

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

WRIT PETITION NO. 3332 OF 2002

Vasant S/o Vishnupant Khalikar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Prashant Deshmukh, Advocate h/f Shri S. K. Kulkarni,
Advocate for the Petitioner.

Shri S. G. Sangle, A.G.P. for Respondent Nos. 1 and 2/State.

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 16TH APRIL, 2015.

PER COURT :

. Mr. Prashant Deshmukh, the learned counsel for the petitioner submits that, the petitioner had filed original application being aggrieved by the order passed by the respondents whereby pensionary benefits were withdrawn.

2. The learned counsel submits that, the petitioner joined the service as suboverseer in the Ex-Hyderabad State on 06.01.1953. On reorganization of the State, the petitioner was transferred to the Parbhani Municipal Council. Thereafter the petitioner was transferred to B. & C. Division Road Project Division and thereafter on promotion to National Highway Division, Solapur. However, due to closer of sub division, the petitioner was reverted to the post of junior engineer, but was not given any specific

posting. In September 1973, the petitioner requested the respondents to allow him to retire voluntarily as he has completed about 21 years of service till September 1973. The respondents did not reject his request for Voluntary Retirement, nor had communicated any decision in writing about the same. The petitioner was labouring under the belief that, his request for voluntary retirement has been accepted. In January 1986, the petitioner gave representation requesting the respondents to prepare his pension papers. Instead of forwarding pension papers, the respondent No. 3, issued memo together with charge sheet with a view to initiate departmental enquiry. On 30.06.1987, the petitioner attained age of superannuation and the said memo was issued on 19.06.1987, which is served on 24.06.1987. The learned counsel submits that, the petitioner was not paid provisional pension as is required. In view of the fact that, provisional pension was not paid as contemplated under Rule 27(4) of the Maharashtra Civil Services (Pension) Rules, the enquiry stands vitiated. In the year 1983 a paltry sum of Rs. 60/- was granted to the petitioner under the head of provisional pension of six months, which is also illegal. The sum that was granted was never paid to the petitioner. The learned counsel submits that, the enquiry was initiated under Rule 27 of the M. C. S. Pension Rules, however, the Tribunal while rejecting the original application has applied Rule 47 which is wholly irrelevant. The learned counsel submits that, prior to September

1973 the petitioner had completed 20 years 09 months service, as such he is qualified for pension. Even under Rule 130 if disciplinary enquiry is pending, provisional pension has to be paid. All these aspects are not considered by the Tribunal while rejecting the original application. The learned counsel relies on the judgment of the Apex Court in a case of **State of Maharashtra Vs. Chandrabhan** reported in **AIR 1983 SC 803(1)** and another judgment in a case of **Ghanshyam Das Shrivastava Vs. State of M. P.** reported in **AIR 1973 SC 1183**. The learned counsel submits that, the period from 1973 to 1987 ought to have been considered as extraordinary leave and the petitioner would have been given benefit of the qualifying service, which the petitioner has rendered for the purpose of pension. According to the learned counsel, the Tribunal committed an error in rejecting the original application.

3. Mr. Sangle, the learned Assistant Government Pleader submits that, the Tribunal has considered all relevant aspects of the matter and has rightly passed the order. The Tribunal has considered that, since the year 1973 the petitioner had abandoned the service, which in a way amounts to resignation. The conduct of the petitioner is such that he had in fact abandoned the service. This aspect has rightly been considered by the Tribunal. The order of forfeiture passed under Rule 47 of the M. C. S. Pension Rules has been rightly applied.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The argument of Mr. Deshmukh, the learned counsel for the petitioner that, non payment of provisional pension vitiate the enquiry could have been considered, had the paucity of funds been a ground for the petitioner in not attending the enquiry. At no material point of time, the petitioner had raised this grievance. As such, it would be too late in the day for this Court to consider the ground put forth at the time of argument in the present petition, that the non payment of provisional pension would vitiate the enquiry.

6. It is undisputed that, after September 1973, the petitioner did not attend the service. The Tribunal has observed that, there is no evidence worth the name to suggest that the petitioner had tendered an application for voluntary retirement. The Tribunal considering the conduct of the petitioner had observed that, it would be case of abandonment of service and/or resigning from service. The said observation and conclusion of the Tribunal is based on facts on record. The enquiry was conducted on two charges. One remaining unauthorizely absent for almost 14 years and another is over payment of Rs. 3,000/- and odd amount.

7. The Tribunal has observed that, the petitioner has raised a after thought plea of petitioner having retired voluntarily in

1973. After September 1973, the petitioner never reported to the duties. The petitioner gave up his service in a way abandoned the service. In the light of that, the Tribunal came to the conclusion that, the petitioner is not entitled for any benefit. The Tribunal observed that, the conduct of the petitioner shows his intention to leave the job permanently. The petitioner has thereby forfeited all his past service and is not entitled to claim retiral benefits. The enquiry was initiated before the petitioner attained the age of superannuation. Both the charges against the petitioner were proved. The absence of service was found to be unauthorized. As such, there was break in service of the petitioner. After 1973 any interruption of service entails forfeiture of past service. Except in cases provided by specific illustration referred in Rule 47. The Tribunal has observed that, the order impugned before it was not articulately worded, however the sum and substance of the order is that, the petitioner remained absent unauthorizedly. There was interruption in service and, therefore, he was not entitled for pension as he forfeits all his past service. The tribunal has arrived at plausible conclusion.

8. In the light of that, no case for interference is made out. The writ petition is disposed of. Rule discharged. No costs.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]

bsb/April 15