

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 491 OF 2004

1. The State of Maharashtra
through
The Commissioner of Fisheries
Department of Fisheries,
Taraporwala Aquarium,
Netaji Subhash Road,
Mumbai – 400 002.
 2. The District Fisheries Development
Officer, Old Collector Office Compound,
Fazalpura, Aurangabad.
- ... Petitioners
(Ori. Respondents)
- Versus
- Laxman s/o Uddhavrao Kanade,
Age : 63 years, Occupation Nil,
R/o Sahas Housing Society,
Garkheda, Aurangabad.
- ... Respondent
(Ori. Applicant)

.....
Mrs. S. A. Dhumal, AGP for petitioners
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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 02.09.2015**

**Date of pronouncing
the Judgment : 04.09.2015**

J U D G M E N T (PER V. K. JADHAV, J.) :-

1. By way of this writ petition, the petitioner-State of Maharashtra has challenged the order dated 12.06.2003 passed by the learned Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad,

thereby partly allowing the Original Application No. 539 of 2000, holding that the respondent is entitled for grant of compassionate pension. The learned Tribunal has further directed the Government to determine the compassionate pension of the respondent by invoking the provisions under Rule 110 (2)(b) r/w Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, hereinafter referred to as "Pension Rules, 1982").

2. Brief facts giving rise to the present petition are as under :

The respondent/original applicant was initially appointed in the Revenue Department with effect from 02.04.1960. He had resigned the said job voluntarily on 21.01.1965. He was then employed afresh by the Fisheries Department of State of Maharashtra on 05.02.1965. The respondent/original applicant had also relinquished the said job by tendering resignation on 01.04.1977. The benefit of pension was not conferred on him on the ground that he had resigned from the service. Belatedly, in the year 2000, the respondent approached the Tribunal by filing Original Application No. 539 of 2000, contending that his case is covered by the judgment of the Apex Court in a case of ***M/s. J.K.Cotton SPG & WVG. Mills Co. Ltd. Kanpur V/s. State of UP and Others***, reported in ***AIR 1990 S.C. 1808***. It the contention of the respondent/original applicant that the Apex Court, in the case

referred above, has held that the resignation could be treated as a superannuation for all purposes.

The learned Tribunal, by its impugned order dated 12.06.2003, partly allowed the said Original Application and thereby held that the respondent/original applicant is entitled for grant of compassionate pension and further directed the State Government to determine the compassionate pension by invoking the provisions under Rule 110(2) (b) r/w Rule 101 of the Pension Rules, 1982. The learned Tribunal has also observed that the respondent/original applicant would be entitled for the arrears of pension for three (03) years preceding the Original Application and rest of the claim of arrears would be barred by limitation. Being aggrieved by the same, the State of Maharashtra has preferred the present writ petition.

3. The learned AGP submits that the respondent has tendered his resignation voluntarily in both the employments and as such, no pensionary benefits can be extended to him. The learned AGP further submits that the respondent has not made any grievance for non-payment of the pensionary benefits from the year 1977 till the year 2000. The learned AGP further submits that the case of the respondent is not covered by the aforesaid case of ***M/s. J.K.Cotton SPG & WVG. Mills Co. Ltd. Kanpur*** (*supra*) decided by the Apex

Court. The learned AGP has pointed out the provisions of Rule 46 of the Pension Rules, 1982 to submit that a resignation from the service or the post entails or forfeiture the past service of the employee. The learned AGP thus submits that since the respondent has resigned from the service way back in the year 1977, his past service stands forfeited in view of the provisions of Rule 46 of Pension Rules, 1982. The learned AGP thus submits that the impugned order passed by the learned Tribunal dated 12.06.2003 in Original Application No. 539 of 2000 is liable to be quashed and set aside and the Original Application filed by the respondent is liable to be dismissed.

4. The respondent sole, though duly served, remained absent.

5. In our view, the reliance placed by the learned Tribunal on the judgment of the Apex Court in the case of ***M/s. J.K.Cotton SPG & WVG. Mills Co. Ltd. Kanpur*** (*supra*) is misplaced. The Apex Court, in the case above, has dealt with the question that, when the service of an employee is terminated consequent upon the employer accepting the resignation voluntarily tendered by the employee, does the termination so brought about, amounts to “retrenchment” within the meaning of Section 2(s) r/w Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947. As per the facts of that case before the Apex Court, the employee's request containing the letter of resignation was accepted by the employer and that brought to end

the contract of service. On the back-drop of this, the Apex Court was of the opinion that such a situation would be covered by the expression “voluntary retirement” within the meaning of clause (i) of Section 2(s) of the said Act. The Apex Court had no occasion to deal with the provisions of Rule 46 of the Pension Rules, 1982 which provides for forfeiture of the past service on resignation.

6. The learned Tribunal held that the respondent is entitled for grant of compassionate pension in view of the provisions of Rule 110(2)(b) r/w Rule 101 of the Pension Rules, 1982. Rule 101 of the above Rules of 1982 reads as under:

“101. Grant of compassionate Pension in deserving cases by Government -

(1) A Government servant who is removed from service shall forfeit his pension and gratuity :

Provided that if the case is deserving of special consideration. Government may sanction a Compassionate Pension not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A Compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than

the minimum pension as fixed by Government.

(3) A dismissed Government servant is not eligible for compassionate pension.”

7. It thus appears from the bare reading of the above said Rule that a Government servant, who is removed from the service, shall forfeit his pension and gratuity and only in deserving cases, on special consideration, the Government may sanction compassionate pension. Rule 110(2)(b), as referred by the learned Tribunal, merely speaks about the amount of pension. Thus, the thrust of Rule 101 of the Pension Rules, 1982 is that when there is removal from service, the same results in forfeiture of pension and gratuity. In the present case, there is no question of removal from service because, admittedly, the respondent has tendered his resignation from service.

8. Rule 46 of the Pension Rules, 1982 provides for forfeiture of the past service on resignation. The Sub-Rules (1) and (2) of Rule 46 are only relevant and thus, are reproduced here :

“46. Forfeiture of service on resignation-

(1) Resignation from a service or a post entails or forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent under the Government where service qualifies.

(3).....

(4).....

(5).....

(6).....”

9. Even for the sake of discussion it is assumed that the respondent's case falls under the provisions of Rule 101 of the Pension Rules, 1982, there is nothing on record to point out that the case of the respondent deserves any special consideration and in tune with the provisions of Rule 101, a compassionate pension can be sanctioned to the respondent.

10. In our considered opinion, the learned Maharashtra Administrative Tribunal has committed a grave error of fact and law in partly allowing the Original Application of the respondent. Thus, the writ petition deserves to be allowed. Hence the following order:

ORDER

I. The impugned order dated 12.06.2003 passed by the

Maharashtra Administrative Tribunal, Bench at Aurangabad in Original Application No. 539 of 2000 is hereby quashed and set aside.

II. The Original Application No. 539 of 2000 is dismissed.

III. Rule discharged. In the circumstances, there shall be no order as to costs.

Sd/-
(V. K. JADHAV, J.)

sd/-
(A. V. NIRGUDE, J.)

vrel/

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