

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

WRIT PETITION NO. 7122 OF 2013

Sadavijay S/o Bansilal Arya .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri R. R. Karpe, Advocate for the Petitioner.

Shri S. B. Yawalkar, Addl.G.P. for Respondent Nos. 1 and 4.

Shri V. D. Gunale, Advocate for the Respondent No. 2.

The Respondent Nos. 3 and 5 are served.

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.**

DATE : 24TH JULY, 2018.

FINAL ORDER :

. The petitioner seeks directions against the respondents to grant pension with interest.

2. Pursuant to the interim orders passed by the Court, the petitioner is receiving the provisional pension.

3. Mr. Karpe, the learned advocate for the petitioner submits that, the petitioner has rendered service from the year 1962 to 1966 with Dayanand College Latur. From the year 1966 to 1974, the petitioner had rendered service with the institution at Ajmer

(Rajasthan) and again from 1974 to 1992 the petitioner has rendered service at Master Dinanath Mangeshkar Senior College at Aurad Shahajani. The learned counsel submits that, the petitioner was made to compulsorily retire in the year 1992. The petitioner has rendered service for 26 years. The petitioner is entitled for pension. The respondents have shown total apathy in sanctioning the pension amount to the petitioner. The learned counsel submits that, the pension is not a bounty, but it is a property of the petitioner. The learned counsel submits that, Rule 4 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short "Pension Rules") gives powers to the Government to relax the operation of any of these Rules with such modifications. The petitioner having rendered 26 years of service is entitled for pension. Rule 54 of the Pension Rules also provides for relaxation, if there is short fall in the qualifying service. The learned counsel submits that, even otherwise the order of compulsorily retiring the petitioner was without adhering to Rule 65 of the Pension Rules.

4. Mr. Yawalkar, the learned Additional Government Pleader for the respondent/State submits that, the service rendered from 1966 to 1974 at Ajmer Rajasthan cannot be counted for the purpose of qualifying service. The petitioner on its own volition had taken up the assignment at Ajmer Rajasthan. The learned Addl. G. P. refers to Note 2 of the Rule 30 of the Pension Rules.

The learned Addl. G. P. further submits that, if a person compulsorily retired, then for him to be eligible for pension, the qualifying service is 30 years. The petitioner has rendered service only for 18 years and his earlier service from 1962 to 1966 at Dayanand College Latur cannot be considered as there was break of more than six years. In view of that, the petitioner is not entitled for pension. The learned Addl. G. P. further submits that, the petitioner is running D. Ed. College at Aurad Shahjani and is also running big Engineering College at Udgir in the name and style as Shamlal Memorial Trust. Mr. Karpe, the learned counsel for the petitioner submits that, the petitioner denies the same.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The petitioner has been compulsorily made to retire and the said order of compulsorily retiring the petitioner has been confirmed upto the Apex Court. Rule 65 of the Pension Rules would be applicable. For a person to be entitled for pension on being compulsorily retired has to put in 30 years of qualifying service in view of Rule 65 of the Pension Rules. The service rendered by the petitioner at Ajmer Rajasthan cannot be counted as qualifying service.

7. In view of that, the petitioner can be deemed to have

rendered service for eighteen years at a stretch and even if break in service is condoned, then the petitioner's qualifying service would be only 22 years. Rule 65 of the Pension Rules would not inure to the benefit of the petitioner.

8. In view of that, the request of the petitioner for grant of pension cannot be entertained.

9. Considering the above, we are not inclined to grant relief to the petitioner. The petitioner was paid provisional pension under the orders of this Court till the final decision is taken by the respondent No. 5 and the amount is also paid to the petitioner. Though, we are not granting the relief claimed by the petitioner and hold that petitioner is not entitled for pension, the amount which is already released to the petitioner shall not be recovered from the petitioner, considering that he has already retired from service and it would be inequitable directing recovery at this stage. The writ petition as such is dismissed. No costs.

10. In view of dismissal of the writ petition, all interim orders stand vacated.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/July 18

**Bhalchandra
Sudhakar
Bodke**

Digitally signed
by Bhalchandra
Sudhakar Bodke
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2018.07.27
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