

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10198 OF 2016

Balaprasad Brijilal Sarda

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Mrs. Suchita Amit Ahongade h/f Shri Suresh D. Dhongade,
Advocate for the Petitioner.

Shri P. S. Patil, Addl. G. P. for the Respondents.

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

DATE : **10th October, 2017**

PER COURT :

1. The learned counsel for the petitioner submits that the tribunal failed to consider that no departmental enquiry was initiated against the petitioner. The petitioner being permanent employee could not have been dismissed without conducting departmental enquiry. The learned counsel further submits that in the year 2000 he had some dispute with the Secretary as such become mentally weak and could not attend the duties. On 20th July 2001, the petitioner went to join duties but was not allowed. On 7.9.2003, the petitioner was directed to appear before the medical board for medical examination. The petitioner appeared

for the medical test and was declared fit to join. The Beed Irrigation Division was transferred to Jayakwadi Irrigation Division No. 3, as the leave of the petitioner was not sanctioned he was not allowed to join. The petitioner in the year 2012 approached the Lokaayukta. His complaint was disposed of with direction to approach the appropriate forum. The learned counsel submits that the petitioner is issued with the show cause notice for absentism on 27.4.2011 for the period 1.9.2000 to 30.11.2006 (date of his superannuation). The said notice is challenged before the tribunal. The tribunal dismissed original application. According to the learned counsel the petitioner having put in almost 35 years of service is entitled for pension. It would be clear that at no point of time departmental enquiry was initiated and the petitioner being a permanent employee could not have been terminated without departmental enquiry. This aspect has been considered by the tribunal.

2. The learned counsel in alternate submits that the petitioner is still entitled for the payment of the gratuity amount and provident fund.

3. Learned A. G. P. supports the order of the tribunal and submits that considering the absentism of the petitioner, the petitioner had abandoned the service, the said aspect is rightly considered by the tribunal.

4. The petitioner was continuously absent for 6 years i.e. from 1.9.2000 to 30.11.2006. The petitioner did not take any steps to get his leave sanctioned nor sought permission before leaving service. The Apex Court in a case of **Vijay Sathye Vs. Indian Airlines Ltd.** reported in **2014 (1) SCC (L & S) 760** has held that if an employee is absent beyond the period prescribed for which leave of any kind is granted he should be treated as resigned and ceased to be in service. In fact, the act of the petitioner amounts to abandonment of service. The said aspect has been rightly considered by the tribunal. The same needs no interference.

5. Assuming that the petitioner has abandoned the service or is dismissed from service still the petitioner would be entitled for payment of gratuity. Reliance can be placed on the judgment of the Division Bench of this Court at the Principal Seat at Bombay in Writ Petition No. 2668 of 2002 dated 20th June, 2014. Rule 46.1 of the M.C.S. Pension Rules has been interpreted and it is held that even if, an employee is dismissed from the service the said employee is entitled for payment of gratuity.

6. As far as, the payment of provident fund is concerned the petitioner certainly would be entitled to his own contribution made.

7. In view of the above, we pass the following order:

ORDER

I] The order of the tribunal needs no interference. However, the respondent – employer shall pay the gratuity to the petitioner as is permissible to the petitioner and shall also consider grant of payment of provident fund as would be admissible as per Rules.

II] The same shall be done expeditiously and preferably within 4 months.

8. The writ petition is disposed of. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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