

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5100/2015

(KALATAI SAHADEO DHAWALE **VERSUS** THE C.E.O., Z.P., GADCHIROLI & ANOTHER)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri P.N. Shende, counsel for the petitioner.
 Shri A.S. Fulzele, Additional G.P. for the R-2.

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : OCTOBER 26, 2015.

By this petition, the petitioner seeks a direction to the respondent no.1-Chief Executive Officer, Zilla Parishad, Gadchiroli to consider the services of the petitioner from 1992 to 2003 and release the notional annual increments to the petitioner and fix the pay of the petitioner accordingly. The petitioner also seeks the pensionary benefits by reckoning his services for the period from 1992 till 2015, when the petitioner retired on attaining the age of superannuation.

According to the petitioner, the petitioner was appointed from year to year by fresh appointment orders from the year 1992 to 2003. According to the petitioner, the petitioner was given a break in service of about two to three months every year and was re-appointed till the year 2003. The petitioner was appointed as a regular Shikshan Sevak in the year 2003 and was regularized as an Assistant Teacher from the year 2006. The petitioner retired in July-2015 on attaining the age of superannuation. By filing the writ petition on 07.08.2015, the petitioner has sought the direction to the respondents to reckon the services of the petitioner from 1992 till July-2015 for releasing the notional annual increments and pensionary benefits. The petitioner has relied on the Government Resolution dated 15.09.2011 and Rule 38 of the Maharashtra Civil Services (Pension) Rules, 1982 to seek the prayers made in the writ petition.

On hearing the learned counsel for the parties and on a perusal of Rule 38 of the Rules of 1982 and the Government Resolution dated 15.09.2011, it appears that the relief sought by the petitioner cannot be granted. Under Rule 38 of the Rules of 1982, a person, who is initially engaged on a contract for a specified period and who is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption in duty, may opt either to retain the Government contribution in the Contributory Provident Fund or may agree to refund the monetary benefits that could be secured in the Contributory Provident Fund and seek the counting of his service in lieu of the monetary benefits. Rule 38 of the Rules of 1982 would not be applicable to the case of the petitioner as admittedly during every year of his service with the respondents from 1992 till 2003, there was an interruption of duty as the petitioner was re-appointed in the subsequent year after giving him a break. The provisions of Rule 38 of the Rules of 1982 refer to the services without interruption of duty. Since such is not the case here, the petitioner cannot seek the benefit of the past service by referring to Rule 38 of the Rules of 1982. The Government Resolution dated 15.09.2011 would also not apply to the case of the petitioner. The said resolution does not speak of counting of the past service with breaks for considering the pensionable service and granting notional increments.

Since none of the grounds raised on behalf of the petitioner would entitle the petitioner to seek the relief, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE