

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3916 OF 2019

Sunil s/o. Chandrarao Attargekar,
Age 50 years, Occ. Retired,
R/o. Jijau Nagar, Shellal Road,
Udgir, Tq. Udgir, Dist. Latur.

.. Petitioner

Versus

- 1] The State of Maharashtra
 through the Director,
 Social Welfare, Maharashtra State,
 Pune.
- 2] The Accountant General-II,
 Office of Accountant General,
 Pension Wing, Old Building,
 Civil Line, Nagpur,
 Maharashtra State, Nagpur.
- 3] The District Social Welfare Officer,
 Zilla Parishad, Latur,
 Dist. Latur.
- 4] The Secretary,
 Mahatma Phule Bahuuddeshiya
 Shikshan Sanstha, Udgir,
 Tq. Udgir, Dist. Latur.
- 5] The Headmaster,
 Premnath Maharaj Residential
 Handicapped School, Udgir,
 Tq. Udgir, Dist. Latur.

.. Respondents

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Mr. Ram S. Shinde, Advocate for Petitioner
Mr. S.S. Dande, Advocate for respondent No.2
Mr. S.S. Manale, Advocate for respondent No.3.

...

**CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 15th JANUARY, 2021

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J] :-

1] Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.

2] The petitioner had issued a notice on 14-02-2018 annexed to the petition at Page 84 for voluntary retirement pursuant to rule 66(1) of M.C.S. (Pension) Rules, 1982 referring to that he had completed twenty years and one month and fourteen days qualifying service and had been working since 1-4-1998. His request had been processed by – Respondents 3 to 5 and proposal had been sent to respondent No.2. The same has been received back with the response dated 12-10-2018 from respondent No.2 (page 44), purportedly referring to that, as per Rule 66(1) of the Maharashtra Civil Services (Pension) Rules, notice is supposed to be given after completion of 20 years of qualifying service and further asking how the notice dated 14-2-2018 had been accepted before completion of 20 years. It is under these circumstances, petitioner is before this court.

3] Learned counsel for the petitioner submits, it would emerge, record would bear that petitioner has been appointed long before 1998. The proposal, submitted to office of respondent No.2 - accountant general by respondent No. 3, with documents sent along, would establish the case of petitioner that the petitioner had, in fact, been working from 1994. It would also be seen that he has been appointed and working from 1996 on the sanctioned post. Initially appointment had been of temporary nature as a probationary employee in pay scale of 950-1500 and the same had continued from time to time. He submits that under mistaken belief and erroneous appreciation of situation, application had been moved referring to the date from which services of the petitioner were confirmed in said post, where he had been working. He submits that the factual position about him being working from 1994/96 onwards would also get support from the service book maintained in respect of his employment which as well had been put up alongwith proposal. He submits that the documents sent along with proposal sufficiently bear that petitioner had been working in substantive post since 1996. He had been working in the post continuously without any interruption and the same has even not been disputed. Return of proposal is detrimental to petitioner's interest and gravely harms his retiral benefits. If the record is not taken into account, it would put petitioner in peril. There had been inadvertent error in referring to the date of appointment as 01-04-1998. He submits that in such a case, having regard to the

documents which have not been disputed, a proper construction on proposal accordingly be placed for voluntary retirement and submits that a pedantic approach would put his long service and the benefits accrued in jeopardy and urges to eschew such an approach.

4] Learned A.G.P. submits that apparently the petitioner has committed a mistake in giving a wrong date in the application and the authorities have considered the proposal accordingly and refers to order dated 13-08-2019 in this writ petition, purporting to point out that petitioner was supposed to place on record copy of permanent approval.

5] Chapter V of the M.C.S. (Pension) Rules defines qualifying service, and Rule 30 which is in respect of commencement of qualifying service, reads thus :-

"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 10 years or voluntary after the completion

of 20 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 scale as admissible to permanent Government servant."

6] Rule 66(1) of the Maharashtra Civil Services (Pension Rules) reads thus :-

"66. Retirement of completion of 20 years qualifying service :-

(1) At any time after a Government servant completed twenty years qualifying service, he may, by giving notice of three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period..... ."

7] After hearing the learned counsel, position appears to emerge that there is material showing petitioner had been appointed on 01-04-1996 as a clerk on the post and his appointment in the same had been accorded permanency in 1998. Pursuant to rules referred to above, situation will have to be relooked into, without devitalizing the claim for voluntary retirement on technicalities if it is otherwise legitimate.

8] Claimed emerging position that petitioner having been appointed from 1994/1996, if is not incorrect, a perfunctory and pedantic approach better be eschewed. The case of petitioner may be taken into account with reference to the documents which have been part of the proposal placed on record referring to his initial posting from 01-04-1996. If that be so, the application of petitioner may have to be given treatment as contemplated under the M.C.S. (Pension) Rules and the notice in such a case may not be treated to be defective for non completion of 20 years service, in the peculiar facts and circumstances in this petition.

9] In view of the aforesaid, we deem it appropriate that proposal of the petitioner for retiral benefits be examined and reconsidered and be given a proper treatment based on record, as may be available and may also give opportunity to mend the application, if required.

10] Writ petition is disposed of.

11] Rule made absolute in above terms. No costs.

(ABHAY AHUJA)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE