

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

WRIT PETITION NO.7454 OF 2005

1. Narayan S/o. Dodu Chaudhari, .. **PETITIONER**
Age-66 years, Occu-Pensioner,
R/o. Faizpur, Tq. Yawal,
Dist. Jalgaon.

Versus

1. The State of Maharashtra .. **RESPONDENTS**
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Deputy Director of Education
Nashik Division,
Nashik.
3. The Education Officer (Secondary)
Zilla Parishad, Jalgaon.
4. Accountant General,
Mumbai.

Mr. A.G.Talhar h/f Mrs. Anita Sharma, Advocate for the
petitioner.

Mr.S.S.Tope, AGP for the respondent/State.

**CORAM : A.V. NIRGUDE &
A.M. BADAR,JJ.**

DATED : 01.07.2015

ORAL JUDGMENT: [PER: A.V. NIRGUDE, J.]

1. The facts leading to this petition are as under:-

2. The petitioner joined as N.D.S. Instructor in Central Government in 1959, where he worked upto 10.06.1968. Thereafter he resigned & tookup service in a private school at Ahmadabad, Gujrat from 11.06.1968 and worked there till 13.06.1971. Thereafter he resigned and from 14.06.1971 he worked in aided private school in Maharashtra till his age of retirement in 1996. In order to show that he resigned with permission of his employer, he placed reliance on his employers certificates which are annexed to the petition at page No. 92, in which it is clearly mentioned by his employers that the petitioner had resigned and joined new service with their permission. There is practically no break in service. Two major changes took place in the career of the petitioner. First when he left service of Central Government on 10.06.1968 and second when he left service in Ahmedabad school on 13.06.1971. Admittedly for the first time he took up job in Maharashtra in a private aided school on 14.06.1971. Even at this time he obtained permission from his previous employer to change the job.

3. The State of Maharashtra from 14.06.1971 till the petitioner's retirement on 13.06.1996 paid him salary

as per his pay-scale. On the day of retirement the petitioner admittedly was entitled to pension. The question arose at that time as to what was duration of qualifying service for pension?. The State of Maharashtra held that his qualifying service would be of 25 years i.e. Between 1971 to 1996 but refused to accept that the service he rendered earlier.

4. The question therefore arose between the parties as to whether the service rendered by the petitioner earlier (between 1959-1967 & 1967-1971) was qualifying service and the State of Maharashtra is liable to accept the same as qualifying service for calculating the pension?. The first question that would arise is whether service rendered by the petitioner between 1967 to 1971 in grant-in-Aid school in Gujrat is qualifying service. The period of such service is only of 3 years. The petitioner has not shown to us any Government Resolution indicating that the State of Maharashtra and State of Gujrat have entered into a mutual arrangement to settle each other employee's claim for pension and qualifying service, etc. In absence of this material we are unable to hold that the service rendered by the petitioner in private school of Gujrat would be qualifying service. In view of this difficulty we discussed the petitioner's case only from the point of view Central Government

Service.

Similar situations arose in the past. Number of employees of Central Government or other State Governments came to work in Maharashtra either as Government Servant or Government of Maharashtra aided school, etc. On number of occasions the question of counting of qualifying service arose.

5. First reason that the State of Maharashtra has given for denying their liability to pay pension based on Rule-46 of the Maharashtra Civil Services Pension Rules. In order to appreciate the controversy arising from this stand would be understood in the light of provisions that are quoted below:-

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.

47. Effect of interruption in service :
An interruption in the service of a Government servant entails forfeiture of his past service except in the following

cases:-

a) authorised leave of absence.

b) Unauthorised absence in continuation of authorised leave of absence so long as the post held by the absence is not filled substantively.

c) Suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of superannuation while under suspension.

d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest.

e) joining time while on transfer from one post to another.

2. Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute [retrospectively] the periods of absence without leave a extraordinary leave.

48. Condonation of interruption in service:-

1. The appointing authority may, by order, condone interruption in the service of a Government servant:

Provided that:-

a) the interruption have been caused by reasons beyond the control of the Government servant.

b) the total service pensionary benefit in respect of which will lost, is not less than five years duration, excluding one or two interruptions, if any: and

c) the interruption including two or more interruptions, if any, does not exceed one year.

