

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE**

**HON'BLE SMT. JUSTICE SUNITA YADAV**

**&**

**HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

**WRIT APPEAL No. 808 of 2024**

***BALLABH DAS LODHI***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri Om Prakash Saxena - Advocate for the petitioner.*

*Shri Deepak Khot - Govt. Advocate for the respondents/State.*

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Heard on : 30/08/2024

Delivered on : 18/09/2024

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**ORDER**

***Per: Justice Milind Ramesh Phadke:***

The instant writ appeal under Section 2(1) of M.P. Uchch Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 is directed against the Judgement/Order dated 26.02.2024 passed in writ petition No.7003/2018, whereby while dismissing the writ petition learned Single Judge has affirmed the encashment of earned leave of 56 days as given by the department holding that the petitioner has rightly been awarded earned

leave as were available to him in accordance with law with a further observation that if the petitioner had worked as teacher in summer vacation by the orders of Collector or Education Department and if for that period earned leave has not given, as for the entries of certain work then the department shall verify the same and if any enhancement of such earned leave is left to be given then that it shall be given to the petitioner but if such payment has already been given, then petitioner shall not be entitled to any other amount.

2. The aforesaid order has been assailed by the appellant/petitioner on the ground that vide memo No.F-A-1/13/77/NI-1/Four issued by the Finance Department of Govt. of M.P. dated 16.09.1980, which is still in force, since the State Government has allowed to encashment of Earned Leave on retirement of an employee subject to the maximum of 240 days which by amendment had been raised to encashment of 300 days with effect from July 2018, the petitioner was entitled for the earned leave for the aforesaid period but learned Single Judge has ignored the said memo, thus, had fell in error of law and facts.

3. It was further argued that learned Single Judge had even not considered the clarification regarding the encashment of the earned leave issued by the Finance Department, Govt. of M.P. vide memo

No.G.3/2/96/C/Four dated 20.02.1996, by which a formula for calculating the encashment of earned leave after retirement of the employee was issued.

4. It was further argued that the learned Single Judge has also not considered the analogy given in the matter of *Veerendra Kiledar Vs. State of M.P. and others in W.P. No.2948/2008(S) decided on 13.10.2010*.

5. Thus, on the basis of aforesaid arguments, learned counsel for the appellant/petitioner had tried to canvas before this Court that grave illegality has been committed by the Single Judge, in dismissing the writ petition and upholding the order of the respondent/authorities, whereby the petitioner was only granted leave encashment of 56 days.

6. *Per contra*, Shri Deepak Khot, learned Govt. Advocate appearing for the State in reply had refuted the contentions, as made by the counsel for the appellant and had submitted that the order passed by the learned Single Judge is based upon sound principles of law and proper appreciation of the rules, thus, needs no interference.

7. It was further submitted that the case of the petitioner falls under the provisions of Rule 27 of M.P. Civil Services (Leave) Rules, 1977 which provides for calculation of the earned leave for the persons serving in the vacation department. While referring to Rule 27 of the Rules of 1977

it was submitted that as per sub-rule (01), a government servant serving in a vacation department would not be entitled to any earned leave in respect of his duties performed in a year, in which he avails himself full vacation and as per second part of sub-rule (02), if in a year the government servant doesn't avail himself of the vacation, earned leave is admissible in respect of that year in accordance with provisions of Rule 25 and as per the note 01 appended to the explanation, a government servant is entitled to vacation shall be considered to have availed himself of a vacation or a portion of a vacation unless he has been required by general or special orders of a higher authority to forego such vacation or portion of a vacation.

8. Thus, on the basis of aforesaid arguments it was contended that in the light of Circular as prevailing, the calculation of earned leave was rightly made as since 10.03.1987 the petitioner was only entitled for grant of seven days' earned leave per year, which looking to the period of his service tenure, for which the claim has been made in the petition, comes to 56 days only which has rightly been calculated by the department and was rightly affirmed by learned Single judge, it was thus, prayed that present appeal has no sum and substance is liable to be dismissed.

9. Heard learned counsel for the parties and perused the record.

10. The case of the appellant/petitioner as was before the learned Single judge, was that on 31.07.1973 he was appointed on the post of Teacher and had worked as Teacher till 20.09.2003 and since he was working in a vacation department (as Teachers got vacation for two months) he was not entitled for any leave encashment for the said period and it was only from 20.09.2003 when he was promoted as Principal that he became entitled for leave encashment. From the circular dated 16.06.2008 it was clear that if during the said period the Collector or the head of the department would had directed the petitioner to be on duty for 15 days or 30 days respectively, then he would have been entitled for any leave encashment for the period he had worked as Teacher and since the petitioner had not submitted any of the document to demonstrate that between the period 1973 to 2003, he was given any duty by the Collector or the head of the department, therefore, he was not entitled for any leave encashment for the said period, though he had not claimed any leave encashment for that period.

11. In the Circular dated 20.02.1996 a calculation chart has been provided in which for the period after 10.03.1987 the entitlement of leave encashment is shown to be of 07 days in a year. In the aforesaid circular it has further been clarified that the number of days beyond 10.03.1987 shall

be reckoned for the purposes of calculation of the earned leave and would be added in the remaining service and for the purposes of calculation would then be considered as one year, thus, if the calculation is made as per the aforesaid chart given in the Circular dated 28.02.1996, the petitioner would only be entitled for a period of 56 days, which has been calculated by the department and had been held to be true by the learned Single Judge.

12. Thus, in the light of aforesaid factual matrix, this Court doesn't find any illegality or perversity in the order passed by the learned Single Judge, therefore, the present writ appeal is hereby fails and is dismissed and admission is declined.

13. Certified copy as per rules.

**(SUNITA YADAV)**  
**JUDGE**

**(MILIND RAMESH PHADKE)**  
**JUDGE**