

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No. 4349/2015.

Neeta Devendra Pise

-VERSUS-

The State of Maharashtra and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI
& P.N. DESHMUKH, JJ.**

DATE : OCTOBER 06, 2015.

Heard Shri R. Joshi, learned counsel for the petitioner and Shri N.R. Patil, learned A.G.P. for respondents.

2. Petitioner filed Original Application No. 288/2004 before the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur claiming that her past services rendered from 01.09.1992 till 22.04.1998 as Instructor in Government Recognized and aided Educational Institution should be clubbed along with her service with government after 23.04.1998 for computing retirement benefits. Her representation was

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turned down by the employer on the ground that there was break between two employments, and therefore, Rule 48 did not permit her earlier services to be clubbed with later services.

3. The Maharashtra Administrative Tribunal has found that though Rule 48 was not relevant in view of Rule 46, as the resignation results in forfeiture of past services. It also did not accept her contention that she had resigned on 22.04.1998. It concluded that the petitioner was relieved on date of sanctioning of her resignation i.e. on 18.06.1998. She therefore, did not comply with the procedure of obtaining no objection certificate as required by Rule 46.

4. Shri Joshi, learned Counsel for the petitioner submits that the entitlement to have such service clubbed, and procedure therefor is not in dispute. The employer refuses clubbing as the breaks were not condoned and therefore, Rule 48 was violated. The remark in service book clearly shows that the petitioner never worked after 22.04.1998 with her earlier employer and hence, the approach of the Maharashtra Administrative Tribunal is erroneous.

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5. Shri Patil, learned A.G.P. does not dispute the contention that Rule 48 is not relevant. He further points out that there was no, no objection certificate from the employer and resignation though dated 22.04.1998 could not have been accepted before 18.06.1998 or in any case before 27.05.1998, as such, the finding that the provisions of Rule 46[2] have not been followed is proper and does not call for any interference.

6. With the assistance of the respective counsel, we have perused records. The fact that the petitioner joined employment with Government Industrial Training Institute on 22.04.1998 itself, is not in dispute.

7. The relevant remark in service book on which the Maharashtra Administrative Tribunal has relied upon reads as under :

“ She has been resigned the service on 22.4.1998 and after depositing one month notice pay into treasury on 27 May 98 Resignation Sanctioned on 18/6/98. Vide order No. Jrk/MCVC/55/98 Date 1/7/98 and she has been relieved on 18/6/98 22/4/98 after noon.”

Remark itself shows that she had resigned from 22.04.1998. However, procedure of depositing of notice pay in lieu of one month notice of resignation was not complied with, that amount was deposited with the treasury on 27.05.1998. After securing that amount, the employer has proceeded to pass order sanctioning resignation on 18.06.1998. It appears that formal orders sanctioning the resignation and relieving her on 18.06.1998 is dated 01.07.1998. Date 18.6.1998, i.e. date of relieving appears to have been corrected by the employer and is substituted by date 22.04.1998.

8. The petitioner was required to pay notice pay as she did not issue requisite notice of one month before submitting resignation. If her resignation dated 22.04.1998, was to take effect from any of these later dates, the compliance with procedure of depositing notice pay was unnecessary. As she tendered resignation on 22.04.1998, and resigned immediately, this compliances became necessary. The belated compliance has been accepted by the employer and petitioner has been shown to have been relieved on 22.04.1998 itself.

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9. In the backdrop of the fact that the petitioner had already started working with the Government Industrial Training Institute, Kurkheda from 22.04.1998, it is established that she resigned on 22.04.1998 itself. As such, we are not in a position to uphold the reasons recorded by the Maharashtra Administrative Tribunal in paragraph no.9 of its judgment. Accordingly order date 20.03.2015 in Original Application No.288/2014 to that extent is quashed and set aside. The services rendered by the petitioner from 01.09.1992 till 22.04.1998 shall be clubbed along with her government service from 22.04.1998 onwards. Her entitlement at superannuation shall be computed accordingly and after making allowances and taking into account amounts already paid (if any), to her for services rendered with her earlier employer.

10. Writ Petition is accordingly allowed and disposed of. No costs.

JUDGE**JUDGE**

Rgd.