

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

WRIT PETITION NO. 1145 OF 2017

1. Bhagwanrao S/o Anantrao Chate
Died through L.Rs.
- 1-A Bhamatai @ Asha Bhagwanrao Chate,
Age : 68 Years, Occu. : Household,
- 1-B Deepak S/o Bhagwanrao Chate,
Age : 48 Years, Occu. : Service,
- 1-C Suhas S/o Bhagwanrao Chate,
Age : 46 Years, Occu. : Advocate,
- 1-D Jyoti D/o Bhagwanrao Chate,
Age : 44 Years, Occu. : Advocate,
- 1-E Swati D/o Bhagwanrao Chate,
Age : 42 Years, Occu. : Advocate,

All R/o Chate Galli, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education & Sports
Department, Mantralaya,
Mumbai – 32.
2. The Accountant General
(Accounts and Entitlement) – II,
Maharashtra, Nagpur – 440 001.
3. The Education Officer,
(Secondary), Zilla Parishad,
Latur.

4. The Headmaster,
Narsinha Vidyamandir,
Secondary and Higher Secondary
Nanded, Dist. Nanded.
5. The Headmaster,
Mahatma Phule Vidyalay,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur. .. Respondents

Shri Dr. R. R. Deshpande, Advocate h/f Shri V. D. Gunale,
Advocate for the Petitioner.
Shri S. B. Yawalkar, Addl.G.P. for Respondent Nos. 1 to 3.
The Respondent Nos. 2, 4 and 5 are served.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

RESERVED FOR JUDGMENT ON : 25.07.2022

JUDGMENT PRONOUNCED ON : 29.07.2022

JUDGMENT (Per Sandeep V. Marne, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The present petition was initially instituted by late Bhagwanrao S/o Anantrao Chate challenging the communication dated 27.07.2016 by which his request for payment of pension and other retiral benefits was denied. During pendency of present petition, late Bhagwanrao Anantrao Chate unfortunately expired and his legal heirs are prosecuting the petition. For the

purpose of convenience, we are referring late Bhagwanrao Anantrao Chate as the petitioner.

3. The petitioner claims to have worked as an Assistant Teacher in the respondent No. 4 school during the period from 20.03.1965 to 15.07.1967 on fixed pay. He tendered resignation to respondent No. 4 school and immediately joined respondent No. 5 school on 16.07.1967 as an Assistant Teacher again on fixed pay. He claims that on 01.11.1969, he was given a pay scale of Rs. 105 - 125 and was thereafter granted yearly increments.

4. The petitioner tendered resignation to the respondent No. 5 school vide letter dated 30.12.1984. In the letter he requested for relieving him with effect from 31.03.1985. There is an endorsement on the resignation letter dated 30.12.1984 that the resignation was accepted on 30.12.1984 itself. However, at page No. 57 of the paper book, there is letter dated 30.03.1985 by which the school management informed him that the resignation was accepted and that he was relieved with effect from 01st April 1985.

5. The petitioner avers that he requested the Education Officer to forward his proposal for pension and retiral benefits and that the respondent No. 5 school accordingly submitted such proposal to the office of the Education Officer on 13.07.2015. It is further averred that the Education Officer forwarded the proposal to the respondent No. 2 on 19.11.2015. Thereafter, it

appears that some queries were raised and replied and ultimately by order dated 27.07.2016, the respondent No. 2 rejected the proposal on two counts namely (i) that the petitioner had resigned from service and that therefore he was not entitled to pension and (ii) that the petitioner's service during 20.03.1965 to 15.07.1967 was on fixed pay, which cannot be counted for pension. The petitioner has filed the present petition on 23.08.2016 assailing the order dated 27.07.2016.

6. The respondent No. 2 has contested the petition by filing affidavit in reply *inter alia* contending that the proposal for pension was submitted after thirty years of the resignation. It is further contended that, on account of resignation he is not entitled to pension. It is also contended that the services of the petitioner between 20.03.1965 and 15.07.1967 were on fixed pay, which do not count for qualifying service. The respondent No. 2 has further contended that the petitioner has rendered less than 20 years of qualifying service and was, therefore, not entitled to opt for voluntary retirement under the provisions of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 (for the sake of brevity hereinafter referred as to the 'Pension Rules').

