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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3770 OF 2010

Mootheveettil Sreedharan s/o
Paramel Krishnan Nair
Age – 61 years, Occ – Pensioner,
R/o 95, Himanshu Residency, Flat No. 1,
Jyoti Nagar, Aurangabad 431 005

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary,
Irrigation Department,
Mantralaya, Mumbai 400 032
 2. The Superintending Engineer,
Nanded Irrigation Circle, Nanded
- RESPONDENTS

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Mr. Ajay S. Deshpande, Advocate for the petitioner
Mr. A. V. Deshmukh, AGP for respondents - State

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[CORAM : SUNIL P. DESHMUKH AND
SMT. VIBHA KANKANWADI, JJ.]

DATE : 28th NOVEMBER, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Petitioner before us questions propriety, validity and legality of decision of Maharashtra Administrative Tribunal dated 26th June, 2008 turning down Original Application No. 555 of 2007.
2. At the outset, Mr. Ajay S. Deshpande, learned advocate

appearing on behalf of the petitioner submits that the reliefs claimed in original application had not been couched properly failing to reflect real intent underlying. As a matter of fact, intrinsic object in the original application had been to see that break in service, as considered under the memorandum, shall not affect him monetarily, especially pensionary benefits.

3. Petitioner, who was holding diploma in civil engineering, had joined service with the respondents as Overseer in 1965. he had later on been designated as sectional engineer in 1981 and had been promoted as sub divisional officer in the cadre of deputy engineer in 2001. Petitioner retired on superannuation in 2004.

4. While the petitioner had been serving in Parbhani, he went on earned leave for a month in 1986 and thereafter had remained absent from duty till 1988. His prolonged absence without authorization had been inquired into in departmental proceedings and he had been put under suspension for about 45 days. As a consequence of inquiry for prolonged unauthorized absence, petitioner had been imposed with a punishment of stoppage of one annual increment, without affecting future increments and **pension**. This order was passed by the disciplinary authority on 13th July, 1994 in sequel to inquiry

proceeding.

5. Subsequently, a memorandum had been issued referring to rule 47 (1) of Maharashtra Civil Services (Pension) Rules, 1982 to treat period of absence as break in service. The memorandum had been issued on 13th August, 2002. Thereafter the petitioner had been continually making representations with the concerned authorities to condone the period, considered to be break in service under the memorandum.

6. Learned advocate also refers to that there had been recommendation by respondent No. 2 to Chief Engineer to sanction extraordinary leave to petitioner facilitating regularization of absence of duty. Learned advocate also refers to that promotion of the petitioner as sub divisional officer, in cadre of deputy engineer in 2001, gives indication of that his services before 1986 had been taken into account for such promotion. He submits that while it came to release pensionary benefits to petitioner on superannuation, entire past period of service from 1965 to 1986 had been ignored and period of service is computed only from 1988. This resulted in scaling down pensionary benefits computing only sixteen years service after 1988. The same has affected petitioner disastrously, as his thirty seven year long tenure, particularly, twenty one years'

service does not get any recognition at all. It is under the circumstances, learned advocate submits that with the hope that with condonation of break in service would restore proper pensionary benefits to petitioner, original application had been moved before tribunal praying for the reliefs as referred to above. However, as stated earlier, intrinsic intention is to have pensionary benefits as are legitimately due to petitioner according to rules, facts and circumstances.

7. Mr. Deshpande submits that decision by the tribunal in original application, however, would reflect that the tribunal has taken into account rule 47 (1) of the Pension Rules only partially and has not taken into account relevant exceptions under said rules, which would not let forfeiture of service of petitioner before 1986. He submits that proper reading of the rule would in fact show that petitioner's case would fall in exception, particularly clause "b" of rule 47 (1) of Pension Rules, reading thus -

“ 47. Effect of interruption in service:- (1) An interruption in the service of a Government servant entails forfeiture of his past service, except in following cases:-

(a) authorised leave or absence;

(b) Unauthorised absence in continuation of authorised leave of

absence so long as the post held by the absence is not filled substantively;

(c)”

8. He submits that admittedly petitioner’s unauthorized absence has been in continuation of authorized leave.

9. Learned advocate further submits that for the unauthorized absence, the matter had been inquired into and punishment had been imposed, and yet petitioner’s pensionary benefits being computed on sixteen years’ service period post 1988 would tantamount to double jeopardy. He has been punished as a consequence of inquiry for misconduct and absence was not to be considered as break in service. The memorandum had been issued about break in service on the eve of retirement of the petitioner. While the petitioner has served thirty seven years, a proper empathetic and objective view be taken and petitioner be granted all the pensionary benefits as would be due, considering that pursuant to Rule 47 (1) (b), pre 1986 service of the petitioner would not be forfeited.

