NC: 2024:KHC:12554
WP No. 17614 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.17614 OF 2023(S-RES)

BETWEEN:

SMT K. POORNIMA
W/O SRI M R M SHASTRY
RETIRED ASSISTANT MANAGER
AGE 55 YEARS, "JEEVANMUKHI"
IST MAIN, IST CROSS
V R S LAYOUT, TURUVANUR ROAD
CHITRADURGA-577501.

...PETITIONER

(BY SRI MADHUSOODHANA P. N., ADVOCATE)

Digitally signed by GAYATHRI P G
Location: HIGH COURT OF KARNATAKA

AND:

1. THE CHAIRMAN
KARNATAKA GRAMIN BANK
HEAD OFFICE, 32, SANAGANAKAL ROAD
GANDHI NAGARA
BALLARI-583 103.

2. THE CHIEF MANAGER
KARNATAKA GRAMIN BANK
HEAD OFFICE, HUMAN RESOURCES WING
STAFF SECTION, 32, SANGANAKAL ROAD
GANDHI NAGARA
BALLARY-583103.

3. THE UNDER SECRETARY TO
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF FINANCIAL SERVICES
R R B SECTION, 3RD FLOOR
JEEVAN DEEP BUILDINGS, PARLIAMENT STREET
NEW DELHI-1100014.

4. NATIONAL BANK FOR AGRICULTURE AND
RURAL DEVELOPMENT, HEAD OFFICE
PLOT.C-24, G BLOCK, BANDRAKURLA COMPLEX
BKC ROAD, BANDRA EAST, MUMBAI-400051
THROUGH ITS CHIEF GENERAL MANAGER.

…RESPONDENTS

(BY SRI T. P. MUTTANNA, ADVOCATE FOR R-1 AND R-2,
SRI SHIVAPRASAD SHANTANAGOUDAR, C.G.C. FOR R-3
R-4-SERVED AND UNREPRESENTED)

THIS WP IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA PRAYING TO-QUASH THE ORDER BEARING NO. HO:HRW:STF:LEAVE:1711/2023-24 DTD 05/07/2023 PASSED BY THE R-2 MARKED AT ANNEXURE-K.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner who is a retired employee of Karnataka Gramin Bank has filed this captioned petition assailing the endorsement issued by respondent No.2 as per Annexure-K thereby indicating that the petitioner's representation requesting privilege leave encashment cannot be considered as NABARD has sought clarification vide letter dated 05.07.2023.

2. Heard the learned counsel for the petitioner, learned counsel for respondent Nos.1 and 2 and learned counsel for respondent No.3.

3. Learned counsel for petitioner has placed reliance on the judgment rendered by the Co-ordinate Bench of this Court, which relates to Karnataka Vikas Grameen Bank. The Co-ordinate Bench while examining an identical issue as to whether the bank could have withheld encashment of privilege leave, rejected the contention raised by the respondent-Bank and mandamus came to be issued to the respondent-Bank to release the encashment of privilege leave. Para 11 of the judgment rendered in W.P.No.102049/2019 is relevant. The same is extracted as under:

> *In the light of the aforesaid submissions, a mandamus is to be issued to the first respondent-Bank to forthwith release the encashment of privilege leave that is withheld since 2022. As encashment of privilege leave as observed by the Apex Court in Jagadish Prasad Saini's case (supra), is the terminal benefit. If it is the terminal benefit, it cannot be withheld on any ground, except in terms of the Regulation. The Regulation nowhere causes an impediment for the Bank to release the encashment of privilege leave in favour of the petitioner. The Apex Court in Jagadish Prasad Saini (supra) noticing the right of an employee for leave encashment has held as follows:*

"20. Evidently, these rules were framed to enable the absorption of employees and teachers of non-government aided institutions. What is relevant for the purposes of this case is that by Rule 5(viii), carry forward of existing privilege leave is denied; likewise, the period of service in aided institutions is not to be reckoned for the purpose of gratuity under Rule 5(ix). Every employee had to furnish an undertaking in the prescribed form to accept the terms and conditions. Ordinarily no public employer can be faulted in imposing pre-conditions before it recruits an employee. However, such conditions cannot be arbitrary, or so onerous as to be unconscionable. In the opinion of this court, the condition in clause (viii) of Rule 5 i.e., carry forward of balance privilege leave, is barred and requiring employees to seek encashment from their previous employer, i.e., aided institutions, is an arbitrary and unconscionable condition, which cannot be enforced. Speaking that such conditions are enforceable, this court, recently, in Pani Ram v. Union of India9 after quoting the observations in Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly10 held as follows:

23. "….Right to Equality guaranteed Under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of Rules as part of the contract, however unfair, unreasonable and unconscionable a Clause in that contract or form or Rules may be."

> *21. This court had categorically ruled, in Senior Higher Secondary School (supra) that leave encashment is part of salary. In the scheme of the 1993 Rules, the assessment of, and determination of the extent of, aid to be granted to any institution, is provided by Rule 13. What forms part of the approved expenditure that would be the content of aid, is provided by Rule 14. In the present case, the management establishment was recipient of 70% aid, in the form of grant. In these circumstances, the State cannot shrug its responsibility to shoulder its part of the responsibility to pay the appellants the share of leave encashment benefits, and hide behind either Rule 5(viii) or the undertaking executed by them. The appellants are held entitled to privilege leave entitlement benefits. Such benefit shall be calculated from the date they entered the service of the establishment till the date of their absorption, by the State, in 2016. The State shall pay the benefits due to the extent of 70%, and the balance 30% shall be payable by the management establishment."*
>
> *Therefore, the petitioner is entitled to the said benefit, now and was always entitled to.*

4. The Co-ordinate Bench while examining identical issues has also taken cognizance of the statement made by NABARD, that it has no role to play with regard to the grant or otherwise of encashment of privilege leave and further statement was made by learned counsel

representing NABARD that such issues needs to be resolved by employer and employee. The Co-ordinate Bench has also held that encashment of privilege leave is a terminal benefit and it cannot be withheld on any ground, except in terms of the Regulations. The principles laid down by the Co-ordinate Bench placing reliance on the judgment rendered by the Hon'ble Apex Court in the case of ***Jagadish Prasad Saini and Others v State of Rajasthan and others*** reported in ***2022 SCC Online SC 1298*** is squarely applicable to the present case on hand. In the light of the dictum laid down by the Co-ordinate Bench of this Court, this Court is of the view that petitioner has succeeded in substantiating that he is entitled to seek payment of paid leave encashment and correspondingly respondent-Karnataka Gramin Bank is under obligation to release the paid leave encashment.

5. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

i) The Writ Petition is ***allowed.***

ii) The impugned endorsement dated 05.07.2023 issued by respondent No.2 REF:HO:HRW:STF:LEAVE:1711/2023-24 as per Annexure-K is hereby quashed.

iii) A direction is issued to respondent Nos.1 and 2 to pay the amount of privilege leave encashment along with interest at the rate of 6% per annum from the date on which it fell due till the date of its payment.

iv) In the event leave encashment is not paid within eight weeks as directed herein, petitioner would then be entitled for 18% interest from the date it fell due till the date of its payment.

Sd/-
JUDGE

GPG