

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

RA ST 20152/2013

903 REVIEW APPLICATION STAMP No. 20152/2013
IN
WRIT PETITION NO.1379 OF 2012

DASHRATH ONKAR PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicant : Mr.Patil Vinod Prakash
AGP for Respondent State: Mrs. A.V.Gondhalekar

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CORAM : R. M. BORDE & P.R. BORA, JJ.
Dated: March 18, 2016

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PER COURT :-

1. The petitioner is seeking review of the order passed by this Court in Writ Petition No.1379/2012 where-under request made by the petitioner, to direct the respondent Municipal Council to forward his pension proposal for consideration to the appropriate authority, has been turned down.

2. The Division Bench of this Court, on interpretation of Rule 48 of Maharashtra Civil Services Pension Rules, 1982, observed that since there would be no change in the monthly pension receivable by the petitioner, in view of the provisions of Sub-Rule (2) of Rule 48, the decision of the respondent Municipal Council, not to condone the interruptions in service, does not appear to be erroneous.

3. The petitioner contends that he has, in fact, filled in an option form and has requested to apply Revised Pension -

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Rules, 1950, contained in Appendix XIV-C of the Bombay Civil Services Rules, Volume II, and the Contributory Family Pension Scheme, 1964.

4. So far as his service conditions are concerned, the petitioner contends that the reliance placed on the Maharashtra Civil Services Pension Rules, 1982 is not proper. The petitioner, however, is not in a position to point out any other Rule contained in the Bombay Civil Services Rules, 1959, entitling him to make a contention that the breaks in service, which occurred from time to time, deserve to be condoned. Reliance placed on Rule 244 in this behalf by the petitioner is misplaced. The aforesaid Rule reads thus:

"244. If a Government servant is serving in an establishment the duties of which are not continuous each year, but are limited to certain fixed periods in each year, the period during which the establishment is not employed shall be treated as duty counting for pension : Provided that it shall not be so treated unless the Government servant is on actual duty -

(1) on the date on which the establishment is discharged prior to such period on completion of its work; and

(2) on the date on which it is re-employed after the expiry of such period.

Note:- This rule does not apply to service in a vacation department which is governed by Rule 241. "

The duties of the petitioner in the establishment were not continuous in each year, but were limited to certain fixed

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period in each year. The petitioner was not employed as a seasonal employee or that it is also not the case of the petitioner that the establishment itself was not continuing throughout the period each year.

Liberal interpretation of Rule 244 leads to a conclusion that the same cannot be applied in case of the petitioner.

No other Rule supporting the claim of the petitioner contained in the aforesaid Bombay Civil Services Rules 1959 has been pointed out.

Review Application does not deserve consideration and stands disposed of.

(P.R. BORA, J.)

(R. M. BORDE, J.)

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