

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

WRIT PETITION NO. 1182 OF 2012

Rajaram @ Rajasaheb s/o. Bhaurao Kawhale .. Petitioner
Age.64 years, Occ. Pensioner,
R/o. H.No.96, Ashtvinayak Nagar,
Taroda Naka, Tq. & Dist. Nanded.

Versus

1. The State of Maharashtra .. Respondents
Through its Principal Secretary,
Technical & Higher Education
Department, Mantralaya, Mumbai-32.
2. The Principal Secretary,
Agricultural & Forest Department,
Mantralaya, Mumbai-32.
3. The Accountant General,
Maharashtra (Accounts & Entitlement) II,
Nagpur 440 001.
4. The Regional Deputy Director of
Education, Latur Division,
Latur.
5. The Principal,
Peoples College, Nanded,
Tq. & Dist. Nanded.
6. The Education Officer (Secondary_,
Zilla Parishad, Nanded.
7. Taluka Agricultural Officer,
Tq. Kinwat, Dist. Nanded.

Mr.V.G. Salgare, Advocate for the petitioner.
Mr.S.B. Yawalkar, AGP for respondent Nos.1to4,6 & 7.
Mr.S.V. Natu, Advocate for respondent No.5.

**CORAM : S.S.SHINDE &
S.M.GAVHANE,JJ.**

**RESERVED ON : 16.04.2018
PRONOUNCED ON : 26.04.2018**

JUDGMENT [PER : S.M.GAVHANE,J.] :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By this petition under Articles 14 and 226 of the Constitution of India, the petitioner has claimed following substantive reliefs :-

"B) By writ, order or directions the respondent No.1 to 5 be directed to count the total service of the petitioner rendered without any physical break of 38 years to the extent of 33 years for grant of pension and pensionary benefits as per the provisions of Maharashtra Civil Service (Pension) rules, 1982 and refix the pension of the petitioner on the basis of total service rendered by him under both the establishment of respondent No.2 Agricultural Department and respondent No.5 College.

C) By writ, order or directions the respondent No.5 be directed to submit proposal for condonation of break due to resignation of past services of Junior Clerk under the Agricultural Department and joining on the post of teacher resubmit the pension proposal to the respondent No.4 and respondent No.4 be directed to grant the condonation of break and resubmit the pension proposal to the respondent No.3 and respondent No.3 be directed to grant approval to the resubmitted pension proposal and issue order by the refixing the pension and other pensionary benefits of the petitioner.

D) By writ, order or directions the respondent No.4 – Regional Deputy Director of Education, Latur Division, Latur be directed to consider/decide the representation dated 16.06.2011."

3. Learned Advocate appearing for the petitioner submits that the petitioner was initially appointed as Junior Assistant on 02.12.1967 under respondent No.2-Agricultural Department and on the said post he served for more than nine years. Thereafter, applying through respondent No.7, his immediate authority selected and appointed the petitioner to the post of teacher under the Junior College of respondent No.5-College and the petitioner joined the said post of Junior Assistant on

02.09.1976. The petitioner retired under respondent No.5-College on superannuation on 31.07.2006 and he is getting regular pension from 01.08.2006. The petitioner submitted proposal for pension and other pensionary benefits counting the total service of 33 years on the post of Junior Assistant and Teacher to the extent of 33 years to get full benefit of pension and pensionary benefits under the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. Respondent No.4-Regional Deputy Director of Education, Latur Division, Latur asked the petitioner to clarify some of the queries in respect of his service on the post of Junior Assistant and understanding the nature of those queries the petitioner requested to respondent No.5 College to submit his proposal for pension considering the services rendered as Teacher under the said college of 29 years, reserving his right to submit re-fixation of pension and pensionary benefits on the basis of total qualifying service of 38 years. Accordingly, respondent No.5-College on 10.08.2006 submitted proposal of the petitioner on the basis of

qualifying service of 29 years under respondent No.5-College and the petitioner was granted pension of Rs.5574/- by respondent No.3-Accountant General, Nagpur.

