

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5493 OF 2003

- 1) The State of Maharashtra,
- 2) The Secretary, Animal Husbandary
and Dairy Development,
Mantralaya, Mumbai,
- 3) The Commissioner, Animal Husbandary,
Pune-1

...PETITIONERS

VERSUS

- 1) Dr. Imtiyazuddin Bashiruddin Patel,
Age-45 years, Occu:Retired Govt.
Servant, Plot No.7, Priyadarshini
Colony, Padegaon, Aurangabad,
- 2) The Accountant General (A & E),
Maharashtra State, Nagpur.

...RESPONDENTS

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Mr. G.K. Thigale (Naik) Additional Government
Pleader for Petitioners.

Mrs. A.N. Ansari Advocate for Respondent No.1.

Mr. S.B. Deshpande, Assistant Solicitor
General for Respondent No.2.

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

DATE : 25TH MARCH, 2015

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

1. Heard learned counsel for the respective parties.

2. Mr. Thigale, the learned Additional Government Pleader submits that the Tribunal committed an error in directing the present Petitioners to pay pension and pensionery benefits though the present Respondent No.1 had resigned from the service. In view of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 [for short "M.C.S.R.(Pension) Rules"] read with Rules 65 and 66, on resignation the employee forfeits his pension. According to the learned Additional Government Pleader, even the Gratuity and other pensionery benefits are also not available to Respondent No.1. Learned Additional

Government Pleader relies on the Judgment of the Apex Court in a case of **UCO Bank with Oriental Bank of Commerce vs. Sanwar Mal with Ashwini Kumar Sharma, reported in 2004(4) S.C.C. 412** and another Judgment of the Apex Court in a case of **M.R. Prabhakar and others vs. Canara Bank and others, reported in (2012) 9 S.C.C. 671**, so also the Judgment of the Apex Court in a case of **Union of India and others vs. Madhu E.V. and another, reported in (2012) 5 S.C.C. 474**.

3. Mrs. Ansari, the learned counsel for Respondent No.1 submits that a person resigning from a particular post would be on a same pedestal as a person seeking voluntary retirement. No distinction can be made between the two. In view of Rule 66 of M.C.S.R. (Pension) Rules, the Respondent No.1 would be entitled for retiral benefits as qualifying service for pension, now is of ten years. According to the learned counsel,

the Central Administrative Tribunal in a case of **Smt. Bimla Devi vs. Union of India and others, reported in 1992(2)(C.A.T.) 310**, has held that if resignation is submitted after ten years, then such employee is entitled for pension. The learned counsel for Respondent No.1 also relies on the Judgment of the Division Bench of this Court in a case of **Jeevan Kashinath Patil and others vs. State of Maharashtra and others, 2014(5) Bom.C.R. 415**.

4. We have considered the submissions canvassed by the learned counsel for the respective parties and also gone through the impugned Judgment delivered by the Maharashtra Administrative Tribunal.

5. The fact that Respondent No.1 was appointed as a Veterinary Officer on 16th July 1977 is not disputed. It is also not disputed that Respondent No.1 submitted resignation on 29th

December 1988, and on 28th February 1989 said resignation was accepted. Respondent No.1 was relieved from service on 28th February 1989 itself. The moot question would be, whether the Respondent No.1 is entitled for the pensionary benefits.

6. Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982, in the present case, is relevant, which reads as under:-

"46. Forfeiture of service on resignation.-

(1) Resignation from a service or a post entails 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) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the

extent which the period is not covered by leave due to him.

(4) The appointing authority may consider the request of a person who had earlier resigned his post under Government, to take him back in service in the public interest on the following conditions, namely :-

(a) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(b) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(c) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(d) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for taking him back in service shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to be taken him back in service and to resume duty the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service."

7. In the present case, there is nothing on record to show that the resignation was submitted with the proper permission seeking another appointment under the Government where service qualifies.

8. The Division Bench of this Court in a case of **Jeevan Kashinath Patil and others vs. State of Maharashtra and others**, referred supra, has an occasion to consider the provisions of the

Payment of Gratuity Act, 1972 vis-a-vis the provisions of Rule 46 of the M.C.S.R. (Pension) Rules. The Division Bench of this Court held that the provision of Rule 46 of the M.C.S.R. (Pension) Rules, to the extent it debars person claiming Gratuity and leave encashment if a person resigns, is ultra vires and bad. However, as far as pension is concerned, the Apex Court in the case of **Union of India and others vs. Madhu E.V. and another**, referred supra, held that such an employee who resigns from service, is not entitled for pension.

9. In the present case also vires of Rule 46 of M.C.S.R. (Pension) Rules is not assailed before the Tribunal. In view of the Judgment of the Apex Court in the case of **Union of India and others vs. Madhu E.V. and another**, referred supra, it will have to be held that the Respondent No.1 is not entitled for pension. However, the Respondent No.1 would be entitled for Gratuity and benefit of Leave En-cashment.

10. In light of above, we pass following order:-

O R D E R

(A) The impugned Judgment and Order passed by the Maharashtra Administrative Tribunal in Original Application No.85 of 2001, dated 5th March 2003, to the extent of granting pension to present Respondent No.1, is quashed and set aside.

(B) However, it is held that Respondent No.1 is entitled for Gratuity and Leave En-cashment, if there is no other impediment.

(C) The Petitioners shall calculate the amount of Gratuity and Leave En-cashment as payable to Respondent No.1, expeditiously, preferably within THREE MONTHS from today,

and shall make the payment of same to
Respondent No.1.

(D) Writ Petition, accordingly, partly
allowed, however, with no order as to
costs. Rule made partly absolute.

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

[S.V. GANGAPURWALA, J.]

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