

मध्य प्रदेश शासन वित्त विभाग ज्ञापन क्रमांक 1206/2644/92/नि-2/चार, भोपाल दिनांक 14 सितंबर 1992 के परिपेक्ष्य में आपको अवगत कराया जाता है कि " कार्यभारित तथा आकस्मिक व्यय से वेतनभोगी कर्मचारियों की सेवानिवृत्ति/मृत्यु के समय शेष अर्जित अवकाश के सर्म्पण एवं नगदीकरण बावत् स्पष्ट किया गया है कि वित्त विभाग के ज्ञापन क्रमांक एफ.ए.1/13/77/नि-1/चार भोपाल दिनांक 16.09.1980 सहपठित ज्ञापन क्रमांक 161-4131-82 नि-2/चार, भोपाल दिनांक 31.01.1983 के प्रावधान कार्यभारित तथा आकस्मिकता व्यय से वेतन पाने वाले कर्मचारियों का लागू नहीं है"।

जहां तक न्यायालयीन अभिनिर्धारण का प्रश्न है, तो यह मामला माननीय उच्च न्यायालय मुख्यपीठ जबलपुर द्वारा रिट पिटीशन क्रमांक 1228/2023 (प्रकाश सिंह कुशवाह बनाम म.प्र.शासन एवं अन्य) में पारित निर्णय दिनांक 24.01.2023, आर.पी. न.506/2012 (म.प्र. शासन एवं अन्य विरुद्ध श्रीमती श्यामा बाई) में पारित निर्णय दिनांक 21.07.2014 तथा रिट अपील क्रमांक 1175/2010 (म.प्र.शासन एवं अन्य विरुद्ध लल्लू गयाराम) में पारित निर्णय दिनांक 10.11.2016 द्वारा पूर्व में ही अभिनिर्धारित किया जा चुका है, जिसके अनुसार:-

"संदर्भित नियम 1977 के नियम 4 के अनुसार कार्यभारित कर्मचारियों को अर्जित अवकाश की पात्रता है तथा इसके अतिरिक्त कुछ भी नहीं"।

उपरोक्तानुसार स्पष्ट है कि माननीय उच्च न्यायालय द्वारा पूर्व निर्धारित दृष्टांतों एवं म.प्र.शासन वित्त विभाग द्वारा जारी परिपत्र दिनांक 14 सितंबर 1992 के अनुसार कार्यभारित कर्मचारियों को अर्जित अवकाश नगदीकरण की पात्रता नहीं है।

WA-1175-2010

(THE STATE OF MADHYA PRADESH Vs LALLU GAYA RAM)

10-11-2016

Shri Pradeep Singh, learned G. A. for the appellant/ State.

None for the respondents, even after service of notice.

Heard.

Respondent No.1 was retired from service after attaining the age of superannuation with effect from 31.1.2005. He was working as Mixer Machine operator at the time of retirement in the Public Works Department. Husband of respondent No.2 was also working in the Public Works Department on the post of Time Keeper. He was died during his service tenure.

Respondents have filed writ petition No.8028/2010(s) before this Court on the ground that the employees were eligible to get the benefit of leave encashment in accordance with the provisions of Rule 4 of M. P. Work Charged Contingency Paid Employees Leave Rules, 1977.

The respondents relied on the orders passed by this Court in writ petitions. The writ Court has ordered vide impugned order that the respondents are eligible to get the benefit of leave encashment after placing reliance on the orders passed by this Court in W. P. No.18652/2003 and W. P. No. 5688/2005.

Shri Pradeep Singh, learned G. A. for the appellant/ State has submitted that as per provisions of M. P. Work Charged Contingency Paid Employees Leave Rules, 1977 employees working at Work Charged Contingency Establishment are not eligible to get the benefit of leave encashment either after retirement or death during service. In support of his contention learned G. A. has placed his reliance on an unreported judgment of the Division Bench of this Court passed in R.

