

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

BENCH AT AURANGABAD.

WRIT PETITION NO.3672 OF 2016

Vasant S/o Mangilal Rathod ...Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...

Mr.S.G.Munde, advocate for the petitioner
Mr.S.G.Karlekar, A.G.P. for the State.
Mr.V.P.Latange, advocate for Respondent No.8.

...

**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 08.11.2017.

PER COURT :

1. Mr.Munde, learned counsel submits that the petitioner was working as Assistant Teacher in a private institution on grant-in-aid post from 21.9.1989. He resigned from the said post on 2.8.1996 and with due permission of the institution, joined the services with Respondent No.8 on the next day i.e. 3.8.1996. The learned counsel submits that the benefit of protection in

respect of payment and continuity is required to be given to him.

2. Mr.Latange, learned counsel for the Respondent Municipal Corporation submits that in view of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982, on resignation the past service stands forfeited and the benefit of the past service can not be given to the petitioner.

3. We have considered the submissions.

4. The factual matrix is not disputed. The petitioner was working as Assistant Teacher in a private institution on grant-in-aid post from 21.9.1989 till the date of his resignation on 2.8.1996 and immediately on the next day, the petitioner joined the School run by Respondent No.8 as an Assistant Teacher. Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 reads thus :

***"46. Forfeiture of service
on resignation.***

(1) Resignation from a service or a post entails forfeiture of past service.

(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 Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) the appointing authority consider the request of a person who had earlier resigned his

post under Government, to take him back in service in the public interest on the following conditions, namely :-

(a) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(b) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(c) that the period of absence from duty between the date on which the resignation became effective

and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(d) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(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.

(6) When an order is passed by the appointing authority allowing a person to be taken him back in service

and to resume duty the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service."

5. Reading Rule 46(2) of the Maharashtra Civil Services (Pension) Rules, 1982, it is abundantly clear that the resignation does 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. It is not disputed by either of the parties that provisions of the Maharashtra Civil Services (Pension) Rules, 1982 apply to the parties. In view of Rule 46(2) of the Rules as referred supra, the past service of the petitioner would be protected.

6. In light of the above, the impugned order is quashed and set aside. In view of Rule 46(2) it is held that the petitioner's past service is not forfeited and is required to be

considered by the Respondent authority.

7. With this observation, the Writ
Petition is allowed. No costs.

(S.M.GAVHANE, J.)

(S.V.GANGAPURWALA, J.)

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