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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1379/2015

Sanjay S/o Dhondu Patil,
Age:46 years,Occu.Service
(as Warden,Govt.Hostel for
B.C.Students,Raver)
Plot No.12,Gut No.106,
Mayur Housing Soicety,
Nimkhedi Shivar,
Jalgaon.

...Petitioner..

Versus

1] The State of Maharashtra
Through its Secretary,
General Administration Dept.,
M.S.Mantralaya,Mumbai-32.

2] The Superintendent of Police,
Jalgaon District, Jalgaon.

...Respondents..

.....

Shri A.S. Deshmukh, Advocate for petitioner.
Smt.P.V. Diggikar, AGP for respondent nos.1 & 2.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 08.12.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

1] Heard learned counsel for the parties. Rule.
Rule made returnable forthwith and with the consent of

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learned counsel for the parties, the petition is taken up for final disposal at this stage.

2] The petitioner assails the order of the Maharashtra Administrative Tribunal dismissing his Original Application whereby the petitioner had prayed to quash and set aside the communication dated 6.10.2012 by virtue of which the request made by the petitioner to take back in the service of Police Constable was turned down.

3] The petitioner was appointed as a Police Constable on or about 5.5.2005. The petitioner had continuously worked on the said post for about six and half years. The petitioner came across an advertisement issued by the Directorate of Social Welfare for the post of Warden. The petitioner had applied for the said post. He was selected and was appointed as a Warden on 24.7.2012. The petitioner, on receipt of the appointment order, filed an application / resignation letter dated 19.7.2012. The same was accepted and the petitioner was relieved.

4] It appears that within a month or so, the Social Welfare Department issued notice to the petitioner to the

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effect that the petitioner was ineligible to apply and be considered for the post of Warden from the ex-serviceman category as earlier while being recruited as a Constable in the Police Department, the petitioner had already taken the benefit of an ex-serviceman category. The petitioner thereafter again applied to the Police Department to take him back in service. The same was rejected. The petitioner had moved the Maharashtra Administrative Tribunal by filing Original Application. The same is dismissed.

5] Mr.A.S. Deshmukh, learned counsel for the petitioner submits that the petitioner while discharging his duties as a Constable was working on a substantive post. In view of Rule 20 of the Maharashtra Civil Services (General Conditions of Service) Rules, the petitioner had lien on the said post and the said lien continues till he acquires permanency or lien on the post on which he is subsequently selected. The word "resignation" in his application given to the Police Department to relieve him from service was stated by mistake, but if the contents of the said letter are perused, it would show that the petitioner was seeking to

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be relieved from his post so as to join the post with the Social Welfare Department under the State Government. The learned counsel submits that the said letter be construed as a letter given to relieve the petitioner so as to join another Government post. The learned counsel submits that the reliance placed by the respondents on Rule 46(1) of the Maharashtra Civil Services (Pension) Rules is mis-placed. The said provision of forfeiture of service on resignation arises only if the person is not joining other Government post. According to the learned counsel, the Tribunal has wrongly interpreted Rule 46 of the Maharashtra Civil Services (Pension) Rules and Rule 20 of the Maharashtra Civil Services (General Conditions of Service) Rules. According to the learned counsel, the petitioner had served with the Army for 16 years at difficult postings. The post on which the petitioner was subsequently appointed with the Social Welfare Department could not be said to be a substantive post inasmuch as the petitioner had not secured lien on the said post and till the time, the petitioner gets right of lien on the subsequently selected post, the lien on the original post remains in force.

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6] Learned AGP submits that the letter given by the petitioner for being relieved from service was a clear resignation letter. Acting upon the said resignation letter, the petitioner was relieved from the service and the formalities subsequent to resignation from the post were followed. Now the petitioner cannot turn around and contend otherwise. The learned AGP submits that the application filed by the petitioner was not in consonance with the Government resolution dated 2.12.1997. The said Government resolution states that if another Government post is to be joined, it is not necessary for the person to resign. The learned AGP further relies on the Government resolution dated 30.12.1991 to contend that the person can take the benefit of ex-serviceman category only once and that benefit the petitioner had already taken when he had joined the service with the Police Department. Second time the petitioner could not have availed the benefit of ex-serviceman category. The learned AGP further submits that in view of Rule 46(1) of the Maharashtra Civil Services (Pension) Rules, once resignation has been given, the same entails forfeiture of earlier service. The learned AGP also relies on Rule

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46 (5) of the said Pension Rules to contend that the petitioner would not be entitled for any relief.

7] WE have considered the submissions canvassed by the learned counsel for the respective parties so also have perused the order of the Tribunal and the documents placed on record.

8] It is not disputed that the petitioner had become permanent while serving with the Police Department on the post of Constable having served with them for six and half years. The appointment of the petitioner was on a substantive post is also not a disputed fact. It is also not disputed that the petitioner through proper channel had applied pursuant to the advertisement issued by the Social Welfare Department for the post of Warden while discharging the duties as a Constable with the Police Department. It is also a fact that the petitioner was selected for the post of Warden on or about 24.7.2012. Pursuant thereto, the petitioner had also given an application with the Police Department for relieving him from service. The moot question is construing the said application dated 27.7.2012. The subject mentioned in the said letter is about

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resignation. The contents of the letter state that for appearing in the selection process for the post of Warden issued by the Social Welfare Department, he had sought permission of the authorities. He has been selected. As such, for joining the said services, he may be relieved.

9] Reading Rule 20 of the Maharashtra Civil Services (General Conditions of Service) Rules, it is abundantly clear that a person holding a substantive post acquires a lien till he is appointed on another permanent post. In the present case, the petitioner had worked with the Social Welfare Department, however, as submitted, he was never confirmed in service nor his probation period was shown to have been completed. Till the petitioner is confirmed with the Social Welfare Department, his lien on the original post would subsist.

10] Rules 46(2) and 46(5) of the Maharashtra Civil Services (Pension) Rules read thus:

"46. Forfeiture of service on resignation :

(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

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Government where service qualifies.

(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."

11] Reading these rules conjointly, it is manifest that 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. The petitioner with the proper permission had taken up the employment with another department under the Government itself. In view of that, even the contention of the respondents that resignation would entail forfeiture of the past service would not hold ground.

12] Be that as it may. We would be more guided with the contents of the letter issued by the petitioner asking the department to relieve him. The word "resignation" appearing in the subject in the said letter

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appears to be a misnomer. In fact, from the tenor of the letter itself, it appears that the petitioner had intended to say that he be relieved so as to join the services with the Social Welfare Department under the State Government itself. The benefit of lien as such ought to be extended to the petitioner. The literal word used in the subject could not be read in isolation vis-a-vis the contents of the letter. The letter in its entirety will have to be read so as to construe the intention of the person writing the said letter to the authority. Going through the contents of the letter, the only irresistible conclusion that can be drawn is that the petitioner wanted to convey that he has got employment with the Social Welfare Department under the Maharashtra State and wants to join the said post, as such should be relieved. We would give the benefit to the petitioner.

13] In the light of the above, the impugned order dated 6.10.2012 issued by the respondent - authorities to the petitioner relying upon Rule 46(1) of the Maharashtra Civil Services (Pension) Rules so also the order of the Tribunal is set aside. The respondents shall give the

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benefit of Rules 20 to 22 of the Maharashtra Civil Services (General Conditions of Service) Rules to the petitioner and shall restore the petitioner on his original post, however, without any back wages. The petitioner would be entitled for continuity in service.

14] Rule is accordingly made absolute in above terms. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)