

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

WRIT PETITION NO.9570 OF 2016

Dr Mohan Anandrao Deshmukh

Age : 59 years, Occu : Service,

R/o. Plot No.19/2, Vishwamohini

Apartment, Samarthnagar, Aurangabad,

District Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32
2. The Director of Higher Education,
Maharashtra State, Pune
3. The Joint Director of Higher Education,
Aurangabad Division, Aurangabad
4. Dr. Babasaheb Ambedkar
Marathwada University, Aurangabad
through its Registrar
5. Maharashtra Institute of Technology,
Aurangabad, through its Principal .. Respondents

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Advocate for Petitioner : Shri S.R. Barlinge
AGP for Respondents No.1 to 3 : Shri G.O. Wattamwar
Advocate for Respondent No.4 : Shri Akshay Lohade h/f.
Shri S.S. Thombre
Advocate for Respondent No.5 : Shri S.V. Kshirsagar h/f.
Shri A.S. Deshpande

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**CORAM : SUNIL P. DESHMUKH &
B. U. DEBADWAR, JJ.**

Date : 15-01-2020

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

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. There is no dispute on that petitioner was appointed as Lecturer in Saraswati Bhuwan Education Society College and had worked there from 1980 to 1988. Thereafter, he had been appointed as Director, Physical Education in the College of Applied Sciences, Aurangabad. Both the colleges had been aided institutes affiliated to the university.

3. Subsequently government had withdrawn grants to College of Applied Science, it being a technical institute and the Maharashtra Institute of Technology was directed to run engineering college on non-grant basis. In the circumstances, the employees working in the College of Applied Sciences,

Aurangabad, were rendered jobless including present petitioner.

4. Quite a few of them had approached this court under Writ Petitions bearing No. 5274 of 1998 and 29 of 1999 seeking absorption in aided colleges. The high court under its order dated 04-02-1999 had allowed said writ petitions finding, pursuant to section 79 (4) of the Maharashtra Universities Act, 1994, surplus employees are required to be absorbed and order to the following effect had been passed:

*“We, therefore, direct that the Registrar of the Dr. Babasaheb Ambedkar Marathwada University, Aurangabad and the Director of Higher Education, M.S., Pune will intimate the names of the petitioners **and other similarly situated persons**, both in teaching and non-teaching faculties, **who were serving in the former college i.e. the College of Applied Sciences to other affiliated colleges** in their jurisdiction so that if there is any vacancy to be filled in in that subject or in that cadre, **the names of these persons shall be considered on preference looking to the spirit of sub section (4) of section 79 of the Maharashtra Universities Act, 1994.**”*

5. Petitioner claims that pursuant to aforesaid order, several employees of College of Applied Sciences had been absorbed save the petitioner. Maharashtra Institute of Technology had expressed its inability to absorb petitioner. Petitioner had been after the authorities for his absorption. However, no action had been taken responding to the same. In the circumstances, petitioner has approached this court under the present writ petition seeking absorption and continuity of service.

6. In the meanwhile, the petitioner had also approached the university under the Right to Information Act. It transpired that one post of Assistant Professor was vacant, making available accommodation for petitioner. Deputy Registrar of the university had suggested his absorption in university department. However, that is sought to be explained by the university under a letter and affidavit stating that, it was internal correspondence between two officers of university and the suggestion had no effective authority in law. It is the contention of the university that petitioner had never been in its employment, therefore, absorption in university on the vacant post would not be possible. The university, thus, expressed its inability to absorb the petitioner in university service. It is contended that said correspondence would be required to be ignored. It is purportedly contended that, since petitioner had not taken any steps to claim absorption and hence he had waived right to claim absorption in the service.

7. There was a subsequent affidavit filed on behalf of university, once again contending that petitioner had not been in service from 04-02-1999 till filing of application in 2016 and before that there was no application or representation filed by petitioner to any of its authorities. Petition suffers delay and

laches and further that petitioner ought to have approached the college / tribunal. It is purportedly being pointed out that in writ petitions No. 5274 of 1998 and 29 of 1999 petitioner had not been a party and university had been respondent no. 4. However, at the relevant time, after the order had been passed by the high court, the university under its letter dated 01-04-1999 issued to the Secretary of Government of Maharashtra had specifically stated that, in view of order passed by the high court, a list of persons to be absorbed in service had been sent, wherein the name of petitioner figures at serial no. 8.

8. Respondents no. 1 to 3, the State Authorities have submitted affidavit opposing the petition on the ground of delay and laches. The reply refers to that, according to the order passed in writ petitions No.5274 of 1998 and 29 of 1999, University / Management / College had prepared a list of 24 employees of teaching and non-teaching staff for absorption in aided and affiliated colleges and accordingly absorption process had been started in 2000 and had been completed. The affidavit purports to refer to that petitioner had been engaged in imparting education and all of a sudden, at the age of superannuation, petitioner has turned around seeking benefit of pension and other monetary benefits after huge lapse of 18

years. It is further stated that the Management / College and University were under obligation to absorb him on vacant post. However, Management / College and University did not take any steps for accommodating petitioner as directed by the high court under its order.

