation. It is pre-existing

and undisputed right of employee. So, the above referred case laws will not bar the present application.

4) Mr. Khare the learned counsel appearing for the Petitioner relies on its order passed in General Order No.114(P) dated 23 August 1982, para-1 whereof reads thus :

> (1) An employee shall be eligible to encash leave at the time of his retirement on supernnuation/voluntary retirement/compulsory retirement but not on resignation, dismissal or discharge as a matter of punishment if an employee against whom disciplinary encashment of the H.A.P. leave to his credit even if the charge against him is one for which the punishment of dismissal/discharge would be warranted. This encashment and commutation of leave (if earlier allowed to the employee) put together should not exceed 180 days in the entire service career.

5) Thus, leave encashment is payable only on retirement on superannuation/voluntary retirement/compulsory retirement and the same is not payable on resignation.

6) In my view therefore, the Labour Court has erred in directing payment of leave encashment to the Respondent who has clearly resigned from service.

7) Mr. Rao attempts to salvage the situation by inviting my attention to the last sentence in the letter dated 17 October 2015 by which the Respondent prayed for payment of amount of leave encashment, gratuity etc. He submits that there is a misnomer while describing the act of quitting the services and what was indeed submitted was application for retirement. I am unable to agree. In petitioner's own application filed before the Labour Court, he himself describes letter dated 17 October 2015 as resignation. In any case, in

application filed under Section 33C-2 of the I.D. Act, the Labour Court was neither called upon to treat resignation as retirement nor the Labour Court has done so. If Respondent believes that his resignation was infact retirement, he his free to a declaration to that effect in appropriate proceedings.

8) In view of the above discussion, the impugned order dated 2 December 2022 is liable to be set aside. The petition accordingly succeeds. The order dated 2 December 2022 passed by the Labour Court in Reference (IDA) No. 12/2017 is set aside. The Writ Petition is **allowed** in the above terms.

NEETA SHAILESH SAWANT
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Date: 2026.10.05 15:14:56 +0530

[SANDEEP V. MARNE , J.]