

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NOS.17039-17040 OF 2008

Khandesh College Education Society,
Jalgaon & Anr.

..... Petitioners

Versus

Arjun Hari Narkhede & Ors.

..... Respondents

WITH

SPECIAL LEAVE PETITION (C) NOS.17960-17961 OF 2008

The Secretary, Khandesh College
Education Society, Jalgaon & Anr.

..... Petitioners

Versus

State of Maharashtra & Ors.

..... Respondents

JUDGMENT

ORDER

A. K. PATNAIK, J.

These Special Leave Petitions are directed against the common orders dated 09.06.2008 and 20.06.2008 of the

Bombay High Court, Aurangabad Bench, in Writ Petition No.2881 of 2007 and Writ Petition No.1410 of 2008. The questions raised in these Special Leave Petitions are whether the Lecturers/Demonstrators working in the Moolji Jeitha College established by the Khandesh College Education Society, Jalgaon, are entitled for earned leave and for encashment of unutilized earned leave on their retirement.

2. The relevant facts very briefly are that respondent nos.1 to 14 in both the Special Leave Petitions have worked as Lecturers/Demonstrators in the Moolji Jeitha College (for short 'the College') which is a private College established by the Khandesh College Education Society, Jalgaon, and has been receiving aid from the State of Maharashtra. After their retirement, respondent nos.1 to 14 were not granted encashment of their unutilized leave despite demands being made on the Principal of the College. Respondent nos.1 to 14 then made a representation to the Grievances Committee of the North Maharashtra University, Jalgaon (for short 'the University') to which the College

is affiliated, contending that under Statutes 424(3) and 424 (C) of the University of Pune, they were entitled for encashment of earned leave after retirement, but have not been paid the same by the College. When the Grievances Committee did not take any action on the representation, respondent nos.1 to 14 filed Writ Petition No.2671 of 2006 in the Bombay High Court, Aurangabad Bench, and by order dated 12.04.2006 the High Court directed the Grievances Committee of the University to dispose of the representation for encashment of unutilized earned leave within three months. Pursuant to this direction of the High Court, the Grievances Committee of the University decided on 10.10.2006 that the Statutes of the University of Pune continued to be applicable to the University by virtue of the provisions of Section 115(xii) of the Maharashtra Universities Act, 1994 (for short 'the Act') and therefore respondent nos.1 to 14 were entitled to encashment of their earned leave to their credit under Statute 424(C) read with Statute 424(3) of the University of Pune. The decision of the Grievances Committee was

communicated to the college by letter dated 18.10.2006 of the University.

3. The Khandesh College Education Society thereafter filed Writ Petition No.2881 of 2007 challenging the decision of the Grievances Committee of the University as well as the constitutional validity of Statutes 424(3) and 424(C) of the University of Pune. Respondent nos.1 to 14 also filed Writ Petition No.1410 of 2008 seeking a direction to the University to direct the Khandesh College Education Society as well as the Principal of the College to pay their unutilized earned leave forthwith along with interest and cost. After hearing learned counsel for the parties, the High Court held in the impugned common order dated 09.06.2008 that the constitutional validity of Statutes 424(3) and 424(C) of the University of Pune cannot be challenged merely on the ground that such provisions did not exist in the statutes of other Universities and that these provisions being beneficial provisions, cannot be held to be *ultra vires* the Constitution. The High Court further held that respondent nos.1 to 14, admittedly,

were employed in the College in various capacities and were entitled to leave in accordance with their service conditions and the Bombay High Court has already held in the case of V.S. Agarkar vs. The chairman, Grievance Cell Committee, Pune University (W.P. No.4936 of 2006 decided on 22.01.2007) that a teacher employed in an Institution affiliated to the University of Pune on retirement is entitled for encashment of unutilized leave on superannuation under Statute 424(C) of the University of Pune. The High Court, however, clarified that the College after discharging its liability of payment of leave encashment would be entitled to claim reimbursement by way of grant from the State of Maharashtra. By the impugned common order dated 20.06.2008, the High Court corrected the earlier order dated 09.06.2008 by clarifying that the liability of the State Government to reimburse the college would be subject to the claim of the College being admissible under law.

4. Mr. Vinayak J. Dixit, learned counsel for the petitioners, submitted that the respondent Nos.1 to 14

were working in the Vacation Department inasmuch as they were not required to work during the vacation period of the College and under Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981, a Government servant serving in a Vacation Department was not entitled to any earned leave in respect of duty performed in any year in which he avails himself of vacation. He further submitted that the State Government, by a Resolution dated 29.03.1997, has taken a decision that only the approved Principals of aided non-Government Colleges, if they are prohibited from enjoying the long term vacations on administrative grounds, would get the benefits of earned leave as per Rules 52, 54 and 68 of the Maharashtra Civil Services (Leave) Rules, 1981 subject to maximum accumulation of earned leave of 240 days. He submitted that since none of the respondent Nos.1 to 14 served as Principals performing administrative functions, they were not entitled to earned leave and consequently they are not entitled to encashment of any accumulative earned leave. He

further submitted that under Section 8 of the Act the State Government has control over the universities and without prior approval of the State Government, the University cannot take a decision which results in increased financial liability, direct or indirect, for the State Government. He argued that under Section 5 (60) of the Act, the University is required to comply with and carry out any directives issued by the State Government from time to time, with reference to the powers, duties and responsibilities of the University and similarly under Section 14 (5) of the Act, the Vice Chancellor has the duty to ensure that the directives of the State Government, if any, are strictly observed. He submitted that although the State Government has issued directives to the University to correct the Statutes to ensure that teachers, who can avail long term vacation, are not entitled to earned leave and encashment of accumulative earned leave at the time of retirement, the University has not amended the Statutes. In this connection, he referred to the various correspondence made by the State

Government annexed to the Counter Affidavit of the State Government as Annexure R-5 (Colly). Mr. Sanjay V. Kharde, learned counsel for the State of Maharashtra, adopted these arguments of Mr. Dixit.

5. Mr. Deva Datt Kamat, learned counsel appearing for respondent Nos.1 to 14, in reply, submitted that it is not disputed that the University of Pune Statutes were applicable to the University and under Statute 424(3) of the University of Pune Statutes a teacher other than the non-vacation teacher is also entitled to earned leave and under Statute 424(C) thereof he is entitled to encashment of earned leave in balance to his credit on the date of his superannuation subject to a maximum of 180 days. He submitted that Section 115 of the Act titled 'Repeal and Savings' provides in clause (xii) that all Statutes in respect of any existing university shall, insofar as they are not inconsistent with the provisions of the Act, continue in force and be deemed to have been made under the Act in respect of the corresponding university until they are superseded or modified by the Statutes made under the Act. He

submitted that since Statutes 424(3) and 424(C) of the University of Pune, which were applicable to the University, have not been superseded or modified by Statutes made under the Act, respondent nos.1 to 14 were entitled to earned leave and encashment of earned leave. He argued that Section 14(5) of the Act casts a duty on the Vice Chancellor to ensure that the provisions of the statutes are strictly followed and, therefore, he is required to ensure that respondent nos.1 to 14 are paid their leave encashment as per the provisions of Statute 424(C) of the University of Pune.

6. Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981 on which learned counsel for the petitioners has placed reliance is quoted hereinbelow:

“54. Earned leave for persons serving in Vacation Departments.

- (1) A Government servant serving in a Vacation Department shall not be entitled to any earned leave in respect of duty performed in any year in which he avails himself of the full vacation.
- (2) (a) In respect of any year in which a Government servant avails himself of a portion of the vacation, he shall be entitled to earned leave in such proportion of 30

days, as the number of days of vacation not taken bears to the full vacation.

Provided that no such leave shall be admissible to a Government servant not in permanent employ in respect of the first year of his service.

(b) If, in any year, the Government servant does not avail himself of any vacation, earned leave shall be admissible to him in respect of that year under rule 50.

Explanation.—For the purposes of this rule, the term “year” shall be construed as meaning not calendar year but twelve months actual duty in a Vacation Department.

Note 1.— A Government servant 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 order of a higher authority to forgo such vacation or portion of a vacation; provided that if he has been prevented by such order from enjoying more than fifteen days of the vacation, he shall be considered to have availed himself of no portion of the vacation.

Note 2.— When a Government servant serving in a Vacation Department proceeds on leave before completing a full year of duty, the earned leave admissible to him shall be calculated not with reference to the vacations which fall during the period of actual duty rendered

before proceeding on leave but with reference to the vacations that fall during the year commencing from the date on which he completed the previous year of duty.

- (3) Vacation may be taken in combination with or in continuation of any kind of leave under these rules :

Provided that the total duration of vacation and earned leave taken in conjunction, whether the earned leave is taken in combination with or in continuation of other leave or not, shall not exceed the amount of earned leave due and admissible to the Government servant at a time under rule 50:

Provided that the total duration of vacation, earned leave and commuted leave taken in conjunction shall not exceed 240 days.”

From the very language of different provisions of Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981 it is clear that it applies only to ‘a Government servant’. Respondent nos.1 to 14 are not Government servants and, therefore, cannot be denied earned leave on the basis of provisions made in Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981.

7. On the other hand, Section 115 of the Act while repealing the different Acts applicable to different

universities in the State of Maharashtra provides in subsection (2)(xii) that all Statutes made under the repealed Acts in respect of any existing university shall, insofar as they are not inconsistent with the provisions of the Act, continue in force and be deemed to have been made under the Act in respect of the corresponding university until they are superseded or modified by the Statutes made under the Act. Hence, Statutes 424(3) and 424 (C) of the University of Pune, which were applicable to the university, continue to be in force and are deemed to be made under the Act if they are not inconsistent with any provision of the Act or are not superseded, modified by Statutes made under the Act. Sections 5(60), 8 and 14(5) of the Act confer power on the State Government to exercise control over the University in some matters and also empower the State Government to issue directives to the University and cast a duty on the Vice Chancellor to ensure compliance with such directives, but these provisions in the Act do not prohibit grant of earned leave to a teacher or lecturer of any affiliated college who can avail a vacation from being entitled to earned leave or from being entitled to encashment of accumulative earned

leave at the time of retirement. In other words, Statutes 424(3) and 424(C) of the University of Pune are not in any way inconsistent with the provisions of the Act. Learned counsel for the petitioners and the State Government have also not brought to our notice any statute of the university modifying or superseding Statute 424(3) or 424(C) of the University of Pune which were applicable to the University.

8. Statutes 424(3) and 424(C) of the University of Pune are extracted hereinbelow:

“Statute 424(3) – Leave

a.

b.

c. Earned Leave

- (a) The confirmed non-vacation teacher shall be entitled to earned leave at the rate of one-eleventh of the period spent on duty subject to his accumulating maximum of 180 days of leave.
- (b) The teacher other than the one included in (a) above shall be entitled to one twenty seventh of the period spent on duty and the period of earned leave as provided in the proviso to Section 423 subject to his accumulation of maximum of 180 days. For this purpose the period of working days only shall be considered.

“Statute 424(C) - Encashment of Unutilized Earned Leave on Superannuation:

The teacher shall be entitled to encash earned leave in balance to his credit on the date of his superannuation subject to a maximum of 180 days.

In case the teacher is required to serve till the end of academic session beyond the date of his superannuation, he shall be entitled to encash the balance of earned leave to his credit on the date of his actual retirement from service.

A reading of Statute 424(3) extracted above would show that clause (a) applies to confirmed non-vacation teachers and clause (b) applies to teachers other than non-vacation teachers and clause (b) clearly states that teachers other than non-vacation teachers shall be entitled to earned leave subject to their accumulation of maximum 180 days. Statute 424(C), quoted above, further provides teachers shall be entitled to encash earned leave in balance to their credit on the date of his superannuation subject to a maximum of 180 days.

9. It, however, appears that the State Government has issued directives from time to time to the universities to amend the Statutes so as to ensure that lecturers or teachers working in Vacation Department are not entitled to

earned leave and encashment of earned leave, but the fact remains that Statutes 424(3) and 424(C) of the University of Pune have not been modified or superseded. There are also no provisions in the Act to the effect that Statutes of a University which are inconsistent with the directives of the State Government will be invalid. Section 115(2) (xii) rather states that statutes which are not inconsistent with the provisions of the Act and which have not been modified or superseded shall continue to be in force. Hence, respondent nos.1 to 14 were entitled to earned leave and encashment of earned leave as per the provisions of Statutes 424(3) and 424(C) of the University of Pune.

10. In the result, we are not inclined to grant leave in these matters but considering financial difficulties of the Petitioners expressed before this Court, we grant three months' time to the Petitioners to comply with the impugned orders of the High Court. The Special Leave Petitions are accordingly disposed of. No costs.

.....J.
(R. V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
July 5, 2011.