4. Learned Advocate for the petitioner further submits that respondent No.5, on instructions from the petitioner, submitted fresh proposal of re-fixation of pension on the basis of 38 years to the extent of 33 years under the Maharashtra Civil Services (Pension) Rules, 1982. Respondent No.4-Regional Deputy Director of Education forwarded the said proposal to respondent No.3 but said respondent returned the re-fixation proposal and service-book of the petitioner with remark that counting of previous service from 02.12.1967 to 02.12.1978 as no orders are issued from the sanctioning authority and further mentioned the general provision that after the resignation previous service cannot be counted for for considering qualifying service for the purpose of pension and pensionary benefit without considering the details of service of the petitioner.

5. It is further submitted that the petitioner made representation dated 18.06.2011 to respondent No.4 – Regional Deputy Director of Education contending that the petitioner applied for the post of teacher under respondent No.5-College and selected and appointed to the post of teacher on 03.09.1978 and on instructions from respondent No.7 depositing one month pay with the respondent No.7 in lieu of resignation and joined the respondent No.5-College without any physical break. Therefore, the petitioner is entitled for consideration of his total service as Junior Assistant and Teacher totaling 38 years to the extent of 33 years as qualifying service for grant of pension and pensionary benefits. According to learned Advocate in another development, respondent No.1 has revised the pay scale of the petitioner as per the 6th Pay Commission from 01.01.2006 but revised formula pension of the 6th Pay Commission was denied to the petitioner and similarly situated employees retired in between 01.01.2006 to 26.02.2006, due to which

the petitioner is also sustaining considerable loss in his pension. For this cause of action, the petitioner has also filed a separate writ petition. Learned advocate for the petitioner has submitted that respondent No.1 has issued several Government Resolutions/Circulars for counting previous service for consideration of qualifying service for the purpose of pension and pensionary benefit, specifically by Government Resolution dated 18.12.1985, 28.09.1989, 13.03.1992 and 04.11.1968. It is submitted that the proposal of the petitioner for counting his service on the post of Junior Assistant for more than nine years and as teacher for 29 years, total 38 years to the extent of 33 years is not considered for qualifying service for the purpose of pension and pensionary benefit by the respondent authorities. Therefore, learned Advocate submits that directions be issued to respondent Nos.1 to 5 to consider above service of the petitioner on the post of Junior Assistant and prayed to allow the writ petition for the reliefs claimed.

6. In support of his submissions, learned Advocate appearing for the petitioner has relied upon the decision of the Supreme Court in the case of **Madhukar Vs. State of Maharashtra and others, 2014(4) All MR 448**. In the said decision, referring to Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982, regarding condonation of interruption in service by the appointing authority and particularly Rule 48(3) of the Maharashtra Civil Services (Pension) Rules, 1982, the Supreme Court in para Nos.12 and 13 observed as under :-

"12. As per Rule 48(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 services to be treated as qualifying service.

13. In the case of the Appellant, there is notional, break in service. He resigned from the Government service on 18.07.1960 and joined the post of Lecturer in Hislop College, Nagpur on the same day i.e. 18.07.1960. Further, higher authorities have recommended to add the earlier period of service for determination of pensionary benefit. Being so, in absence of a specific direction to the contrary in the

service record, the interruption between two spells of service rendered by the Appellant under the Government shall be treated as automatically condoned; the earlier service rendered by Appellant is to be counted towards qualifying service."

7. Learned AGP appearing for respondent Nos.1 to 4, 6 and 7 referring to the affidavit of Dy. Education Officer (Secondary), Zilla Parishad, Nanded submits that respondent No.3 communicated to respondent No.4 that the petitioner's earlier service rendered from 02.12.1967 to 02.09.1976 cannot be counted for the purpose of grant of pension as per letter dated 04.08.2009 (Exh."F") of respondent No.3 as the petitioner had resigned from the earlier post.

8. We have carefully considered the submissions made by the learned advocates appearing for the petitioner, respondent No.5 and learned AGP appearing for rest of the respondents. We have perused the pleadings of the petitioner, affidavit-in-reply filed on behalf of respondent No.6 and the documents produced on record by

the petitioner.

