

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

10 WRIT PETITION NO. 171 OF 2015

ANANT SHRINIWAS PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Pradeep Deshmukh h/for Mr.
Yogesh P. Deshmukh

AGP for Respondents 1, 2 and 4: Mrs. V. H. Patil

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

DATE : 28th November, 2016

ORDER:

1. Mr. Deshmukh, the learned counsel for the petitioner submits that the petitioner was appointed for the first time in the year 1964 and served at various places on grant-in-aid posts and eventually retired on 30th September, 1999. The learned counsel submits that because of the fact that the petitioner had worked with different Institutions, there were breaks in service, either because of resignation of the petitioner or by efflux of the period for which the petitioner was appointed. According to the learned counsel, the Government has condoned the three breaks in service, however, has not condoned the break in service from 03.08.1969 to 30.06.1971 i.e. for the period of 1 year 10 months and 29 days.

2. The learned counsel submits that Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982 and Rule 46 of the said Rules have to be read coherently and harmoniously, in a way that Rule 46, Sub Rules 2 and 3 do not become redundant. According the learned counsel, for the reasons to be recorded, the Government has got power to condone the breaks in service, even beyond one year. The learned counsel submits in some of the cases, the Government has considered the same, such as one Mr. D. J. Deshmukh, Mr. Neware and Mr. Surwase. However, discriminatory treatment is being given to the petitioner. In others' cases, more than two years break in service has been condoned and in case of the petitioner, break in service of 1 year 10 months and 29 days is not being condoned. The respondent State be directed to consider the same.

3. Learned AGP states that in view of the Sub Rule (1)(c) of Rule 48 and Sub Rules (3) and (4) of the Rules, 1982, continuous break in service cannot be condoned. Even the Government Resolution dated 12.08.1999 does not permit the same.

4. We have considered the submissions.

5. The petitioner stood retired on attaining the age of superannuation on 30.09.1999. There were various breaks in service on account of the petitioner, either tendering resignation or the service period having come to an end. The break in service on three occasions have been condoned. However, the major break in service from 03.08.1969 to 30.06.1971 has not been condoned by the Authority.

6. Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982 would be relevant. The same reads as under:

"48. Condonation of interruption in service:

(1) The appointing authority may, by order, condone interruptions in the services of a Government servant;

Provided that-

(a) the interruptions have been caused by reason beyond the control of the Government servant;

(b) the total service pensionary benefit in respect of which will be 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 under sub-rule (1) shall not count as qualifying service.
- (3) In the absence of a specific indication to the contrary in the record, an interruption between two spells of civil service rendered by a Government servant under government, shall be treated as automatically condoned and the per-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 strike.
- (5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service."

7. It is laid down in Sub Rule (1)(c) of Rule 48 that the interruption, including two or more interruptions if any, does not exceed one year, then can be condoned. Meaning thereby that the continuous interruption in service of more than one year could not be condoned. Rule 46 and 48 have to be read

coherently and head on collusion between the two Rules have to be avoided. They will have to be read in a manner that neither of it is rendered as a dead letter. Sub Rule (3) of Rule 46 lays down that interruption in service because of resignation with proper permission seeking another appointment under the Government can be condoned provided, the absence does not exceed the joining period. Rule 48 applies more liberally and even continuous interruption in service up to one year can be condoned by the authority.

8. We could have considered the case of the petitioner of interruptions in service up to five years in the total service period, however, the interruption ought not to exceed one year at a length. In the present case as the break in service is for more than one year i.e. 1 year 10 months and 29 days, the case of the petitioner cannot be considered.

9. It is submitted that the Government has condoned the break in service of even two years and above in case of some persons. In pursuant to the Rules, 1982 this Court would not be in position to pass any order. If the Government has a power to

condone the break in service, it is for the petitioner to approach the Government. However this Court cannot issue any directions in this regard.

10. Writ petition is accordingly dismissed. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA,
J.)

JPC