7. Dr. R. R. Deshpande, the learned counsel appearing for the petitioner has raised a plea that even though the petitioner had tendered resignation vide letter dated 30.12.1984, it is required to be construed as an application under Rule 66 of the Pension Rules for voluntary retirement. Dr. Deshpande contended that the petitioner had given three months notice by way of his letter

dated 30.12.1984 and that acceptance of the resignation as well as relieving of the petitioner was also done only after expiry of the period of three months. In support of his contentions, Dr. Deshpande, places reliance on following judgments :

- I. Judgment dated 28.07.2011 of the Supreme Court in Civil Appeal No. 6013 of 2011 in the case of Sheelkumar Jain Vs. The New India Assurance Co. Ltd. and others.**
- II. Judgment of the Supreme Court in the case of Shashikala Devi Vs. Central Bank of India : (2014) 16 SCC 260.**
- III. Judgment of the Bombay High Court in the case of Sherro Shapurji Vs. Bank of India, Mumbai : 2018(1) Mh.L.J. 586.**

8. With regard to the second objection of the service from 20.03.1965 to 15.07.1967 being on fixed pay, Dr. Deshpande contended that the same is required to be counted towards qualifying service by relying on the provisions of Rule 9(40), 9(53) and Rule 30 of the Pension Rules.

9. With regard to the objection on delay, Dr. Deshpande submitted that since the issue involved is payment of pension, it is a matter of continuous cause of action. Dr. Deshpande also relied on the judgment of the Supreme Court in **Civil Appeal No. 4100 of 2022** in the case of **M. L. Patil (Dead) through L.Rs. Vs. The State of Goa and another, dated 20.05.2022**

10. Per contra, Mr. Yawalkar, the learned Additional

Government Pleader for respondent Nos. 1 to 3 submitted that there are two reasons for not counting petitioner's service during 20.03.1965 to 15.07.1967 (i) that the petitioner had tendered resignation, which entailed forfeiture of service under Rule 46 of the Pension Rules and (ii) that the service being on fixed pay, it cannot otherwise count for qualifying service. Mr. Yawalkar, further relied on Section 7 of the Maharashtra Employees of Private School (Condition of Service Regulation) Act (for short 'M.E.P.S. Act') providing for procedure for resignation by employees of private schools. He further relied on Rule 40 of the Maharashtra Employees of Private School (Condition of Service Regulation) Rules, 1981 (for short 'Rules of 1981') under which a permanent employee can leave the service only after giving notice of three calendar months. Relying on these provisions, Shri Yawalkar contended that it was only on account of these provisions that the petitioner submitted three months notice for resignation and that, therefore, he cannot, now, be permitted to contend that the said notice be treated as an application for voluntary retirement.

11. Shri Yawalkar further contended that Rule 66 of the Pension Rules provides that the notice of voluntary retirement can be given only after completion of 20 years of qualifying service by laying stress on the words, "at any time after.....". He contended that the petitioner had not completed 20 years of service as on 31.12.1984, even if his service during 20.03.1965 to 15.07.1967 was to be counted as a qualifying service. He further relied upon the provisions of Rule

46 of the Pension Rules which provides for forfeiture of past service on account of resignation.

12. In support of his contention Shri Yawalkar relies upon the judgment of this Court in case of **Dr. Suhas Digambar Herlekar and others Vs. State of Maharashtra and others : (2019) 3 AIR Bom R 280**. Shri Yawalkar, also prayed that petition be dismissed on the ground of inordinate delay in raising the claim for pension.

13. In rejoinder Dr. Deshpande contended that on proper interpretation of the provision of Rule 66 of the Pension Rules, it requires 20 years of qualifying service for retirement and not for giving notice. Dr. Deshpande distinguished the judgment of this Court in the case of Dr. Suhas Digambar Herlekar and others (supra) by contending that none of the petitioners in that case had given three months notice for the resignation.