P. No.506/2012.

It is an admitted fact that employees were working in Work Charge Establishment. They were employees of Public Works Department and at the relevant time the provisions of M. P. Work Charged Contingency Paid Employees Leave Rules, 1977 were applicable to them. The Division Bench of this Court considered the provisions of Rule 4 of M. P. Work Charged Contingency Paid Employees Leave Rules, 1977 and held that employees working at Work Charged Contingency Establishment are not eligible to get the benefit of leave encashment. The relevant findings of the Division Bench are as under :

"Counsel for the respondent relies on Rule 7 of Rules of 1977. That Rule enables the employee on earned leave and maternity leave to get benefit of leave salary equal to the rate of pay or salary which has been drawn for the month immediately prior to the month in which the leave is taken. That does not result in allowing encashment of leave of 120 days as such Rule 4 is very specific to availing of earned leave by an employee having permanent status. The facility of encashment of leave in any case cannot be extended to work charged employee. Accordingly, this review petition succeeds.

Operative order passed in Writ Appeal No.753/2010 be understood to mean that the employees would be entitled to earned leave referred to in Rule 4 of the 1977 Rules and nothing more."

In view of aforesaid judgment of Division Bench of this Court, this appeal is allowed. The order passed by the writ Court is hereby

quashed. No order as to costs.

(S.K. GANGELE)
JUDGE

(SUBODH ABHYANKAR)
JUDGE

kkc

21.07.2014

R.P. No. 506/2012
(State of M.P. & others Vs Smt. Ghyma Bai)

Shri Piyush Dharmadhikari, learned Government Advocate the petitioners/State.

Shri Ashok Gupta, learned counsel for the respondent.

Heard counsel for the parties.

Although this petition has been filed as Review Petition, but the relief claimed by the State is one of speaking to the minutes of order. Inasmuch as, in the 6th line of last paragraph of internal page 3 of the order, it is incorrectly mentioned as "Leave Encashment", whereas it ought to have been noted as "Earned Leave" referable to Rule 4 of the 1977 Rules.

The petitioners submitted that need to file review petition has arisen because the respondent(s) have insisted for allowing them to encash the leave of 120 days. According to the respondent(s), the decision permits them to encash 120 days of earned leave. The argument of respondent(s) will have to be stated to be rejected. For, in the same paragraph, the Court has noted that the respondent would be entitled to the benefit of earned leave of 120 days. The concerned paragraph reads thus:

"We have considered the submission made by learned counsel for appellants. From perusal of the grounds mentioned in clause (b) of memorandum of the appeal filed by the appellants, it is apparent that the appellants have admitted that under Rule 4 of the 1977 Rules, the employees are entitled to 120

days' leave encashment. Thus, in view of the stand taken by the appellants themselves, the respondent is entitled to the benefit of encashment of 120 days' earned leave. Accordingly, the appellants are directed to extend the benefit of encashment of 120 days leave to the respondent which is admissible under the Rules within a period of three months from the date of production of certified copy of the order, if not already paid. Accordingly, the order passed by learned Single Judge is modified to the extent indicated above.

Accordingly, the writ appeal is disposed of."

[Emphasis supplied]

The highlighted portion, therefore, will have to be understood to mean that the respondent(s) have succeeded to the extent of relief of benefit of 120 days of earned leave as per Rule 4 of Rules of 1977 and not encashment of leave as such.

Counsel for the respondent relies on Rule 7 of Rules 1977. That Rule enables the employee on earned leave and maternity leave to get benefit of leave salary equal to the rate of pay or salary which has been drawn for the month immediately prior to the month in which the leave is taken. That does not result in allowing encashment of leave of 120 days as such. Rule 4 is very specific to availing of earned leave by an employee having permanent status. The facility of encashment of leave in any case cannot be extended to work

charged employee. Accordingly, this review petition succeeds.

Operative order passed in Writ Appeal No.753/2010 be understood to mean that the employees would be entitled to earned leave referred to in Rule 4 of the 1977 Rules and nothing more.

Accordingly, this review petition succeeds to the above extent.

