

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

11 WRIT PETITION NO. 4722 OF 2016

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
SAHEBRAO ANANTRAO SORMARE

...
Advocate for Petitioners / State : Mrs. A.V. Gondhalekar
Advocate for Respondents : Mr. Jadhav Kakasaheb B.

...
**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**
DATE : 21.08.2017

P.C. :-

. The present respondent had filed the original application before the Tribunal challenging the order dated 20.02.2015. The claim of the present respondent for extra ordinary leave for the period 20.03.2002 to 03.07.2008 was rejected. He further requested that the said period should be treated as qualifying service for pensionary benefits. The Tribunal allowed the original application filed by the respondent, aggrieved thereby the present petition by the State.

2. Mrs. Gondhalekar, the learned A.G.P. submits that the present respondent had applied for medical leave from 20.03.2002 till 22.04.2002 and thereafter has remained absent till the date of his voluntary retirement. The learned A.G.P. further submits that as the present respondent was absent from duty without permission for the

period 20.03.2002 to 03.07.2008, the petitioner is not entitled for pension. The said aspect has been lost sight of by the Tribunal.

3. Mr. Jadhav, the learned counsel for the respondent supports the order and submits that the present respondent had availed the medical leave on 20.03.2002 till 22.04.2002 and on 23.04.2002 the present respondent reported to the office of Senior Geologist and requested to allow him to join the duties, he was however not allowed to join. He was allowed to join only on 04.07.2008. Even the Inquiry Officer has held that the charge against the present respondent is not proved.

4. We have gone through the judgment of the Tribunal. It has been observed that Departmental Inquiry was initiated against the respondent for absenteeism in service from 28.03.2002. The Inquiry Officer upon conducting the inquiry gave report that the charges against the present respondent about absenteeism are not proved and exonerated the respondent. Thereafter, the respondent was allowed to join on 04.07.2008. It has also been observed by the Inquiry Officer that the respondent was not allowed to join the duty on 22.04.2002, though, he had submitted due application to that effect along with fitness certificate. Eventually, after the respondent was exonerated by the Inquiry Officer, he was allowed to join on 04.07.2008 and was also

allowed to retire voluntarily with effect from 31.01.2011. It is also observed by the Tribunal that the Presenting Officer frankly admitted that no inquiry is pending against the present respondent. His pension papers were also forwarded, however, as no orders were passed with regard to the absence period of five years, the pension was not sanctioned. The government ought to have passed orders.

5. Upon having found that the present respondent is not guilty of absenteeism and is also exonerated in the inquiry conducted to that effect, the Tribunal has passed the order holding the period from 20.03.2002 to 03.07.2008 as qualifying service for pensionary benefits only and to treat the said period as extra ordinary leave.

6. We see no error on the part of the Tribunal in passing the said order. Writ petition, as such, is disposed of. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]