14. Rival contentions of the parties now fall for our consideration.

15. Let us first examine the contention of Dr. Deshpande that the notice dated 30.12.1984 be treated as notice for voluntary retirement. The notice at page No. 56 of the paper book is reproduced hereinbelow :

दिनांक : ३०/१२/८४

मे.
सेक्रेटरी साहेब
किसान शिक्षणप्रसारक, मंडळ उदगीर

विषय : राजीनामा मंजूर करुन दि. ३१/०३/८५ रोजी सेवामुक्त करण्याबाबत

महोदय,

वरील प्रकरणी नम्र विनंती कि, मी आपल्या संस्थेमध्ये १९६७ पासून सहशिक्षक म्हणून महात्माफुले विद्यालय अहमदपूर येथे काम करित आहे. मी आज दिनांक ३०/१२/८४ रोजी पूर्वसूचना म्हणून राजीनामा देत आहे.

तरी कृपया मला दि. ३१.०३.८५ रोजी दुपार नंतर सेवामुक्त करावे ही नम्र विनंती.

आपला विश्वासु
स्वाक्षरीत/—
चाटे भगवान अनंतराव
सहशिक्षक म. फु. विद्यालय
अहमदपूर

राजीनामा मंजूर करण्यात आला
स्वाक्षरीत/— ३०/१२/८४
किसन शिक्षण प्रसारक मंडळ
उदगीर जि. लातूर

स्वाक्षरीत/—
मूख्याध्यापक
महात्माफुले विद्यालय अहमदपूर जि. लातूर

16. The notice, in no unequivocal terms, expresses the intention of the petitioner to resign and not to retire voluntarily. There is an endorsement on the notice that the resignation was accepted on the same day i. e. on 30.12.1984. Even letter of the school management dated 30.03.1985 states that it accepted the

resignation of the petitioner. **The petitioner always accepted the position that he had resigned from the service.** It had entailed consequences of Rule 46 of the Pension Rules, which contemplates forfeiture of past service. This is because from 30.03.1985 till forwarding of the proposal by the school management on 13.07.2015 i. e. for 30 long years, the petitioner lived with the reality that he had resigned from service and was not entitled to any pension. At no point of time during the said period of 30 long years, the petitioner ever believed that he had voluntarily retired and, therefore, did not stake any claim for pension. Apart from the fact that there is inordinate and unexplained delay of 30 long years in raising claim for pension, which has been dealt with hereinafter separately, the conduct of the petitioner in this period of 30 long years assumes importance. This is not a case where there were any compelling circumstances on account of which the petitioner was required to tender resignation rather than opting for voluntary retirement. On the contrary the conduct of the petitioner during 30 long years makes it abundantly clear that he always desired to resign from service and never believed that he had voluntarily retired.

17. The provisions of Rule 46 of the Pension Rules are clear which provide for forfeiture of past service on resignation. On account of tender and acceptance of resignation, the petitioner clearly entailed forfeiture of his past service and cannot lay any claim for pension.

18. Dr. Deshpande has made an attempt to impress upon us

that application for resignation submitted by the petitioner is required to be treated as notice for voluntary retirement. The only ground on which the contention is raised by Dr. Deshpande is because the petitioner had given a notice of 03 months and that the resignation was also accepted after expiry of notice period. Shri Yawalkar has correctly countered the submission by relying upon Rule 40 of Rules of 1981 under which it is mandatory for a permanent employee to leave service only after giving notice of three calendar months. Thus it was incumbent upon the petitioner to give a notice of 03 months before resigning from respondent No. 5 school. Therefore, merely because 03 months notice is given in the application for resignation, it cannot be construed as a notice for voluntary retirement. It is also pertinent to note that the Rules of 1981, though provide for resignation, do not provide for voluntary retirement. Therefore on this count also it is difficult to accept the contention of Dr. Deshpande that the notice of resignation given under Rule 40 of the Rules of 1981 could be construed as notice for voluntary retirement under Rule 66 of the Pension Rules.

