

## **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