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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE MANINDER S. BHATTI
ON THE 17th OF NOVEMBER, 2022

WRIT PETITION No. 9930 of 2017

BETWEEN:-

MOHANLAL GUPTA S/O SHRI B.L GUPTA, AGED
ABOUT 62 YEARS, OCCUPATION: RETIRED
OFFICER MADHYANCHAL GRAMIN BANK
BEHIND SPS MALL URRAHAT REWA (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI ANURAG GOHIL, ADVOCATE)

AND

1. MADHYANCHAL GRAMIN BANK THROUGH ITS
CHAIRMAN HEAD OFFICE PODDAR COLONY
TILI ROAD SAGAR (MADHYA PRADESH)
2. GENERAL MANAGER (ADMINISTRATION)
MADHYANCHAL GRAMIN BANK (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI VIKRAM JOHRI, ADVOCATE)

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

ORDER

The petitioner has filed this petition while praying for following reliefs:-

"7.(i) The Hon'ble Court may be pleased to call the
entire record of the petitioner pertaining to the earned
leave encashment.

(ii) The Hon'ble Court may be pleased to set aside
the impugned order dated 23-05-2015.

(iii) The Hon'ble Court may direct respondents to release the benefit of earned leave encashment to the petitioner within a period of 60 days and with the interest of 12% per annum from the date of superannuation.

(iv) Any other relief this Hon'ble Court deems fit and proper under given facts and circumstances of the case may also be granted in favour of the petitioner along with cost of litigation throughout."

The contents as elaborated in the petition reveal that the petitioner, who was working with the respondent/Bank, as Officer Category-II, after disciplinary inquiry, vide order dated 22-04-2014, was removed from service and the said order of removal was passed just before the scheduled date of superannuation i.e. 30-06-2014. After the said order, the petitioner made representation to the respondents to release the benefits, which are admissible to the petitioner upon superannuation.

The respondents though, released the gratuity to the petitioner but, did not release the earned leave encashment and the same was withheld. The petitioner then submitted representation dated 03-07-2014 but, the said representation was declined vide letter dated 10-07-2014(Annexure P/3). Thereafter, the petitioner submitted another representation dated 15-07-2014 (Annexure P/4), the same was again declined vide impugned order dated 23-03-2015. Thereafter, an appeal was also preferred by the petitioner vide memo contained in Annexure-P/6 but, the petitioner was not extended the benefit of encashment of privileged leave. Therefore, seeking quashment of order dated 23-03-2015, this petition was filed by the petitioner with a further relief to direct

the respondents to confer the benefit of earned leave encashment with interest.

The counsel for the petitioner contends that the service conditions of employee of the petitioner are governed by the Regulations which are contained in Annexure-P/8. It is the submission of the counsel for the petitioner that Regulation -61 of the Regulations provides for privilege leave. Regulation-67 of Regulations, provides for lapse of leave. In terms of Regulation-67 of Regulations, when an employee of the Bank ceases to be in service, he is entitled to be paid all allowances and pay for the period of privilege leave at his credit and therefore, submits that there is no clause in Regulation-67, which deprives the petitioner from availing the benefit of leave encashment. It is submitted by the counsel for the petitioner that the petitioner had number of leaves to his credit and therefore, despite the order of removal, which is contained in Annexure- P/1 dated 22-04-2014, the petitioner could not have been deprived of the benefit of leave encashment. It is also contended by the counsel for the petitioner that the amount of gratuity has been released to the petitioner and therefore, the respondents could not have withheld the leave encashment under the garb of Regulation-67 of the Regulations, which are contained in Annexure-P/8.

