

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

WRIT PETITION NO. 5525 OF 2010

**SHAMLA MAHADEORAO HARODE
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

Mr.S.V.Adwant and Mr.N.B.Kamble, Advocate for the
petitioner
Mr.A.V.Deshmukh, AGP for the respondent/State

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

DATED : 09.10.2018

P.C. :-

The petitioner assails the order dated 08.06.2009 denying the request of the petitioner to consider the earlier service rendered by the petitioner at Lady Amritbai Daga College for Women at Nagpur for the purpose of pensionary benefits.

2. Mr.Adwant, learned counsel for the petitioner submits that the petitioner had served from 01.07.1966 to 13.07.1977 with Lady Amritbai Daga College for Women at Nagpur affiliated to the Nagpur University. The State has given grant-in-aid to the said college. The petitioner rendered service of 12 years and 10 months with the said college. On 13.07.1977 the petitioner tendered resignation as a Lecturer with the Lady Amritbai Daga College for Women and joined respondent No.4 Agricultural University as a Professor on 14.07.1977. The petitioner served as a Professor with respondent No.4 from 14.07.1977 till the date of retirement on attaining the age of superannuation on

20.02.1999. The learned counsel submits that there is no break in service. Immediately upon resignation with Lady Amritbai Daga College for Women, on the very next day the petitioner joined with respondent No.4. As there is no break in service Rule 46 of the MCS (Pension) rules apply. The past service will have to be counted for the purpose of pensionary benefits. According to the learned counsel the certificate is issued by the Lady Amritbai Daga College for Women, thereby clearly establishing that the said college is on grant-in-aid. The learned counsel submits that the earlier service has been counted for the purpose of selection grade pay given to the petitioner. The learned counsel relies on the judgment of the Punjab and Haryana High Court in case of Tajvir and others Vs. State of Haryana and others dated 25.09.2008.

3. The learned counsel in alternate submits that if the Court is not inclined to consider the case of the petitioner, then in view of the Revision of Pension of Pre-2006 pensioners scheme introduced letter dated 02.06.2016, the period of qualifying service has been relaxed from 33 years. The benefits of the same be directed to be given to the petitioner.

4. An affidavit is filed by the respondent No.2 to the effect that the service rendered by the petitioner with the Lady Amritbai Daga College for Women at Nagpur is on unaided one and in view of that the previous service cannot be counted.

5. We have consider the submission Rule 46 of the

MCS (Pension) rule 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 may 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 day;

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

6. It appears that the petitioner with due permission has tendered resignation and joined respondent No.4 Agricultural University. There is no break in service, however, the certificate produced on record by the petitioner clearly establishes that Lady Amritbai Daga College for Women at Nagpur has been brought on grant in aid as per the Government Resolution dated 21.09.1977. The petitioner had tendered resignation with the said college on 13.07.1977. In view of that till the petitioner tendered her resignation with Lady Amritbai Daga College for Women at Nagpur, the said college was not brought on grant in aid.

7. No provision or instructions are pointed out by learned counsel for the petitioner to even remotely suggest that service rendered on unaided post can be counted for the purpose of pensionary benefits.

8. In light of the above the stand of the respondent that the earlier service rendered by the petitioner for 01.07.1966 to 13.07.1977 was on grant-in-aid post and be counted for pensionary benefits and pension cannot be accepted. The service rendered with Lady Amritbai Daga College for Women at Nagpur cannot be counted for pension and pensionary benefits.

9. It is further submitted that revision of Pre-2006 pensioners scheme has been introduced under letter dated 02.06.2016 and is made applicable for all pensioners who retired prior to 2006.

10. In that event the respondent shall consider the said scheme and take decision with regard to applicability of the same to the petitioner within a period of four months from the date of this order. In case respondents came to the conclusions that the petitioner is entitled for the benefits of the said scheme (Pg.102) Annexure "F" then the same be extended to the petitioner expeditiously.

11. The Writ Petition accordingly stands disposed of. No costs.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]