(A.M. Khanwilkar)
Chief Justice

(Alok Aradhe)
Judge

snb/-

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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 24th OF JANUARY, 2023

WRIT PETITION No. 1228 of 2023

How to
dispute
two left
order

SE (Law)
F

BETWEEN:-

PRAKASH SINGH KUSHWAHA S/O LATE SHRI VISHWNATH SINGH KUSHWAHA, AGED ABOUT 65 YEARS, OCCUPATION: RET. HAND PUMP MECANIC H.NO. 1793/01 CHOTI BAJARIYA PHOOLWADI NEARBY ANAND KUNJ TIRAHA RANI DUGAVATI WARAD GARHA JABALPUR DISTRICT JABALPUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI RAJESH SONI - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY PUBLIC HEALTH ENGINEERING DEPARTMENT STATE OF MADHYA PRADESH VALLABH BHAWAN BHOPAL DISTRICT BHOPAL (MADHYA PRADESH)**
- 2. ENGINEER IN CHIEF, PUBLIC HEALTH AND ENGINEERING DEPARTMENT SATPUDA BHAWAN, BHOPAL DISTRICT BHOPAL (MADHYA PRADESH)**
- 3. CHIEF ENGINEER, PUBLIC HEALTH AND ENGINEERING DEPARTMENT, JABALPUR NEAR BY WATER TANK DAMOH NAKA, JABALPUR, DISTRICT JABALPUR (MADHYA PRADESH)**
- 4. EXECUTIVE ENGINEER, PUBLIC HEALTH AND ENGINEERING DEPARTMENT, JABALPUR NEAR BY WATER TANK DAMOH NAKA, JABALPUR, DISTRICT JABALPUR (MADHYA PRADESH)**
- 5. ASSISTANT ENGINEER, PUBLIC HEALTH AND ENGINEERING DEPARTMENT SUB DIVISION NAGPUR ROAD CHUI KHADAN VEDI NAGAR, NEARBY SHARDA CHOWK, JABALPUR, DISTRICT JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI GIRISH KEKRE - GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

By the instant petition filed under Article 226 of Constitution of India, the petitioner is raising grievance that he is entitled to get the benefit of earned leave for a period of 300 days but the same has not been granted to him. He prayed direction to the respondents to pay the said benefit with interest @ 12%.

From the facts as narrated in the petition, it is clear that the petitioner was appointed as a daily wager employee in Work Charged Contingency Establishment by an order dated 01/08/1980 (Annexure-P-1) and absorbed on the post of Hand Pump Mechanic. He was also granted regular pay scale of work charged contingency establishment w.e.f 01/01/1986. A circular was issued by Finance Department on 06/08/2018 (Annexure-P-3), whereby as per Rule 25 of M.P.Civil Services (Leave) Rules, 1977 an amendment was made that employees would be entitled to get the benefit of leave encashment for 300 days instead of 240 days.

It is submitted by counsel for the petitioner that the petitioner made a representation to the authorities claiming the said benefit but that representation is still pending.

From the facts and circumstances of the case, it is clear that the notification on which petitioner is placing reliance relates to the employees working in a regular establishment. The petitioner is a member of Work Charged Contingency Establishment for which different rules i.e known as Madhya Pradesh Work Charged and Contingency Paid Employees Leave Rules, 1977 would be applicable. Rule 4 of the said Rules very specifically provides that work charged contingency employee is not entitled to get the benefit of leave encashment but entitled to get the benefit of earned leave that too of 120 days.

The Division Bench of this Court in **The State of Madhya Pradesh Vs. Smt. Shyama Bai (R.P.No.506/2012)** has also clarified this position. Accordingly, petitioner is not entitled to get the benefit of leave encashment. However, benefit of earned leave as per the provision of Madhya Pradesh Work Charged and Contingency Paid Employees Leave Rules, 1977 can be granted to him for which he may approach the competent authority.

Accordingly, Petition is **disposed of**.

(SANJAY DWIVEDI)
JUDGE

sushma

