

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4194/2013

Balkrishna s/o Govindrao Kulkarni
Age 52 years, Occu-Agriculture
R/o 'Shripuja' Samata Colony
Osmanabad, Taluka and District
Osmanabad.

..PETITIONER
[ORIG.Applicant]

VERSUS

- 1] The State of Maharashtra
through its Principal Secretary
Public Works Department,
M.S. Mantralaya, Mumbai-32
- 2] The Secretary
Public Works Department
M.S. Mantralaya, Mumbai-32
- 3] The Superintending Engineer
Public Works Circle, Osmanabad
Taluka and District
Osmanabad

..RESPONDENTS

...
Mr.R.S.Deshmukh, Adv. For petitioner.
Mrs.S.A.Dhumal,AGP for respondent State.
...

**CORAM : S. V. GANGAPURWALA &
V. L.ACHLIYA, JJ.
DATED : 23rd FERUARY, 2015**

ORAL JUDGMENT [PER S.V.GANGAPURWALA,J.] :-

Rule. Rule made returnable forthwith. With consent of parties,

Petition is heard finally.

2] The petitioner herein was appointed as Sectional Engineer on 3/11/1979 after rendering service of about 11½ years. The petitioner submitted his resignation and vide office order dated 21/6/1991, the same was accepted. The petitioner claimed retiral benefits. The authorities negated claim of the petitioner. Aggrieved thereby, the petitioner filed Original Application bearing No.550/2003. The Maharashtra Administrative Tribunal at Aurangabad dismissed said Original Application. Hence, present Writ Petition.

3] Mr.Deshmukh, learned counsel for petitioner during the course of arguments canvassed following propositions :

A] As per Rule 30 of the Maharashtra Civil Service (Pension) Rules 1982 on completing 10 years of qualifying service petitioner is entitled for pensionary benefits. The tribunal and the authorities failed to consider the said aspect that the petitioner has completed qualifying service and as such was entitled for all the retiral benefits.

B] The distinction cannot be made between resignation on one hand and retirement on another. The basic consideration would be the completion of the qualifying service. The learned counsel further submits that the Maharashtra Civil Service (Pension) Rules, 1982 cannot be read in isolation and will have to be read alongwith provisions of Payment of Gratuity Act.

4] According to the learned counsel, even leave encashment to its optimum has to be provided and it cannot be restricted to half. Learned counsel relied on the judgment of the Division Bench in the

case of **Jeevan Kashinath Patil V/s State of Maharashtra and others reported in 2014 (4) M.L.J. 899**. The Division Bench of this Court in the case of Jeevan referred supra was not required to consider Rule 46 vis-a-vis entitlement of pension as the Petition before the division Bench in the case of Jeevan was restricted to the extent of gratuity and leave encashment. The observation with regard to the pension cannot be termed as a ratio decidendi as the same was not subject matter of discussion before Division Bench. According to the learned counsel, analogy that is applied for considering the retiral benefits to the extent of payment of gratuity and leave encashment has to be accepted in regard to the payment of pension also. According to the learned counsel, the judgment of the tribunal as such is erroneous and deserves to be set aside.

5] The learned AGP submits that the Tribunal has considered Rule 46 in its entirety and thereby has rightly passed the order. No illegality has been committed by the tribunal while dismissing Original Application. As per Rule 46 of the Pension Rules, on resignation, the pensionary benefits are forfeited. The same has been rightly considered by the authorities so also the tribunal. Resignation from service or post entails the forfeiture of past service.

6] We have considered submissions canvassed by learned counsel for respective parties. Before we proceed to deal with the submissions canvassed by the learned counsel of respective parties, it would be appropriate to refer to the relevant Rules. Rule 30, 46 (1) and (2) of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under :

30] Commencement of qualifying service –
Subject to the provisions of these rules,

qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency.”

Rule 46 of Pension Rules, 1982 reads as under :

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.

7] There cannot be any dispute with the proposition that on completion of ten years of qualifying service, a person is entitled for the pensionary benefits. The only question is about entitlement of the person to the pensionary benefits after resigning on completion of ten years of service.

8] The issue with regard to the payment of the gratuity and the

leave encashment is no longer resintegra in view of the judgment of the Division Bench in the case of Jeevan referred supra. In light of the judgment of the Division Bench of this court in the case of Jeevan referred supra, it is explicitly clear that Section 4 of Payment of Gratuity Act fully applies to Rule 46 of the Pension Rules. According to the non obstante clause appearing in Section 4 of the Payment of Gratuity Act as such, even though petitioner has resigned from the service, however, after completion of the qualifying period, is entitled for the payment of gratuity and that cannot be forfeited. The Division Bench in the case of Jeevan referred supra, has also held that Rule 67(3) of the Leave Rules, 1982 provides for leave which can be encashed being half of such leave to their credit subject to cap of 150 days to an employee who has resigned from service. In light of that the petitioner would be entitled for leave encashment as a person who has retired on completion of qualifying service would be entitled to.

9] The next question arises about the benefit of the pension to the petitioner. Rule 46 as is referred supra, deals with forfeiture of service on resignation. The said Rule is not subject matter of challenge before the Tribunal or in the present Writ Petition.

10] The Writ Petition is filed against the judgment of the Maharashtra Administrative Tribunal and the scope would be restricted to the extent the same was subject matter before Maharashtra Administrative Tribunal. Rule 46 read as it is makes it abundantly clear that resignation from service or a post entails forfeiture of past service. It is not disputed that the petitioner did not join any other Government service on resignation. Rule 46(1) will have to be read as it is. The said rule is unambiguous. The said rule is also not a subject matter of challenge in present matter.

11] In light of the above, Writ Petition is partly allowed. It is held that the petitioner is entitled for payment of gratuity and the leave encashment of the leave to his credit as is applicable to a person who retired from service on completion of the qualifying years of service. The claim of the petitioner to the extent of pension is negated. Rule accordingly made partly absolute. No costs.

V.L.ACHLIYA, J.

S. V. GANGAPURWALA, J.

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