

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

83 WRIT PETITION NO.8962 OF 2019

KISAN DEORAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioner : Mr. Irale Patil D.R.

AGP for Respondent No. 1 : Mr. S.P. Tiwari.

Advocate for Respondent No. 2 : Mr. Navandar Manish N.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 07/01/2020

PER COURT :

Mr. Irale, the learned counsel for the petitioner submits that the impugned order dated 01.06.2016 passed by the respondent No. 2 be set aside and the respondent No. 2 be directed to revise the order dated 01.06.2016 and consider the earlier service of more than 19 years including additional service prior to retirement of more than 3 years total 22 years for the purpose of pensionary benefits.

2. The learned counsel submits that as per Rule 63(6) of the Maharashtra Civil Services (Leave) Rules, the power has been given to the Authority to condone the break in service. Even two breaks in the service can be condoned. In this case there is only one break in service. The learned counsel also refers to Rule 48 of the Maharashtra Civil Services (Pension) Rules to contend that the Appointing Authority has power to condone the interruption in service, if the interruption

has been caused by reasons beyond the control of the government servant. The learned counsel submits that considering the earlier service of 19 years and 5 months and the subsequent service of 3 years, total 22 years, the petitioner is entitled for pensionary benefits.

3. Mr. Navandar the learned counsel submits that the interruption in service is of 10 years. Under the order dated 01.06.2016 the petitioner has been given a fresh appointment without condoning the break in service. It is only after issuing notice the petitioner resumed duty and the order itself says that the petitioner is not entitled for counting his previous service.

4. Rule 63 of the Maharashtra Civil Services (Leave) Rules puts an embargo on the right of the appointing authority to condone the break in service of a period more than that prescribed under the said Rules. Rule 48 of Maharashtra Civil Services (Pension) Rules also prescribes condonation of interruption in service, interruption including two or more interruptions should not exceed one year. Herein in the present case the interruption in service is of more than 10 years. To condone the interruption in service of more than 10 years does not appear to be within the realm of the appointing authority. The Authority has issued fresh appointment order to the petitioner, which the petitioner has accepted, thereafter petitioner has retired on

attaining the age of superannuation. The petitioner did not raise any objection to the said order till the date of his retirement. In the light of that it would not be possible to accede to the request of the petitioner.

5. However, if the petitioner is appointed in the year 1985 and has worked up to 2005, the respondent has to consider the service rendered by petitioner from 1985 to 2005 for pensionable purposes as may be admissible, according to the rules. Even a service rendered on work charge establishment can be considered for pensionable purpose. The respondent Authorities may consider the service rendered by the petitioner from 1985 to 2005 and whether the same was on a substantive vacant post.

6. The petitioner may file an application to that effect with the respondent No. 2. On receipt of the application, the respondent No. 2 shall take decision on it with regard to the pensionary benefits of the petitioner expeditiously and preferably within a period of three months from the date of receipt of the application on its own merits.

7. The Writ Petition is accordingly disposed of. No costs.

(MANGESH S. PATIL, J.)

(S. V. GANGAPURWALA, J.)

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