9. There is no dispute that initially the petitioner was appointed as Junior Assistant on 02.12.1967 under respondent No.2 – Agriculture Department and he resigned from the post of Junior Assistant on 02.09.1976 and without any physical break on 03.09.1976 he was selected and appointed to the post of teacher under Junior College of respondent No.5 – College. Thereafter, he retired on superannuation on 31.07.2006 while working as Teacher under the Junior College of respondent No.5-College. As such, the petitioner served for more than nine years as a Junior Assistant under the respondent No.2 – Agriculture Department and he served as a teacher for 29 years in the Junior College under respondent No.5-College, without any break in service. It appears that respondent No.2-Agriculture and Forest Department and the Junior College under respondent No.5-College are under the control of respondent No.1/State. There is no dispute that respondent No.5-College under

which the petitioner was serving as a teacher when he retired, said college on 20.01.2008 had submitted proposal of pension of the petitioner through respondent No.6-Education Officer (Secondary), Zilla Parishad, Nanded to respondent No.4 – Regional Deputy Director of Education for considering service of the petitioner under respondent No.2-Department of Agriculture for qualifying service for considering pension and pensionary benefits of 38 years to the extent of 33 years. Respondent No.3-Accountant General, Nagpur by letter dated 04.08.2009 had returned the proposal and service book of the petitioner to respondent No.4 without granting re-fixation with remark that counting of previous service from 02.12.1967 to 02.09.1976, no orders are issued by the sanctioning authority. Thereafter on 16.06.2011, the petitioner made detailed representation (Exh."G") to respondent No.4-Regional Deputy Director of Education, Latur Division, Latur for counting his previous service and to re-fix the pension, which is still pending.

10. As per the Government Resolution dated 11.03.1992, the services rendered by the teaching and non-teaching staff on any Government post would be considered for pension. The relevant part of the Government Resolution is as under :-

"3). Now the government issues the Order that, the previous services of teaching/non-teaching employees retiring from non- agricultural universities and grant-in-aid non-government affiliated colleges rendered on any of post in government service, to which the Government Pension Scheme is applicable, may be taken into account for the purpose of pension. Moreover, previous services of employees retiring from government posts to which the Government Pension Scheme is applicable, rendered in on teaching/non-teaching posts in non- agricultural universities and grant-in-aid non-government colleges affiliated to it, may be taken into account for the purpose of pension. This Order will be applicable to the employees retiring on and after 1.10.1982. However, the benefit of previous service by condoning break in service will be granted only if there is compliance of Conditions contained in Rule 48(1) of Maharashtra Civil Services (Pension) Rules."

. From the bare reading of the Resolution dated 11.3.1992, it is clear that the Resolution is applicable to the employees retiring on or after 01.10.1982.

11. Considering the above said Government Resolution, above referred admitted facts and observations of the Supreme Court in paras 12 and 13 in the case of Madhukar (Supra), we hold that, as in the present case, the petitioner resigned on 02.09.1976 from the post of Junior Assistant of Respondent No.2-Agriculture Department and immediately on the next day i.e. on 03.09.1976 joined as Teacher in the Junior College under respondent No.5-College, the petitioner is entitled to count his service from 02.12.1967 to 02.09.1976 for the purpose of determination of pension by condoning break in service. Due to resignation of past service, respondent No.4-Regional Deputy Director of Education is required to consider the petitioner's representation dated 16.06.2011 (page 36) in this respect. Therefore, merely because the petitioner had resigned from his earlier service/post, it cannot be said that his period of earlier service cannot be counted for

pensionary benefits as contended by respondent No.6.

12. For the foregoing reasons, we hold that the petitioner is entitled to relief claimed. Therefore, the writ petition is allowed. Rule is made absolute in terms of prayer clauses (B), (C) and (D). In addition, we direct respondent No.4-Regional Deputy Director of Education, Latur Division, Latur to decide the representation dated 16.06.2011 of the petitioner within three months of this judgment. No costs.

[S.M.GAVHANE, J.]

[S.S. SHINDE, J.]