

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13846 OF 2016

Sahadev Rama Gadling, Age 64 years,
R/o.409, Ayoudhya Nagar, Opp.Citiric Company,
Jail Road, post Panchak, Nashik Road-422101.

Petitioner

versus

1. The Union of India through
Secretary, Ministry of Defence, South Block,
New Delhi-110011.

2. The Cantonment Executive Officer,
Cantonment Board, Deolali Cantonment,
Deolali-422401.

Respondents

Mr.A.S.Rao i/by Mr.Surendra Prakash Saxena for Petitioner.

Mr.P.M.Palshikar with Mr.Ashok R. Varma for Respondent UOI.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 7th November 2025

ORAL JUDGMENT (G.S.Kulkarni, J.) :-

1. Rule. Rule made returnable forthwith. By consent of the parties Heard finally.

2. This petition under Article 226 of the Constitution of India challenges the denial of pension to the Petitioner on the ground that the Petitioner has not completed ten years of continuous service, on account of the period of suspension undergone by the Petitioner, which was with effect from 2nd June 2005 to 4th January 2005 being a period of about 7 months and 2 days. The Petitioner has contended that such period of suspension was required to be reckoned to consider

the Petitioner eligible for grant of pension in view of specific provisions of Rule 23 of Central Civil Services (Pension) Rules, 1972 ('CCS Pension Rules) read with clarificatory Office Memorandum No.F 11(3)-E.V (A)76, dated 28th February 1976. This inasmuch as no specific order was passed to that as period of suspension be excluded from the qualifying service. Hence it was deemed that the period of suspension necessarily was to be taken into consideration and counted in the qualifying service, is the Petitioner's case.

Facts :

3. The relevant facts are required to be noted. The Petitioner was initially appointed as X-ray Technician by the Respondent/Deolali Cantonment on 7th May 1985. However, on 6th December 1985 the Petitioner resigned from the said service. There was a fresh advertisement which was issued in the year 1985 inviting applications for the post of X-ray Technician. The Petitioner participated in the selection process and was issued an appointment order dated 8th November 1985. It appears to be not in dispute that from the date of joining i.e. 8th November 1995 up to 2nd June 2005 which a period of almost 9 years 6 months, there was no grievance in regard to the Petitioner smoothly discharging his duties. However, there was an incident which occurred in the month of June-2005 in which it was alleged that in the discharge of his duties, the Petitioner misbehaved with a poor pregnant lady patient, under the pretext that the internal examination of womb is to be carried out. He undertook the internal examination in absence of Lady Doctor and Sonologist. It was alleged that the Petitioner misbehaved with her amounting to a misconduct. The Petitioner pending a departmental inquiry was

placed under suspension on 2nd June 2005. A departmental inquiry was initiated against the Petitioner on 9th June 2005 as per the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The departmental inquiry culminated into a punishment of compulsory retirement being imposed on the Petitioner vide order dated 4th January 2005. The departmental appeal against the order of compulsory retirement could not succeed and ultimately after having accepted the decision of the Labour Court dated 9th July 2014, the Petitioner appears to have accepted the decision of his compulsory retirement.

4. On such backdrop the Petitioner made a representation demanding pension. By communication dated 12th August 2008 which was in reply to the Petitioner's representation as to why the Petitioner was not granted pension, the Petitioner was informed by the Respondents that the Petitioner was entitled to receive only the gratuity amount of Rs.1,54,741/- and Rs.39,092/- being the leave encashment.

5. Thus, the only issue which falls for our adjudication in the present petition is as to whether the Respondent's decision to deny pension to the Petitioner is legal and valid.

6. Before we consider the rival contentions, we note the prayers as made in this petition :

“a. This Hon'ble Court may be pleased to grant Rule,

b. This Hon'ble Court maybe pleased to call for the records/ proceedings from the Respondents and after perusal of the same, it may be declared that the period of suspension of Petitioner from 02.06.2005 to 03.01.2006 be treated as qualifying service of Petitioner in determining his pension and other retirement benefits;

- c. To direct the Respondents to calculate pension for the Petitioner on the basis of his last pay drawn as per CCS (Pension) Rules, and pay the arrears of pension to the Petitioner along with 9% interest,
- d. To pass any other appropriate order which may be considered necessary in the facts and circumstances of the case.”

Contentions of Parties :

7. We have heard Mr.Rao, learned counsel for the Petitioner and Mr.Palshikar with Mr.Varma for Respondents. Mr.Rao, learned counsel for the Petitioner has contended that it was not appropriate and correct for the Respondents to reckon the period of suspension from 2nd June 2005 to 4th January 2006 to be calculated for the qualifying period of pension for the reason that Rule 23 of CCS Pension Rules was required to be read in the context of the clarification issued in that regard in Office Memorandum dated 28th February 1976 (supra), which provides that when there is no specific entry in regard to the period of suspension as made dealing with the suspension period when the order of termination/removal is passed, the employee would be entitled for the period of suspension to be counted in the qualifying service to be considered for grant of pension. In support of his contention Mr.Rao has also placed reliance on the decision of Supreme Court in **Ashok Kumar Vs. Union of India**¹.

