

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

WRIT PETITION NO.257 OF 2019

Abdul Salim Abdul Karam

..Petitioner

Versus

The State of Maharashtra and ors.

..Respondents

Mr Arvind Deshmukh, Advocate for petitioner
Mr K.B. Jadhavar, A.G.P. for respondent-State

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

DATE : 9th January, 2019

PER COURT

1. The petitioner had filed original application before the Tribunal claiming pensionary benefits. The original application is dismissed. Aggrieved thereby, the present petition.

2. Learned Counsel Mr Deshmukh for the petitioner submits that on or about 1.6.1984, the petitioner joined service as Live Stock Development Officer with the respondents. On 9.6.1995 the petitioner was transferred from Zari, District Parbhani to Panchayat Samiti, Jafrabad, District Jalna. Before joining at present place, the petitioner suffered from anxiety and from disturbed behaviour activities from 11.6.1995 to 31.12.2001. Thereafter petitioner could not join at the transferred place. The petitioner was continuously suffering from anxiety and was under medical treatment upto 2.7.2012. After the petitioner recovered from illness, on 2.5.2012 petitioner submitted application to the Joint Commissioner, Animal Husbandry through the District Animal Husbandry Officer and requested him to allow him to join the duties. The application was submitted along with all medical

certificates. The proposal was submitted by the District Animal Husbandry Officer to the Commissioner *inter alia* the proposal was submitted to respondent no.2. The petitioner was referred to medical board to take fitness certificate, however, the medical board did not issue certificate. On 12.7.2012, the petitioner again made application and requested to allow him to join. However, the same was not granted and the petitioner attained age of superannuation on 31.7.2012.

3. According to the learned Counsel for the petitioner, after the date of retirement, the petitioner was asked by the medical board to appear on 31.10.2015 and thereafter certificate was issued. It was opined that the petitioner was fit to join the duty. The petitioner has served for more than 11 years, as such is entitled for pension. The Corrigendum issued by the government, pursuant to the Government Resolution date 31.10.2009 enables the petitioner the benefit of pension. The learned Counsel referred to Rule 110 (1) and 111 (2) of the Maharashtra Civil Services (Pension) Rules. The learned Counsel for the petitioner submits that atleast 50% of the last basic pay ought to have been considered for pensioner benefit as per the said Corrigendum. He further submits that even the leave has been sanctioned and accepted by the State 28.10.2015.

4. It is a fact that, the petitioner was issued with the transfer order on 09.06.1995 transferring him to Panhayat Samiti Jafrabad, Dist. Jalna. The petitioner did not join at the transferred place. The petitioner approached the authorities 20 days prior to his retirement on or about 02nd July 2012 with an application to permit him to join.

The case of the petitioner is that he was suffering from anxiety. It appears that, after the petitioner was transferred, the said ground has been put forth for the first time on 02nd July 2012. The petitioner during the period of 17 years never gave an application to the employer. The petitioner relied on Rule 47 of the Pension Rules. The case of the petitioner does not fall under any of the contingencies enumerated in Rule 47 of the Pension Rules. Rule 47 of the Maharashtra Civil Services (Pension) Rules provides that an interruption in the service of a Government servant entails forfeiture of his past service. The case of the petitioner cannot be brought within the purview of exceptions of Clauses (a) to (b) of sub-rule (1) of Rule 47 of the Pension Rules. Rule 111 and 110 of Pension Rules would not inure to the benefit of petitioner in view of Rule 47 of the said Rules.

5. The facts of the case are eloquent. It is only after the petitioner was transferred and the petitioner did not join at the transferred place, the petitioner has raised the ground of anxiety after 17 years. Even his leave has not been sanctioned. The order dated 28.10.2015 passed by the authority is abundantly clear. It says that the unauthorised leave period is considered as unauthorised. The Rule 110 (1) and 111 (2) of the Pension Rules as relied by the learned Counsel for the petitioner cannot be read de hors Rule 47 of the Pension Rules. The benefit of Sec. 111 and 112 of the Pension Rules cannot be given to the petitioner as the past service stands forfeited.

6. The tribunal has not committed any error. Writ Petition disposed of. No costs.

(A.M. DHAVALA, J.)

(S.V. GANGAPURWALA, J.)

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