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wp2064.21

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2064 OF 2021

Miss. Padma Tirupati Peddalwar .. Petitioner
Died – Through LR.

VERSUS

The State of Maharashtra & Ors. .. Respondents

Mr. Sanket S. Kulkarni h/f. Mr. G.R. Ingole, Advocate for the petitioner.
Mr. R.S. Wani, AGP for respondent No.1-State.
Mr. M.N. Nawandar, Advocate for respondent Nos. 2 and 3.

**CORAM : KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.**
RESERVED ON : 03.08.2026
PRONOUNCED ON : 06.10.2026

ORDER : [PER : KISHORE C. SANT,J.] : -

01. Heard learned Advocates for the parties. This petition is taken up for final disposal by consent.

02. The petitioner had filed this petition for direction to the respondents to pay her monetary and pensionary benefits and other consequential benefits considering her services from 31.03.1999 or 27.03.2000, by treating her to be in regular service since that day.

Further prayer is made to quash and set aside order passed by respondent No.2 i.e. Vice Chancellor and respondent No. 3 – Registrar of the University dated 25.11.2019. Respondent No.1 is the State of Maharashtra.

03. Facts in short are that the petitioner was appointed as a Technician (Computer) by the respondents in a scheme, namely, Network programme on characterization evaluation conservation on Deoni cattle for a period up to 31.03.1998 or till the scheme is over, whichever is earlier. The petitioner joined on 09.10.1997 on the post of Technician (Computer) and was working till 31.03.1998. She was given fresh appointment order on 11.06.1998 for period till 31.03.1999 or till the scheme is completed. She had given bond while joining of the service. Since the ad-hoc scheme came to an end, she was relieved on 31.03.1999 and her services came to be terminated. The petitioner, therefore, had approached this Court by filing Writ Petition No. 5103 of 1999.

04. This Court by order dated 15.03.2000 directed to absorb the petitioner in service from the date of her discontinuation to the post of Agricultural Computer Assistant. It was held that for the period from

31.03.1999 till the date of order, she was not working. The petitioner, thereafter, started working.

05. It is her case that later on she was not given benefits as per order passed in the said Writ Petition. Said petition was ultimately allowed by order dated 04.09.2014 by this Court. It is, thereafter, the Contempt Petition was required to be filed. This Court disposed off Contempt Petition No. 262 of 2018 by order dated 14.01.2020, observing that the order was substantially complied and if any grievance remains, it was kept open to the petitioner to raise grievance before appropriate forum. In the Contempt Petition, this Court had taken note of order dated 25.11.2019, which was passed pending the Contempt Petition, which is now under challenge.

06. Learned Advocate for the petitioner vehemently argued that once this Court, by way of interim relief, directed the petitioner to resume duty on 27.03.2000, it was incumbent on the part of the respondents to treat the services of the petitioner as continuous regular service and ought to have granted pensionary benefits. However, same is not done. In 2007, when she was required to go on medical leave, said period is treated as break. The petitioner, therefore, had

approached respondent No.2 - the Grievance Committee for regularization of her temporary appointment. The learned Registrar, however, did not grant benefits from 1999. He wrongly considered the services from 11.12.2007 and granted benefits only from that date.

07. Though all the consequential benefits are seem to have been granted, those are granted only from 2007 and not by considering service from 31.03.1999 or 27.03.2000. Mr. Kulkarni, learned Advocate submits that the petitioner's services be treated as regular at least from 27.03.2000.

08. Learned Advocate for the respondent Nos. 2 and 3 vehemently argued that the petitioner was ready to join services as per interim order passed by this Court. However, on 17.03.2007, the interim order was challenged by filing review application. However, said review application filed by the University came to be dismissed. When she was in service, she went on medical leave. As there was no medical leave available to her credit, her period of absence i.e. 8 months was treated to be period as no work no pay and she was given appointment from 11.12.2007. The University still has granted benefits with retrospective effect, holding her eligible to get qualifying service, increment etc. as per

the prevailing Government rules. The grievance of the petitioner as such now stands redressed and nothing remains to be decided. The only period of 02.04.2007 to 10.12.2007 was considered to be period not on duty.

09. After death of the deceased, her husband i.e. petitioner No.1 filed an application on 11.09.2023 for getting pensionary benefits under the Maharashtra Civil Services (Pension) Rules, 1982 by adjusting the benefits granted under the Defined Contributory Pension Scheme [for short "DCPS"]. Mr. Navandar, learned Advocate relied upon Government Resolution dated 31.03.2023. He also pointed out order dated 08.08.2024 granting family pension.

10. This Court has heard the submissions and perused the documents on record. It is seen that in the earlier round of litigation this Court had directed to join the deceased, which was accordingly done and there is no grievance now. After the Contempt Petition came to be disposed off, no grievance was made.

