

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.956 OF 2008

Chandrakant s/o Manikrao Patil,
(since deceased)
through his legal heir
Smt.Mandakini w/o Chandrakant Patil,
age: 48 years, Occ: Household,
R/o Shital Smruti,
Near Ahilyadevi Holkar Udyan,
Bidar Road, Udgir, District Latur.

Petitioner

Versus

01 The State of Maharashtra,
through Secretary,
Animal Husbandry Department,
Mantralaya, Mumbai-32.

02 Commissioner,
Animal Husbandry Department,
Central Building, Pune-01.

03 Deputy Director of Animal
Husbandry, Artificial Incrimination
Centre, Georai, Tq. Georai,
District Beed.

04 The Accountant General,
Maharashtra - II, (A & E),
Nagpur, District Nagpur.

Respondents

Mr.S.R.Kolhare, advocate for the petitioner.
Mr.S.B.Joshi, A.G.P. for Respondents No.1 to 3.
Respondent No.4 served.

**CORAM : R.M.BORDE &
SMT. VIBHA KANKANWADI, JJ.
DATE : 21st December, 2017**

ORAL JUDGMENT (Per R.M.Borde, J.):

1 The petitioner is objecting to the order passed by the Maharashtra Administrative Tribunal in Original Application No.735 of 2006, decided on 28.03.2007.

2 The petitioner (deceased employee) was in the employment of Animal Husbandry Department since 1965. The petitioner was inducted in employment as Supervisor in the Animal Improvement Project at Miraj, District Sangli, on 08.11.1965. It is not a matter of dispute that he was a confirmed Government employee and that he was permitted to retire on attaining age of superannuation on 28.02.1999. There was six years interruption in the service of the petitioner commencing from 14.06.1993 to 28.02.1999.

3 According to the petitioner-employee, he proceeded on leave tendering an application seeking casual leave for a period of two days on 14th June, 1993. The absence of the petitioner-employee for 14th and 15th June, 1993, is on account of casual leave sought by him. However, he did not report to the duty thereafter and remained absent until the date he was permitted to retire on attaining the age of superannuation i.e. 28.02.1999. As a result of continued absence of the petitioner, Respondent-Department initiated departmental proceedings against him by issuing a charge sheet in the year 1999. The petitioner was called upon to answer the charge, which he did and after due inquiry, the Inquiry Officer reported that the petitioner employee had unauthorisedly remained absent from 16.06.1993. It is recorded in the inquiry report that he left the headquarters after tendering leave for two days and did not report thereafter. The

charge levelled against the petitioner in respect of his continued unauthorised absence has been proved. The Department, considering the report of the Inquiry Officer, proceeded to issue final order on 11.07.2003 imposing punishment of forfeiture of past service and holding the petitioner disentitled to claim pensionary benefits as well as gratuity on retirement. The order passed by the Department on 11.07.2003 was a matter of challenge before the Maharashtra Administrative Tribunal in Original Application No.735/2006, which came to be rejected by the Tribunal on 28.03.2007.

4 The finding recorded by the Inquiry Officer that the petitioner remained unauthorisedly absent from 16.06.1993 till 28.02.1999 is not liable to be set aside. The Inquiry Officer has rightly recorded that the petitioner has remained absent unauthorisedly during the aforesaid period after tendering leave application for 14th and 15th June, 1993. It is not a matter of dispute that from the date of joining i.e. 08.11.1965 till the date of unauthorised absence of the petitioner from 16.06.1993, he had rendered almost 28 years of service and is eligible to draw pension in accordance with Maharashtra Civil Services (Pension) Rules, 1982. The past service of the petitioner, for a period of about 28 years, is sufficient to grant him pensionary benefits in accordance with Maharashtra Civil Service (Pension) Rules. The Department, however, has passed an order holding the petitioner disentitled to claim pensionary benefits.

5 The petitioner, relying upon Rule 47 of the Maharashtra Civil Service (Pension) Rules, 1982, contends that in

view of exception (b) Rule 47(1), since absence of the petitioner is in continuation of authorised leave, the past service rendered by him is not liable to be forfeited.

6 Rule 47(1) provides that an interruption in service of the Government servant entails forfeiture of past service except in the cases mentioned thereunder. Clause (b) makes an exception, which reads as under:

(b) unauthorised absence in continuation of authorised leave of absence so long as the post held by the absence is not filled substantively.

7 It has not been reported that the post held by the petitioner has been filled substantively. It is also not a matter of dispute that the petitioner had tendered an application seeking casual leave for two days on 14th and 15th June, 1993 and thereafter remained absent until the date of his superannuation. The unauthorised absence of the petitioner is, thus, in continuation of authorised leave for absence of two days. The case of the petitioner falls within exception provided to clause (b) of Rule 47(1) of the Pension Rules.

8 Learned A.G.P., appearing for Respondents No.1 to 3, has invited our attention to Rule 48 of the Pension Rules, which relates to condonation of interruption in service. Rule 48 provides thus:

48 Condonation of interruption in service- (1) The appointing authority may, by order, condone interruptions in the service of a Government servant :

Provided that-

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

(b) the total service pensionary benefit in respect of which will 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 condoned under sub-rule (1) shall not count as qualifying service.

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government shall be treated as automatically condoned and the pre-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 a strike.

(5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service.

9 It is the contention of the learned A.G.P. that since interruption in the service of the petitioner exceeds period of one year, in view of clause (c) of Rule 48(1), the interruption in service is not liable to be condoned. The claim of the petitioner does not appear to be for condonation of interruption in service. Admittedly,

the deceased employee is not entitled to claim condonation of interruption in service in view of Rule 48. However, merely because six years unauthorised absence of the deceased employee, is not liable to be condoned, it does not have any effect on his entitlement to earn the pension. In view of clause (b) of Rule 47(1), the unauthorised absence of the petitioner, which is preceded by authorised absence, does not have effect of forfeiture of his past service. The deceased employee had rendered past service for about 28 years and as such, he is entitled to claim pensionary benefits on computation of aforesaid period. The interruption in service, on account of unauthorised absence of the petitioner, is not liable to be condoned in view of rule 48 of the Pension Rules and the said period of unauthorised absence of deceased employee cannot be added to the past service rendered by the deceased employee prior to his unauthorised absence. The Maharashtra Administrative Tribunal has not applied its mind to the aforesaid aspect and has mechanically rejected the Original Application tendered by the petitioner.

10 For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The order dated 28.03.2007 passed by the Maharashtra Administrative Tribunal in Original Application No.735 of 2006 is quashed and set aside. Deceased employee shall be held entitled to claim pensionary benefits on the basis of his past service preceding authorised absence commencing from 16.06.1993 till 28.02.1999.

11 It is informed that the petitioner-employee is no more and is represented by his second wife. Entitlement of the heirs is

not a question to be determined in this petition and appropriate decision, in that regard, on receipt of application on behalf of heirs, shall be taken by the authorities in accordance with law.

12 Rule is accordingly made absolute. There shall be no order as to costs.

SMT.VIBHA KANKANWADI
JUDGE

adb/wp95608

R.M.BORDE
JUDGE