The counsel while placing reliance on the decision of the Apex Court in the case of State of *Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Ors. (2013) 12 SCC 210* submits that the present petition deserves to be allowed inasmuch as, the Apex Court in the case of *Jitendra Kumar Srivastava (supra)* has held that terminal dues like pension, gratuity or leave encashment cannot be withheld in absence of any statutory provisions to do so. It is the further contention of the counsel that the *pari materia* provisions of Regulations-61 and 67 have been incorporated in *Maharashtra Gramin Bank*

(Officers and Employees) Service Regulations, 2010 and the **High Court of Mumbai (Aurangabad Bench) in WP No. 1347/2016 (Ashok and Ors. Vs. Chief Secretary, Union of India, Banking Division, New Delhi and Ors.) decided on 17-02-2017**, while dealing with the case of removal itself, held that there is no provision in the regulation, where the claim of the petitioner for leave encashment can be withheld. It is also contended by the counsel that the order passed by the Mumbai High Court in the case of *Ashok (supra)*, was assailed by the Bank by submitting Special Leave Petition before the Supreme Court vide Appeal (Civil) No. 19888/2017, which was also dismissed. The counsel while relying upon the decision of Indore Bench of this Court in **WP No. 18249/2018 (Mukund Hegde Vs. Narmada Jhabua Gramin Bank & another)**, submits that this court directed the respondents therein to take into consideration the petitioner's grievance regarding leave encashment. The counsel for the petitioner also while placing reliance on the decision of the Division Bench in **WA No. 240/2019 (Narmada Jhabua Gramin Bank Through Chairman Vs. Mukund)** in the same case, which was a case of compulsory retirement has held that the employee, who has been compulsorily retired, is entitled for leave encashment inasmuch as, Regulations-61 & 67, nowhere provides that if an employee is compulsorily retired, he shall not be entitled for leave encashment. Accordingly, the counsel submits that in view of the aforesaid position of law, the present petition deserves to be allowed and the petitioner is entitled for relief as prayed for.

Per contra, learned counsel for the respondents Shri Vikram Johri submits that the present petition is grossly mis-conceived. It is the contention of the counsel that encashment of privilege leave cannot be claimed as a matter of

right. The counsel contends that there are statutory rules, which govern the said field and therefore, the encashment of leave, is only permitted within the four corners of the provisions of Regulation-67, which have been brought on record as Annexure-P/8. It is contended by the counsel that by virtue of Regulation-67, all leaves stand lapsed in the event of death of an Officer/employee, or if, he ceases to be in service of the Bank. It is contended by the counsel that such cessation further has exception which are elaborated in Regulation-67. Shri Johri contends that in terms of provisions of Regulation-67, if an employee, whose services have been terminated owing to retrenchment, he shall be paid, pay and allowances for the period of privilege leave at his credit. Shri Johri submits that Regulation-67, does not entitle an employee for leave encashment, if he has been removed from service on the allegations of mis-conduct. Shri Johri further submits that in the present case, the petitioner has been extended the benefit of gratuity in terms of Regulation-72 inasmuch as, in terms of proviso contained in Regulation-72, the case of the petitioner was considered by the employer and as the petitioner, against whom allegations of financial loss to bank were levelled against the petitioner and petitioner had subsequently, indemnified the bank thus, invoking the powers contained in proviso to Regulation-67, the gratuity amount was paid to the petitioner.

It is contended by Shri Johri that the order of removal contained in Annexure-P/1 dated 22-04-2014 reveal that allegations of financial irregularities and other mis-conducts were levelled against the petitioner and disciplinary authority while passing the order of removal observed that financial loss which was sustained by the Bank, on account of petitioner's mis-conduct, was later on indemnified by the petitioner and therefore, while taking a lenient view penalty of removal was imposed, which was initially proposed to be a penalty

of dismissal. Thus, submits that the petitioner cannot claim the benefit of leave encashment, on the ground that as the gratuity has been paid to the petitioner, he is entitled for the leave encashment as well. Shri Johri, submits that Regulation-67 has been taken into consideration by this Court in *WP No. 16345/2014 (Bhoop Narayan Sharma Vs. Central Madhya Pradesh Gramin Bank)* and while dealing with a case, where the employee concerned was imposed a penalty of compulsory retirement, who claimed benefit of leave encashment, this court observed that the Regulation-67, does not save the cases of termination and compulsory retirement and therefore, the petitioner therein, who was compulsory retired, after departmental inquiry, was not entitled for leave encashment.