2. The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

3. In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

4. Nothing in sub-rule(3) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

5. The period of interruption referred to in sub-rule(3) shall not count as qualifying service.

6. The petitioner by making amendment in the petition very clearly mentioned that his case would fall

in Sub-rule(2) and he is saved from forfeiture. The State of Maharashtra made no reply to the amended petition. We still would examine merits of the claim of the petitioner that his case falls within exceptions to Sub-rule(2).

7. Sub-Rule(2) has a peculiar phrase namely 'proper permission'. This proper permission is required to be taken from the previous employee before submitting resignation. The petitioner apparently has obtained such permission in view of letters issued by his previous employee which are referred to above earlier. The next question falls within the parameters of phrase 'where service is qualifying'. This is related to the subsequent employer. The State of Maharashtra is under obligation to examine any case of this nature as to whether the service rendered under previous employer is 'qualifying service'. The petitioner must convince the State of Maharashtra that his previous service was 'qualifying service'.

8. Let us examine as to whether the Central Government Service was qualifying service. The petitioner worked for 9 years under Central Government and as said above after proper permission he had resigned from such service. In order to answer this we must refer two Government Resolutions on which petitioner placed reliance. The Central Government vide G.R. dated

07.02.1986 resolved that the Central Government and other employers like State of Karnataka, etc. had mutually agreed to accept earlier employments as qualifying service. Curiously this Government Resolution does not mention the name of the State of Maharashtra. So this Central Government Resolution probably at the time of issuance was not applicable to the employees who joined service in the State of Maharashtra after resigning with proper permission from a job of Government of India. But this problem was solved by the State of Maharashtra itself. They suo-moto took a decision to apply and accept Central Government Resolution dated 07.02.1986 to the employees who serve Central Government and State Government. On careful perusal of both the Government Resolutions, it is clear that the State of Maharashtra entered into an agreement with Government of India that in case an employee of Government of India resigns with proper permission and takes up a Government of Maharashtra job they would count his service in the Central Government as qualifying service.

9. Despite of this clear favourable circumstance to the petitioner, the State of Maharashtra has taken an adamant stand in the impugned order as well as in the further correspondence that there is no agreement between State of Maharashtra and Central Government. They simply

ignored their own resolution of 1993.

10. We wondered as to whether this is a case of feigning ignorance or purposeful denial. It is thus clear that the service rendered by the petitioner in the Central Government till 1968 for 9 years is qualifying service. The petitioner did not come to Maharashtra immediately after he resigned from the Central Government service in 1968 for about 3 years. Thereafter, he worked in an aided school in Gujrat. He took up a job for the first time in Maharashtra in 1971. We are assuming that there is no similar mutual agreement between State of Gujrat and State of Maharashtra and so the petitioner's service in private school of Gujrat is not qualifying service. In this situation the petitioner's case would fall within parameters of Rule 47 and 48. The Government of Maharashtra was bound to consider the period between 1967 to 1971 as interruption in the service of the petitioner. Sub-section (2) of Section 47 gives ample discretion to the State of Maharashtra to consider this absence as extraordinary leave without pay. We are inclined to hold that this is a case where discretion ought to have been used by the State infavour of the petitioner. The reasons is obvious. The petitioner did not sit idle during this period. He took up a job and worked continuously till 1971. Since unfortunately we are

not shown any mutual agreement between the State of Maharashtra and State of Gujrat, the service rendered in Gujrat cannot be counted as qualifying service. Nonetheless, the petitioner's earlier service of 9 years is held to be qualifying one.

11. The petition should partly succeed. The State of Maharashtra should count service rendered by the petitioner between 1959 to 1968 as qualifying service for calculating the pension. They should recalculate the pension, pay the arrears & other consequential benefits to the petitioner within six months from today.

12. The State Government is also directed to condone the break in service between 1968 to 1971.

13. The petition is accordingly allowed with cost.

14. Rule made partly absolute. The petition is disposed of accordingly.

[A.M. BADAR, J.]

[A.V. NIRGUDE, J.]