

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

929 WRIT PETITION NO.9600 OF 2018

**RAMESH DAULAT JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. Ade Ravindra B.
AGP for Respondent Nos.1 to 6 : Mr. P.S. Patil

...
**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 02nd MARCH, 2022

PER COURT:-

1. We have considered the extensive submissions of the learned advocate for the petitioner and the learned AGP on behalf of the respondents. With their assistance, we have gone through the petition paper book and the litigation history.

2. It is contended that the petitioner joined in 1973. On 01.02.1979, he was terminated. On 07.03.1980, he reported for duties in the light of the order dated 01.03.1980 appointing him as a fresh candidate against a vacant post of a Lab Assistant. The break in service is in between 01.02.1979 till 06.03.1980, which is 13 months and 6 days.

3. The petitioner approached the learned Maharashtra Administrative Tribunal at Mumbai vide Original Application No.618

of 2006. By a judgment dated 29.09.2011, the learned Tribunal dismissed the original application. The petitioner approached this Court in Writ Petition No.2354 of 2012. By a judgment dated 24.08.2012, this Court concluded that Rule 48(1)(c) of the Maharashtra Civil Services (Pension) Rules, 1982, does not, in any way, permit the condonation of break in service beyond one year. This Court, therefore, concluded that the Tribunal was justified in turning down the request made by the petitioner. This Court also concluded that Rule 48(1)(c) permits the condonation of two interruptions, provided the interruptions are not beyond one year.

4. As such, this Court declined to grant any relief to the petitioner. However, the petitioner was given a choice to make an application under Rule 4 to the government for requesting relaxation of any rules applicable to the petitioner. By communication dated 01.02.2013, the petitioner was informed that Rule 4 cannot be utilize for condoning the delay of 1 year, 1 month and 6 days and therefore, the request for relaxation is rejected.

5. The petitioner approached the learned Tribunal at Aurangabad in Original Application No.772 of 2013. Said original application was dismissed in default. The petitioner filed Miscellaneous Application No.405 of 2017 seeking condonation of delay. During the pendency of the said application, a copy of the internal communication (the date cannot be read) addressed by the

Executive Engineer, Special Project Circle, Nashik to the Superintending Engineer, Quality Control Circle, Aurangabad stating that the claim of the petitioner cannot be entertained and no relief can be granted to him, was placed by the applicant himself before the learned Tribunal which was marked as 'X'. He then conceded that, in the light of document 'X', nothing survives in his claim and he therefore, sought the disposal of his miscellaneous application as being infructuous. Thereafter, the petitioner approached this Court directly with this petition on 10.08.2018.

6. Once this Court has delivered a pronouncement that the claim of the petitioner cannot be entertained under Rule 48(1)(c) of the Maharashtra Civil Services (Pension) Rules, 1982, the petitioner cannot again raise the same issue. This Court did not create a remedy for the petitioner to make an application under Rule 4 for seeking relaxation. Even if it is assumed that he was granted the liberty to make a representation which created a new cause of action, his original application was dismissed in default by the Tribunal and his miscellaneous application seeking restoration of the original application, was withdrawn voluntarily since he made a statement that nothing survives in his claim.

7. In view of the above, the filing of this petition is clearly an abuse of the process of law warranting not only the dismissal of the petition, but also imposition of heavy cost of Rs.50,000/-.

8. The learned advocate for the petitioner submits that as the petitioner has retired and is a senior citizen who is about 73 years of age today, cost may not be imposed. Considering the request made on the ground of the petitioner being a senior citizen, though his act of abusing the process of law cannot be countenanced, we are not imposing cost.

9. The petition is dismissed.

(S.G. MEHARE. J.)

(RAVINDRA V. GHUGE, J.)