Shri Johri, has further placed reliance on the decision of Supreme Court in the case of *State of Jharkhand and another Vs. Govind Singh (2005) 10 SCC 437* and it is submitted that when the words of statute are clear, plain or unambiguous, the courts are bound to give effect to that meaning, irrespective of consequences. Since, in the present case, Regulation-67, does not leave any scope for extension of benefit of leave encashment to an employee, who has been removed from service after disciplinary inquiry, such a relief cannot be extended to the present petitioner.

Heard the rival submissions and perused the record.

In order to deal with the controversy, it would be apposite to first deal with the regulations which deal with service conditions of the petitioner. As the issue in question pertains to Regulations-61 & 67, they are being reproduced herein :-

"61. Privilege Leave :- (1) An officer or employee shall be

eligible for privilege leave computed for one day for every 11 days of service on duty:

Provided that no privilege leave shall be availed of before the completion of 11 months of service on duty at the joining of his service.

(2) The period of privilege leave to which an officer or employee is entitled at any time shall be the period which he has earned less the period availed of.

(3) An officer or employee on privilege shall be entitled to full emoluments for the period of leave.

(4) Privilege leave may be accumulated upto 31st December, 1989 for an aggregate period up to 180 days and from 1st January, 1990, the privilege leave may be accumulated up to not more than 240 days.

(5) An application for privilege leave shall be submitted by an officer or employee one month before the date from which such leave is required.

(6) The application which does not satisfy the requirement of sub-regulation (5) may be refused without assigning any reason:

Provided that if the Competent Authority is satisfied that such requirement was not possible, he may, at his discretion, waive the requirement."

67. Lapse of Leave :- All leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank:

Provided that where an officer or employee dies in service, there shall be payable to his legal representatives, sums which would

have been payable to the officer or employee as if he has availed of the privilege leave that he had accumulated at the time of his death subject to sub-regulation (4) of regulation 61:

Provided further that where a staff retires from the service of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to sub-regulation (4) of regulation 61:

Provided also that in respect of the employee where his services are terminated owing to retrenchment, he shall be paid pay and allowances for the period of privilege leave at his credit."

A perusal of the aforesaid Regulation-61 shows that an employee is entitled for the privilege leave computed for one day for every 11 days of service on duty and it is also mentioned that the period of privilege leave to which, an officer/employee is entitled at any time shall be the period, which he has earned less the period availed of. It is also mentioned in the Regulation-61, that an officer or employee on privilege shall be entitled to full emoluments for the period of leave. Therefore, the right to leave is a statutory right, which is made available to an employee on the strength of statutory provisions. The privilege leave as defined in Regulation-61, can be availed of by an employee by performing the duties for a particular period, which are described in Regulation-61. It is also clear that for period of privilege leave, an employee is entitled for *"full emoluments"*. Therefore, the benefit of privilege leave is to an employee is based on a notional situation, as if the employee on that particular day of leave, has performed his duty. Therefore, Regulation-61 provides that an employee shall be entitled for the "full emoluments" for the period of leave.

In service jurisprudence, an employee becomes entitled for the salary/emoluments or allowances etc, only upon performing the duties in the realm of master-servant relationship, which flow from the rules governing service conditions. Thus, an employee, who wish to avail the benefit of privilege leave encashment, is required to first perform the duties for every 11 days and then, he becomes entitled for one day of privilege leave. Therefore, an employee, who is desirous to avail privilege leave, first has to perform duty for the fixed stipulated period and then only he becomes entitled for the privilege leave of one day and the said privilege leave may be accumulated for not more than 240 days and thus, during the service tenure, an employer as well as employee are well aware that an individual employee, has to perform his duties for certain stipulated days and thereby, he earns leave to his credit.

Regulation-67, which deals with the lapse of leave provides that all leave shall lapse on the death of an officer or employee or if he ceases to be in the service.

An exception has been carved out in the 3th proviso to Regulation-67, which provides that in respect of the employee, where his services are terminated owing to retrenchment, he shall be paid, pay and allowances for the period of privilege leave at his credit. Regulation-67 does not elaborate the different eventualities of cessation. Regulation-67, also does not deal with different penalties, which results into cessation. The third proviso of the Regulation-67, only deals with the termination owing to retrenchment and it is provided in the said proviso that in the cases of termination owing to retrenchment, an employee will be entitled for leave encashment.

In order to deal with the petitioner's claim with regard to leave encashment, it is first necessary to evaluate as to whether leave encashment is

property of the petitioner are not.

Regulation-61 in unequivocal terms reflect that an employee earns leave upon performance of duty for certain period of days and therefore, while performing his duties in terms of Regulation-61, an employee becomes entitled for the privilege leave, which in-turn entitles him for the entire emoluments, as if he was on duty. Therefore, such a privilege leave, which the employee has earned, becomes his property and deprivation from such a property, in absence of statutory rule not permitted. A question regarding pension, came up before the Hon'ble Supreme Court in the case of *D.S. Nakara and Ors. Vs. Union of India (1983) 1 SCC 305* wherein the Apex Court in paragraph-20 has held as under:-

"31. From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to [Art. 309](#) and clause (5) of [Art. 148](#) of the Constitution ; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered ; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an

additional condition of impeccable behaviour even subsequent to requirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure."

The Apex Court held that pension is a right and payment of the same does not depend upon the discretion of the government subject to statutory rules. The Apex Court has also referred to an earlier decision of the Apex Court in the case of *Deoki Nandan Prasad Vs. State of Bihar and Ors. (1971) 2 SCC 330*.

Therefore, the benefits like pension and leave encashment are earned by an employee and therefore, once such benefit are earned, they become property of an employee and if an employee is deprived of such a property, there has to be specific provision in the statutory rules governing the field.

The Apex Court in the case of *Jitendra Kumar Srivastava (supra)*, while dealing with the provisions of Article 300-A of Constitution of India held that the right to property cannot be taken away without due process of law. The Apex Court has held in paragraph-14 as under :-

" 14. [Article 300](#) A of the Constitution of India reads as under:

"300A. Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in [Article 300](#) A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without a ny statutory provision and under the umbrage of administrative instruction cannot be countenanced."

In view of the aforesaid enunciation of law, an employee has a right for leave encashment, which in view of enunciation of law laid down by the Apex Court becomes his property upon earning the same in terms of statutory

provisions and therefore, such a right can only be curtailed by another statutory provision empowering the employer to forfeit or withhold the same.

In the present case, the stand of the employer is that in terms of Regulation-67, in cases of removal, an employee is not entitled for leave encashment and the further stand of the employer in the present case is that a case of removal is one of the eventuality, on account of which, an employee ceases to be in service of the bank and as per plain reading of Regulation-67, such an employee, who is ceased to be in employment on account of removal is not entitled for leave encashment.

The High Court of Mumbai in the case of *Ashok and Ors (supra)*, which was a case of removal from service in respect of petitioner No. 3 and a case of compulsory retirement in respect of remaining two employees, held in paragraph-8 as under :-

"8. In the case at hand, there is absolutely no provision in the Regulations of the Bank whereunder the claim of the petitioners for leave encashment can be withheld on the ground that they have been penalised. If that be so, respondent No. 3 was not right in refusing the claim of the petitioners for the amount of leave of encashment as was admissible to them."

The Mumbai High Court held that the respondents/Bank therein could not have withheld the amount of leave encashment, which was admissible to such an employee, in absence of any provision. The said order was though assailed before the Supreme Court but, the Special Leave Petition was also dismissed vide order dated 11-08-2017.

The Division Bench of this Court in *WA No. 240/2019 (Narmada Jhabua Gramin Bank Through Chairman Vs. Mukund)*, while placing

reliance on decision of the Mumbai High Court in *Ashok (supra)* has held that in a case of compulsory retirement, the regulation does not provide for forfeiture of leave encashment. It was further observed by the Division Bench that Regulations- 61 as well as 67, nowhere provide that an employee is compulsory retired, he shall not be entitled for leave encashment and accordingly, declined to interfere with the order passed by the Single Bench, by which, the petition of the employee was allowed.

A perusal of order dated 18-07-2019 passed by this Court in *WP No. 16345/2014 (Bhoop Narayan Sharma Vs. Central Madhya Pradesh Gramin Bank)* reveal that the same was also a case of compulsory retirement but, the Single Bench of this Court held that Regulation-67, does not save the case of termination and compulsory retirement from lapse of leave and therefore, the petitioner therein, who was compulsorily retired from service after departmental inquiry, was not entitled for leave encashment. A perusal of the said order reflect that it did not deal with situation where an employee is removed from service. While dealing with provisions of Regulation-45 as well, it was held that the same govern retiral pensionary benefits only and not leave encashment and leave encashment is governed by the provisions of Regulation-61 and 67 and the regulation-67, does not come to rescue of an employee, who has ceased to be in service. In *Bhoop Narayan Sharma (supra)*, the order of Mumbai High Court in *Ashok (supra)* was not discussed which was affirmed by the Supreme Court as well. The Division Bench of this Court in *WA No. 240/2019 (Narmada Jhabua Gramin Bank Through Chairman Vs. Mukund)*, while referring to the decision of Mumbai High Court in *Ashok (supra)* held that in a case of compulsory retirement, there cannot be forfeiture of leave encashment.

Though, the order passed by the Division Bench on 08-11-2019 but, the said Writ Appeal was arising out of judgment dated 08-01-2019 passed in WP No. 18249/2019 (*Mukund Hegde Vs. Narmada Jhabua Gramin Bank & another*) by the Single Judge of Indore Bench of this Court. The said Judgement dated 18-01-2019 in WP No. 18249/2019 (*Mukund Hegde Vs. Narmada Jhabua Gramin Bank & another*) by the Indore Bench of this Court was not brought to the notice of this Court at the time of hearing of WP No. 16345/2014 (*Bhoop Narayan Sharma Vs. Central Madhya Pradesh Gramin Bank*). The order in *Bhoop Narayan Sharma (supra)* neither deals with the *Mukund Hegde (supra)* nor with the *Ashok and Ors (supra)*.

The Judgment dated 18-01-2019 in Mukund Hegde (supra) has been affirmed by the Division Bench of this Court in WA No. 240/2019 (Narmada Jhabua Gramin Bank Through Chairman Vs. Mukund).

Since, the provisions of regulation-67, does not specifically exclude an employee from availing the benefit of leave encashment, if he has been removed from service therefore, under the garb of third proviso to regulation-67, an employee cannot be deprived of leave encashment.

Such an interpretation of Regulation-67 by the employer is not permissible, more particularly, when the employer intends to deprive the employee from his legitimate right to property, which he has earned after performing the duties during his entire service career. The stand of the Bank that the term "if he ceases to be" also includes cases of removal in the opinion of this Court, is unsustainable as there has to be specific provision in Regulation-67, specifying each penalty, which ultimately result in cessation of master-servant relationship. More particularly, when the decision as regards withholding of leave encashment, is in issue, which undisputedly is a right of an employee.