10. Countering aforesaid submissions, learned AGP Mr. Aniket Deshmukh submits that during inquiry proceedings, mischief played by the petitioner had surfaced. During the unauthorized

absence he had been away from India, which had been revealed during police inquiry, while he had been telling that he had been to his native state Kerala. In such a case, learned AGP submits that explanation had not at all been scrupulous and had been so considered by the tribunal and, thus, refused to give relief as prayed by the petitioner.

11. On the legal side, he submits that punishment for misconduct and the effect of regime of rules operate in different spheres. Invoking rule 48 of MCS (Pension) Rules is not possible any way in the circumstances. He submits that an unauthorized absence, which is interruption in service, would efface the effect of past service, having regard to rule 47 (1). He submits that rule 47 (1) (b) of the Pension Rules may not be applicable in present matter, since it has emerged in inquiry proceedings that petitioner's absence had been unauthorized absence on an improper pretext. He, therefore, purports to support the decision by the tribunal.

12. Perusal of the decision by the tribunal would show that it had been enamored by communication from police department about petitioner having been abroad and not in the native place during unauthorized absence and also appears to be oblivious of the exception under rule 47 (1) (b) referring only to rule 47 (1)

of the MCS (Pension) rules and that in the inquiry proceedings, disciplinary authority had imposed punishment on the petitioner, as under -

“ म्हणून आता निम्नस्वाक्षरित म. ना. सेवा (शि. व अ.) नियम १९७९ च्या नियम ६ व ९ मधील दिलेल्या अधिकाराचा वापर करून श्री. एम. श्रीधरण शा. अ. यांच्या वेतन श्रेणीतील पूढील एक वार्षिक वाढ पुढील भविष्य कालीन वेतन वाढीवर व **सेवा निवृत्ती वेतनावर काहीही परिणाम होणार नाही** अशा रितीने रोखण्याची शिक्षा या ओदशान्वये देण्यात येत आहे. ”

13. Memorandum referring to that as per provisions of Rule 47 (1) of Maharashtra Civil Services (Pension) Rules, 1982, period to be treated as break in service has been issued fourteen years after resumption. It does not appear that inquiry and punishment therein had been fallen for consideration before issuing the same.

14. Perusal of the decision by tribunal, as referred to above, further shows that Rule 47 (1) had been partially taken into account, without reference to exception thereunder, particularly to clause "b". Petitioner now resiles to a situation wherein he does not insist upon condonation in interruption of service pursuant to Rule 48 (2) of the Pension Rules. Proper reading of Rule 47 (1) would show that it is not disputed that period of unauthorized absence of petitioner has been in continuation of authorized leave, which is stated to be earned leave. There is no

dispute on that unauthorized absence is in continuation of authorized leave and that the post had not been filled in. Additionally, while imposing punishment, it had been specifically observed that punishment would not affect pensionary benefits of the petitioner. It appears that these aspects have not been taken into account by the tribunal and the decision tends to be rather drifted to other aspects. Looking at the purport and intent of the punishment imposed under the inquiry proceedings, saving pensionary benefits, reading the same with rule 47 (1) (b) of the Pension Rules, the tribunal's decision has been rather astray in this aspect.

15. We, therefore, consider it appropriate not to be pedantic and pensionary benefits legitimately as would be due to the petitioner shall ensue in the circumstances considering that the petitioner's pre 1986 service would not stand fortified because of the break in service, as considered under the memorandum. Pensionary benefits, in the circumstances, shall be computed without forfeiture of pre-1986 service. Needless to refer to that in the circumstances, the benefit of rule 48 of the Pension rules of condonation of interruption for the period of absence from 1986 to 1988 would not be available to the petitioner.

16. As such, petition stands allowed to aforesaid extent and is

disposed of. Rule is made absolute accordingly. Needless to refer to that in the circumstances, since unauthorized absence being not condoned pursuant to Rule 48 (2), the period would not be computed as qualifying service. Learned advocate for the petitioner submits that since the petitioner is seventy three years of age, authorities may take call on revision of pension in accordance with order, expeditiously. As such, concerned authorities to look into the matter and decide upon revision of benefits, preferably within a period of ten weeks from the date of receipt of writ of this order.

[SMT. VIBHA KANKANWADI]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE