

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7434 OF 2009

Dr. Pratap s/o Ramchandra Tekale ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

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Shri J.M. Murkute, Advocate for petitioner

Mrs. M.A. Deshpande, A.G.P. for State

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**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 24.09.2019

PER COURT :

1. Heard learned counsel for the parties. The grievance of the petitioner is to non consideration of 12 years and 3 days service while computing his pensionary benefits.

2. The petitioner was appointed as a Medical Officer Class-II in the State of Maharashtra on 15/1/1965. There is no

material placed before us regarding the nature of the appointment but counsel for the petitioner states that the appointment was ad-hoc. Whether it was against a sanctioned post or not is not known. Thus, the petitioner cannot stake any claim for pensionary benefit commencing from 15.1.1965.

3. The petitioner was selected through Maharashtra Public Service Commission as a Doctor in MMS – Class-II under the State of Maharashtra on permanent basis. Being a pensionable service, the benefit of pensionable service would logically commence from 30.12.1967.

4. An advertisement was issued to fill up a post of Senior ENT Specialist in the Union Territory of Goa by the Government of Goa under the Employees State Insurance Scheme. The petitioner applied pursuant to said advertisement issued by the Government of Goa on 18.7.1976. An advertisement was also issued by the State of Maharashtra to fill up the post of Senior ENT Specialist under the Employees State Insurance Scheme in the State of Maharashtra. The petitioner applied thereunder but

having been offered appointment by the Government of Goa as an ENT Specialist on 4.11.1976, he joined there and tendered his resignation as MMS Class-II employee under the State of Maharashtra. The petitioner was thereafter offered employment by the State of Maharashtra and he submitted his resignation on 6.6.1977 to the Government of Goa and joined as an ENT Surgeon under the Employees State Insurance Scheme with the State of Maharashtra on 18.6.1977.

5. The problem which this Court encounters in considering the grievance of the petitioner is that having served as a Doctor under the State of Maharashtra the petitioner submitted his technical resignation and proceeded for service under State of Goa and having worked there for a short duration submitted technical resignation and reverted back to service under the State of Maharashtra.

6. The petitioner has not impleaded the state of Goa as a party.

7. If a Government servant in one State proceeds for

employment in another State and both services are pensionable, a technical resignation from one service to join the other would require the first State Government to remit the papers of the employee to the second State Government with proportionate share of the pensionary benefits. There are no averments as to what happened to the General Provident Fund Account of the petitioner. There are no avements as to in what manner the State of Goa maintained the service record of the petitioner when he served there. There are no averments of the petitioner making any representation to the State of Goa to remit the proportionate pensionary benefits to the State of Maharashtra.

8. It appears that, the petitioner has been misguided in pleading his case.

9. In the interest of justice, while dismissing the petition, we direct that upon the petitioner submitting a representation to the secretary, Public Health Department, State of Maharashtra, the officer would send a communication to his counterpart in the State of Goa and ascertain the manner in which the petitioner rendered

the services in the State of Goa. If the state of Goa responds that since the services rendered by the petitioner in the State of Goa for 137 days was not treated as a pensionable service, we request the Secretary in the State of Maharashtra to exercise powers under Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 to waive the 137 days period and ignore the technical resignation submitted by the petitioner to join services in State of Goa for the reason the forfeiture of service on the resignation envisages by Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 in Maharashtra, would be a resignation without the same being a technical resignation, to join services in another pensionable service.

10. The petition is dismissed but as noting above.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

fmp/-