Now, to deal with the contentions of the respondents as regards the interpretation of Regulation-67, in the light of the Apex Court in the case of *Govind Singh (supra)*, it would be germane to appreciate the provisions of Regulation-72, of the Regulations as well. Regulation-72 provides for gratuity and in the said regulation, the Bank while recognizing the right of the employee, permits disbursement of gratuity to an employee, even in a case of dismissal where "no financial loss to the Bank has caused." In the present case, the respondents while appreciating the fact that the disciplinary authority while passing the order of removal dated 22-04-2014 observed that, as the petitioner while depositing the amount has compensated/indemnified the bank and therefore, has released the amount of gratuity. Therefore, when the leave encashment as well as gratuity is the property of the petitioner, therefore, in the considered view of this court, a restricted interpretation of Regulation-67 would not only be in direct conflict with the provision of Article-300-A of Constitution of India but, will also leave scope with the employer to pass order in whimsical as well as capricious manner. The respondent/Bank cannot take recourse to discrimination in the cases of gratuity as well as leave encashment. When the bank itself permits that even upon penalty of dismissal, an employee is entitled for the gratuity, if there is no financial loss to the bank, then, in the present case, when undisputedly, there is no financial loss to the bank, under the garb of conspicuously silent provisions of Regulation-67, the petitioner herein could not have been deprived of the benefit of leave encashment, which is not only his statutory right but, also falls within the ambit of provisions of Article 300-A of Constitution of India.

If the interpretation so suggested by the respondent/Bank in respect of

Regulation-67 is accepted, the same would result in exercise of unbridled and also whimsical powers at the hands of employer and then would have direct bearing on the property i.e. leave encashment of an employee.

Therefore, the reliance placed on the decision of ***Govind Singh (supra)*** by the respondents is mis-placed inasmuch as, the principle of "*Casus Omissus*" as is being sought to be put forth by the respondents cannot be pressed into service inasmuch as, it cannot be said that in the present case, there was inadvertence while framing the regulation and therefore, the issue in the present case is to be governed by the settled position of service laws. The words of the Statute if are clear, plain or unambiguous, the courts are bound to give effect to that meaning, irrespective of consequences but, in the present case, the Regulation does not fall within the aforesaid criterion laid down by the Apex Court in the case of ***J.P. Bansal Vs. State of Rajasthan (2003) 5 SCC 134.***

The Apex Court in the case of ***Shiv Shakti Co-op. Housing Society, Nagpur Vs. M/s. Swaraj Developers and others 2003 AIR SCW 2445*** held that the courts cannot add the defective phrasing of a statutory provisions and nothing can be added to make up the deficiencies in such a statutory provisions. The Court held in paragraph-23 as under:-

"23. Two principles of construction one relating to *casus omissus* and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred

and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said *Danackwerts, L.J. in Artemiou v. Procopiou (1966-1 QB 878)*. "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (*Per Lord Reid in Luke vs. IRC (1966 AC 557)*) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is *casus omissus*, and that the law intended *quae frequentius accidunt*." "But," on the other hand, "it is no reason,

when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (*See Fenton v. Hampton 11 Moore PC 345*). A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt legislatores*, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute *Casus omissus* of oblivion *datus dispositioni communis juris relinquitur*; "a *casus omissus*," observed Buller, J. in *Jones v. Smart (1 TR 52)*, "can in no case be supplied by a Court of law, for that would be to make laws." यते

In the present case, the provisions of Regulation-67 are undoubtedly not plain and completely silent about the nature of penalties, which result in cessation of master-servant relationship. The interpretation of Regulation-67, which is favourable to the employer, is not permissible, more particularly, when such interpretation deprives an employee from his right to leave encashment. Moreover, in such a case, the employer cannot be permitted to exercise discretion, when the disciplinary authority itself has arrived at a categorical finding that there is no financial loss to the Bank.

In view of the aforesaid analysis, in the considered view of this Court, the

impugned order dated 23-05-2015 contained in Annexure-P/5 deserves to be and accordingly stand quashed. The respondents are directed to forthwith release the amount of earned leave encashment to the petitioner within a period of 90 days along with interest @ 6% from May, 2014 (the month after the date of removal) till realisation.

The petition is **allowed** to the extent indicated above.

(MANINDER S. BHATTI)
JUDGE

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