8. On the other hand, Mr.Palshikar, learned counsel for the Respondents has supported the decision of the Respondents in not including the period of suspension in counting of the qualifying service for pension also relying on Rule 23 of CCS Pension Rules. Mr.Palshikar has drawn our attention to the reply affidavit filed on behalf of the Respondents on the basis of which he would submit

¹1999-SCC (L&S)-1226

that this is a case where the Petitioner was suspended pending a departmental inquiry being initiated against the Petitioner, which ultimately culminated in imposing of a punishment of compulsory retirement of the Petitioner vide order dated 4th January 2006. According to Mr.Palshikar the Petitioner during the period from 2nd June 2006 when the order of suspension was issued, till the punishment of compulsory retirement was imposed, had in fact suffered suspension and on such backdrop a specific order being passed imposing a punishment of compulsory retirement under Rule 23, the second part of Rule 23 is clearly applicable. The period of suspension stands excluded from the qualifying service. There is no express declaration at the time of passing of such order that the period of suspension shall count. Once the Competent Authority has not issued such order which is the basic requirement of Rule 23 of CCS Pension Rules, the Petitioner's contention based on Office Memorandum dated 20th February 1976 is misconceived and cannot be accepted. It is submitted that in the event a declaration is not made, the proceeding can be remanded to the Disciplinary Authority so that an appropriate declaration can be provided.

Analysis and findings :

9. Having heard learned counsel for the parties and having perused the record, we are of the opinion that the Petitioner has made out a case for interference in the present proceedings. The following discussion would aid our conclusions.

10. At the outset the facts which are not in dispute need to be noted. The Respondents have made a specific statement in paragraph 11.4 of the reply affidavit

that the Cantonment Board is an autonomous body and CCS Pension Rules 1972 are applicable to the Cantonment Board employees in regard to grant of pensionary benefits. The facts in relation to Petitioner's appointment as an X-ray Technician vide appointment order dated on 8th November 1995 is also not in dispute. It is also not in dispute that by way of order dated 2nd June 2005 the Petitioner was placed under suspension pending a departmental inquiry as initiated against the Petitioner. Till the final order of punishment of compulsory retirement was passed on 4th January 2006, the Petitioner had suffered suspension. It is hence an admitted position that the Petitioner had suffered suspension for a period of about seven months, hence considering the appointment of the Petitioner on 8th November 1995, the qualifying service for pension could have been achieved by the Petitioner considering the continuous service of ten years, which otherwise would have completed on 8th November 2005. The Respondents have considered a shortfall of such ten years of continuous service in view of the suspension from 2nd June 2005 to 4th January 2006, by virtue of which according to the Respondents, would not qualify the Petitioner for the pensionable service.

11. Considering the aforesaid factual position, the adjudication of present proceeding thus revolves around the only question whether the period of suspension can be considered for the purpose of counting the qualifying service of ten years necessary for grant of pension under Rule 23 of CCS Pension Rules.

12. As urged on behalf of the parties, Rule 23 of CCS Pension Rules is the only provision which provides mechanism for counting of periods of suspension. We extract Rule 23 of CCS Pension Rules, which read thus :

“23. Counting of periods of suspension. - Time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified : in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent at the competent authority may declare.”

13. On a bare reading of Rule 23 it is quite clear that this Rule would be required to be read in two parts. The first part provides that time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified. In the second part of Rule 23, it is provided that in other case the period of suspension shall not count, unless the authority competent to pass orders under the rule governing such cases, expressly declares at the time, that it shall count to such extent at the competent authority may declare. Thus, on plain application of the requirement of the Rule, in the facts of the present case, there is no express declaration by the Competent Authority in regard to the period of suspension as per the requirements of the second part of Rule 23 of CCS Pension Rules. There is no express declaration that it shall count to such extent as the Competent Authority may declare. If this be the situation as contended by Mr.Rao, the petition would stand covered by Office Memorandum dated 28th February 1976 whereby Rule 23 has been clarified in regard to the following effect :

“(1) Entries for counting of periods of suspension.- Rule 23 of the C.C.S. (Pension) Rules, 1972 requires that in cases other than those in which suspension has been held to be wholly unjustified, the competent authority should at the appropriate time declare whether and to what extent the period of suspension will count towards the

qualifying service. Specific entries in this regard in the service book/records will be taken note of at the time of reckoning qualifying service. In the absence of any specific entry, period of suspension shall be taken as counting towards the qualifying service.”

14. We find substance in the contention as urged by Mr.Rao when he contends that in the present case there is no decision taken by the Competent Authority, as mandated under rule 23 of CCS Pension Rules, in regard to any decision being taken in regard to the period of suspension as to in what manner the period of suspension shall count and to what extent it is required to be declared by the Competent Authority, and it is for such reason to deal with such cases, an appropriate clarification is provided in the Office Memorandum dated 28th February 1976.