9. Petitioner had filed additional affidavit referring to the prosecution of his claim since 1999. As would emerge from documents submitted by petitioner, he had been before concerned authorities seeking absorption vide communications dated 29-06-2006, 21-01-2007, 06-10-2008, 08-12-2009, 18-01-2010, 14-05-2010, December-2011 and 27-10-2014. However, the authorities was not paid heed to his requests and approach. In the additional affidavit filed on behalf of the State, which is filed in 2020, the prosecution of claim by petitioner as stated above, has not been disputed.

10. It, thus, emerges that, there is no particular dispute in respect of the documents referred to above. Despite aforesaid correspondence, petitioner had not been issued with any absorption order either by the College, Management or University pursuant to the directions of the high court. Petitioner is not stated to have been gainfully employed elsewhere.

11. It appears that, the high court passed order directing absorption of the employees of the College of Applied Sciences, Aurangabad. It does not appear to be the case that, petitioner had not made any efforts at all. It emerges that, there had been different views amongst the authorities of the universities in respect of the absorption of the petitioner.

12. Petitioner is over the age of superannuation and absorption now is not possible. Petitioner does not insist upon and gives up claim for salary during the period he had not been absorbed.

13. Learned counsel for petitioner, on instructions, states that petitioner is not interested in claiming backwages and presently his livelihood is to be taken care of. The petitioner's case may be given treatment taking into account his past service and the ends of justice can be met with taking overall view in the matter that respondents would consider the case of petitioner for pensionary benefits since he has already crossed the age of superannuation.

14. He refers to the Maharashtra Civil Services (Pension)

Rules, 1982. Rules 30, 48, 62, 63 given below and requests those may be taken into account for considering the claim of petitioner for pensionary benefits.

"30. Commencement of qualifying service. - *Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :*

Provided that at the time of retirement he shall hold substantively a permanent post in government service or holds a suspended lien or certificate of permanency :

[Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.]

Exception.- The rules regarding grant of terminal benefits to temporary Government servants [except those mentioned in the second proviso] who retire without being confirmed in any post in government service are embodied in Appendix II.

Note 1. - If a Government servant is holding a temporary post when the permanent post on which he holds a lien is abolished in the circumstances described in rule 81, or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service.

Note 2. - In the case of employees of former Indian States who have been absorbed in government service previous pensionable service rendered by them under the same State should it immediately followed by government service be taken into account for purposes of pension on his final retirement from Government service. Pensionable service rendered under different States should be taken into account for purposes of pension provided that the employees were transferred or sent on deputation from one State to another under a written

agreement between the Governments of the States concerned.

The term "immediately" appearing in Note 2 above includes a break in service if it does not exceed six months, between the date on which the service was terminated and the date of his re-employment in service.

The question whether the previous service in Indian States is pensionable or not should be determined in accordance with these rules as if those rules were applicable to that service.

Note 3.- See rule 57.

48. Condonation of interruption in service. -

(1) The appointing authority may, by order, condone interruptions in the service of a Government servant :

Provided that -

(a) the interruptions have been caused by reasons beyond the control of the Government servant;

...

62. Different classes of pensions. - *The following different classes of pensions may be granted to Government servants or their families :-*

(1) *"Superannuation Pension," which is a pension granted to a Government servant who retires from Government service at an age at which he is by rule entitled or required to retire.*

(2) *"Retiring Pension," which is a pension granted to a Government servant who retires voluntarily on completion of 20/30 years' qualifying service or who is required by the appointing authority to retire in the public interest, but before attaining the age of superannuation.*

(3) *"Invalid Pension", which is a pension granted to a Government servant who retires from Government service, before reaching the age of superannuation, on account of mental or bodily infirmity.*

(4) *"Compensation Pension," which is a pension granted to a Government servant who is discharged from Government service otherwise than on medical certificate and for no fault*

of his own, before earning a Retiring or Superannuation Pension.

(5) "Wound or Injury Pension," which is a pension granted to a government servant wounded or injured while in Government service.

(5-A) "Compulsory Retirement Pension," which is a pension granted to a Government servant who is compulsorily retired from Government service as a penalty.]

(6) "Compassionate Pension," which is a pension granted to a Government servant who is removed [x x x] from Government service for misconduct, insolvency, or inefficiency.

(7) "Family Pension" means Family Pension, 1964, admissible under Rule 116 and includes Family Pension, 1950, admissible under Rule 117 to the family of deceased Government servant.

(8) "Extraordinary Family Pension," which is a pension granted to the family of deceased Government servant under rules in Appendix IV."

63. Superannuation Pension.- *A Government servant who retires on his attaining age of superannuation fixed by the relevant sub-rule of Rule 10 shall be granted a Superannuation Pension."*

15. In the scenario, it appears to be expedient that, the petitioner puts up his case properly before concerned authorities and the authorities may, having regard to the facts and circumstances and law including the case being canvassed now on behalf of petitioner with respect to Maharashtra Civil Services (Pension) Rules, 1982, examine the petitioner's case and, if required, may also call him for hearing and decide on the same expeditiously. The exercise be carried out expeditiously on either side.

16. Rule is made absolute to the aforesaid terms. Writ
Petition accordingly is disposed of.

(**B. U. DEBADWAR, J.)**

(**SUNIL P. DESHMUKH, J.)**