11. During the course of arguments, it was tried to be shown that though the Writ Petition was allowed by order dated 15.03.2000, still the

order passed in it was not implemented with retrospective effect. It is wrongly shown that the petitioner was not on duty for eight months and nine days i.e. total 253 days. Her absence was because of medical problem. It is also sought to be agitated that the Authorities have wrongly invoked Rule 63 of the Maharashtra Civil Services (Leave) Rules, 1981.

12. This Court finds that the Registrar had rightly observed that the petitioner was allowed to join on 30.03.2007 after order passed by this Court. However, immediately within two days, she again went on leave. It was only after eight months and nine days on 11.12.2007, she joined services. Since there was no medical leave standing at her credit, said period was considered as absence from duty.

13. In this view, the principle of no work no pay was applied. However, the petitioner was granted benefit with effect from 10.12.2007 considering period of absence as not on duty. The Court thus has to consider as to whether as per Rule 63, period of absence can be considered as period on duty and secondly whether pension is wrongly fixed by treating that period as no work no pay?

14. It is not in dispute that now by order dated 08.08.2024 the husband of the petitioner is given family pension. It is necessary to see whether extraordinary leave can be granted under Rule 63. Rule 63 of the Leave Rules reads as under :-

"63. Extraordinary leave

(1) Extraordinary leave may be granted to a Government servant in special circumstances-

- (a) When no other leave is admissible;
- (b) When other leave is admissible but the Government servant applies in writing for the grant of extraordinary leave.

(2) Unless Government in view of the exceptional circumstances of the case otherwise determines, no Government servant who is not in permanent employment shall be granted extraordinary leave on any one occasion in excess of the following limits:-

(a) three months;

(b) Six months, where the Government servant has completed three years continuous service on the date of expiry of leave of the kind due and admissible under these rules, including three months extraordinary leave under clause (a) and his request for such leave is supported by a medical certificate as required by these rules;

(c) twelve months, in the case of a Government servant who has completed five years continuous service on the date of expiry of leave due and admissible under the rules including extraordinary leave under (a) and (b) of sub-rule (2) above, **if the extraordinary leave is required on account of illness of the Government servant as certified by a Civil Surgeon or Superintendent of Government Hospital, as the case may be;**

(d) twelve months, where the Government servant who has completed one year's continuous service is undergoing treatment for cancer, or for mental illness, in an institution recognized for the treatment of such disease or under a Civil Surgeon or a Specialist in such disease;

(e) eighteen months, where the Government servant who

has completed one year's continuous service is undergoing treatment for—

xxxxxxx "

15. Thus, looking at Rule 63 (2), it needs to be considered whether in the present case said rule is rightly invoked by the respondents. Secondly, the respondents submit that the petitioner once having availed benefits of new pension scheme, whether now it is open to claim pension by considering services as regular from 1999. By order dated 08.08.2024, it is seen that petitioner No.1A has received benefits of Rs.7,96,800/-. However, since there was recovery of amount of Rs.7,33,800/-, said amount was deducted from death cum retirement gratuity of Rs. 7,96,000/- and he was given amount of Rs. 62,200/-. The contention, therefore, of the respondents is that now the petitioners are estopped from claiming benefits of old family pension scheme.

16. So far as Rule 63 (2) is concerned, this Court finds that the learned Registrar has observed that no extraordinary leave was applicable to the petitioner. What ultimately seen is that though the petitioner was appointed as per the order passed by this Court, however immediately within two days she went on leave. She did not join for 253 days. Thus, there was break in service. In the present case as per Rule,

Government has a power to grant extraordinary leave under certain conditions. However, case needs to be made out either under Rule 63(1) or 63(2). In the present case deceased petitioner was absent for more than eight months. To invoke Rule 63(1) extraordinary case needs to be made out as given in Rule 63(2). Nothing is on record to show that the leave was required for any of the reasons stated in Rule 63(2). This Court does not find any illegality committed by the Authorities. She was therefore rightly appointed as a fresh appointee.

17. One more aspect needs consideration that there is no challenge to the fresh appointment, which clearly shows that the petitioner has no grievance about fresh order. It was therefore rightly considered as fresh appointment and considering the same, order was passed. Now, prayer to consider service as continuous service from 27.03.2000 does not arise. In the petition the averments show that the petitioner claims entitlement of pensionary benefits with retrospective effect from 11.12.2007. The only claim is that since this Court had allowed Writ Petition No. 5103 of 1999, in view of interim relief, there was protection from 2000, cannot be accepted. Had she not taken break in service, the petitioner's case certainly could have been considered as continuous from 1999.

18. Having accepted appointment as fresh appointee in 2007, now it is not open to the petitioner to contend that the services need be treated as continuous service from 1999. Though it is tried to be contended that similarly situated persons are getting benefits of continuous service, same cannot be accepted in view of the above facts.

19. In view of the above, this Court finds that no case is made out calling for interference at the hands of this Court. Therefore, this Writ Petition stands dismissed.

[AJIT B. KADETHANKAR,J.]

[KISHORE C. SANT, J.]