15. We are not persuaded to accept the submissions of Mr.Palshikar that the Competent Authority may be now directed to take a position and decide in regard to the counting of period of suspension and to what extent. If we accept such contention as urged by Mr.Palshikar, we are asking a completely new authority which is not the decision making authority which passed the order dated 4th January 2006 and that too after a period of almost 20 years to revisit the decision taken at the relevant time by then Competent Authority to call upon him to give a fresh declaration in regard to the counting of period of suspension. This would be contrary to Rule 23 of the CCS Pension Rules and as specifically provided in the Office Memorandum dated 28th February 1976. Once the Competent Authority at the relevant time refused to take a position and make any declaration as to in what manner and as to what extent the period of suspension shall be considered, in the light of what the Office Memorandum dated 28th February 1976 would

mandates that is in the absence of any specific entry, the period of suspension shall be taken as counting towards the qualifying service. In the present case, as it is clear that the Competent Authority having failed to pass any specific order that the period of suspension shall not count in regard to the qualifying service, in our opinion, the Petitioner would be correct in his contention that such period of suspension of eight months would avail to his benefit in counting the qualifying service for pension. Similar view has been taken by the Supreme Court in **Aashok Kumar Vs. Union of India (supra)**. In such case the Supreme Court was also confronted with a similar issue wherein the appellant Ashok Kumar was compulsorily retired and the order imposing penalty of compulsory retirement did not state anything of the manner the suspension period shall be treated on completion of inquiry as per Rule 23 of CCS Pension Rules. The Supreme Court in such circumstances granted benefit of such period of suspension being counted for the qualifying service. Following observations of the Supreme Court are required to be noted, which read thus :

“3. However, Mr.M.N.Krishnamani, learned Senior Advocate appearing on behalf of the appellant submitted that the order no made does not state anything about the manner in which the period of suspension should be treated on the termination of inquiry, in the order dated 29-5-1995 as required under the relevant rules. He drew our attention to the specific provisions of Rule 23 of the CCS (Pension) Rules which enable that even in cases where a government servant who was under suspension has not been exonerated, may state that the period of suspension shall count to such extent as it may declare for purpose of qualifying service and submitted that there is no application of mind to this aspect of the matter with the result that the appellant is deprived of that benefit. Learned Senior Advocate Shri Mahajan for the respondent is not in a position to controvert the same. It is clear from the order made by the Government that there was no application of mind to this aspect of the matter. In the circumstances, we do not think that there is any good reason to state that the appellant should be deprived of the benefit of counting qualifying service even though he has been

placed under suspension, the only charge against him being one of overstaying beyond the period of deputation in a foreign country.

4. In the circumstances, we allow this appeal in part while upholding the order of compulsory retirement made by the Government as confirmed by the Tribunal. We make it clear that the period of suspension made against the appellant from the date of compulsory retirement shall be treated as qualifying service and his pension computed accordingly.”

16. There is another aspect which cannot be overlooked by the Court namely as to what is the legal effect of an order of compulsory retirement and as held in several decisions of Supreme Court. This more particularly as in the present case the Disciplinary Authority in imposing such order of compulsory retirement thought it appropriate not to pass a specific order as Rule 23 of the CCS (Pension) Rules, (supra) would contemplate in regard to the period of suspension. As discussed hereinabove, this certainly brought about such effect that the period of suspension suffered by the Petitioner, was required to be included in the qualifying service to be counted for the purpose of pension. In such context, we may refer the decision of the Constitution Bench of the Supreme Court in **Shyam Lal vs. State of Uttar Pradesh & Anr.**² in which the Supreme Court observed that the power of compulsory retirement may be used when the authority exercising such power cannot substantiate the misconduct which may be the real cause for taking the action. It was held that a compulsory retirement has no stigma or implication of misbehaviour or incapacity. Also in a recent decision in **Captain Pramod Kumar Bajaj vs. Union of India & Another**³ considering the earlier decision in **Allahabad Bank Officers' Association v. Allahabad Bank**⁴ as also in

2 (1954) 1 Supreme Court Cases 572

3 (2023) 11 SCC 466

4 (1996) 4 SCC 504

Shyam Lal vs. State of Uttar Pradesh & Anr. (supra) and the decision in **State of Bombay vs. Saubhag Chand M. Doshi**⁵, it was held that, by its very nature, the power to compulsorily retire a government servant is distinct and separate from the power to punish him by way removal, dismissal etc for misconduct. It was observed that a government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. It was thus held that compulsory retirement differs both from dismissal and removal as it involves no penal consequences. Thus, considering these principles, in our clear opinion, the Petitioner would become eligible for inclusion of the period of suspension being counted for the qualifying service. It is not in dispute that by such inclusion of the period of suspension, the Petitioner becomes eligible for the pensionary benefits.

17. In the light of the above discussion we are certain that the petition needs to succeed. It is allowed in terms of prayer clauses (b) and (c).

18. Rule is made absolute in above terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)

5 AIR 1957 SC 892