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### **LEAVE ENCASHMENT IS A STATUTORY RIGHT**

The Gujarat High Court in the *Sadgunbhai Semulbhai Solanki* case<sup>1</sup> held that depriving a person of their leave encashment, which is equivalent to their salary, violates their constitutional right.

#### **A. Brief Facts:**

Sadgunbhai Semulbhai Solanki (**Solanki**) was offered to work as a helper with the Ahmedabad Municipal Corporation (**AMC**) in 1975. In 1982, he was offered the role of a turner, but since Solanki failed to clear the departmental examinations, he was reverted to the role of helper and was placed at a lower pay scale than that of turner.

Thereafter, he was appointed as junior clerk in 1989 but he was again reverted to the post of helper in 1993 for not passing the departmental exams despite three attempts. When he was provided with an opportunity to reappear for the examination in 2012, he refused, and consequently, he was reverted to the post of a helper.

Subsequently, Solanki resigned in 2013 without depositing notice pay for one month and informing that he proposed to be retired with effect from 07.03.2013.

Due to his unauthorized absence from March 2013, his application for benefit of leave encashment for the period of 10 months remained unaddressed.

He applied before the Labour Court (**LC**) for granting benefit of leave encashment for 10 months. Based on certificate issued by AMC dated of 2012, which was submitted by Solanki and which mentioned leave he had earned, the LC allowed his application. Subsequently, AMC appealed before the HC.

#### **B. HC's Judgement & Analysis:**

The HC observed that:

- Regarding the non-payment of one month's notice pay, Solanki's application for resignation in 2013 remained unattended and he was sent a communication regarding payment of notice pay only seven months after his resignation notice. According to state service regulations,<sup>2</sup> communication by AMC on his resignation must have been sent to Solanki within 90 days of his application to resign. If not, it would

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<sup>1</sup>*Ahmedabad Municipal Corporation vs. Sadgunbhai Semulbhai Solanki*, R/Special Civil Application No. 12834 Of 2018 (**Judgement**). A copy of the Judgement can be accessed [here](#).

<sup>2</sup>Rule 49(1)(2) of the Gujarat Civil Services (Pension) Rules, 2002: “*Voluntary retirement on completion of twenty-five years' qualifying service.*”

be considered that Solanki's resignation would be effective. However, Solanki failed to receive any intimation for seven months.

- *“Learned Labour Court relying on the certificate issued by the [AMC] dated 27.06.2012...came to the conclusion that there is a pre-existing right in the favour of [Solanki] and in view of the recognition of the claim by [AMC], the application is maintainable”*<sup>3</sup>
- *“The [certificate] is not disputed by [AMC] it cannot be said that there is no pre-existing right and therefore, learned Labour Court has rightly held that application is maintainable.”*<sup>4</sup>
- *“Leave encashment is akin to salary which is property and depriving a person of his property without valid statutory provision is violation of the provision of Constitution of India. If an employee has earned the leave and employee has chosen to accumulate his earned leave to his credit then encashment becomes his right and in absence of any authority that right cannot be infringed by [AMC].”*<sup>5</sup>

Therefore, the HC dismissed AMC's appeal petition.

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<sup>3</sup> Paragraph 5 of the Judgement.

<sup>4</sup> Paragraph 6 of the Judgement.

<sup>5</sup> Paragraph 8 of the Judgement.