19. We are not impressed by the submission of Dr. Deshpande that qualifying service of 20 years is not required for giving of notice for voluntary retirement under Rule 66 of the Pension Rules. Dr. Deshpande contended that the period of 20 years of qualifying service is required for retirement and not for issuance of notice. The provision of Rule 66 of the Pension Rules is clear, which provides that notice of voluntary retirement can be given at any time after completion of 20 years of qualifying service.

Admittedly, the petitioner did not have 20 years of qualifying service as on 31.12.1984, even if hypothetically service during 20.03.1965 to 15.07.1967 was to be counted as qualifying service. We have already held that the said service from 20.03.1965 to 15.07.1967 cannot be counted as qualifying service. It is, thus, clear that the petitioner did not have 20 years of qualifying service as on 30.12.1984 and was not eligible to give a notice of voluntary retirement under Rule 66 of the Pension Rules.

20. Now we deal with various judgments relied upon by Dr. Deshpande in support of his contention that the resignation could be treated as voluntary retirement. In *Sheelkumar Jain* (supra) appellant therein had rendered 28 years of qualifying service. The Supreme Court in para No. 10 of the judgment has observed, “*In the facts of the present case, we find that the appellant had completed 20 years qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave service and the appointing authority had accepted notice of appellant and relieved him from service.*” In the present case, the petitioner did not complete 20 years of qualifying service before submitting notice dated 30.12.1984 and the decision is thus clearly distinguishable.

21. In the case of *Shashikala Devi* (supra), the petitioner therein had completed 34 years of qualifying service. This aspect was considered by the Supreme Court in para No. 16.1 of the judgment. Further in para No. 16.2 the Supreme Court considered the circumstances namely the poor health condition,

on account of which the employee was required to tender his resignation. On both counts, the decision is clearly distinguishable.

22. In *Sherro Shapurji* (supra), the employee therein had completed 26 years of qualifying service and had tendered resignation on account of ill health. The reason of ill health was clearly stated in the resignation letter. It is in the facts of the case, the Court proceeded to treat resignation as voluntary retirement.

23. Thus the common thread that runs across the three judgments relied upon by Dr. Deshpande is that the employees therein had undisputedly rendered more than 20 years of qualifying service required for giving notice of voluntary retirement. The employees were constrained to tender notice of resignation on account of unique circumstances that existed in each case. Both the factors, of completion of more than 20 years of qualifying service as well as circumstances in which resignations were tendered, were taken into consideration by the respective Courts. The resignations were treated as voluntary retirement in those cases essentially on account of the fact that the employees therein had undisputed right to tender notice of voluntary retirement. In the present case, there is serious dispute as to whether the petitioner had completed 20 years of qualifying service as on 30.12.1984 and whether he had right to give notice of voluntary retirement. Therefore, all the three decisions relied upon by Dr. Deshpande are clearly

distinguishable. On the contrary the judgment of this Court in case of *Dr. Suhas Digambar Herlekar* (supra), it has been held as under :

31. In our opinion, the language of Rule 66 is very clear and leaves no manner of doubt that for a voluntary retirement to take effect, the procedure laid down in Rule 66 has to be followed. Moreover, voluntary retirement becomes effective from the date of expiry of notice period of three months, unless on a request made in writing to the appointing authority, which decides to accept notice of voluntary retirement of less than three months giving reasons therefor, in which case the period can be curtailed.

32. As per clause (2) of Rule 66, the notice of voluntary retirement requires acceptance by the appointing authority and the appointing authority can refuse to grant permission as per proviso to clause (2) of Rule 66. It is only when 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. From the materials on record, it is apparent that the intention of the petitioners was to resign from service. It is not as if the petitioners have given notice of three months and made a request in writing to the appointing authority to accept the resignation before expiry of three months giving reasons therefor. For that would have enabled us to juxtapose Rule 66 with the facts of the present case to come to a conclusion that the essential components of Rule 66 stand substantially fulfilled. As can be seen from the narration, none of the essential components of Rule 66 are fulfilled or substantially fulfilled, for even then it may have been possible for us to consider the 'resignation' as 'voluntary retirement' in view of the law laid down by the Apex Court in the case of *Asger Ibrahim Amin* (supra). In this view of the matter, we are unable to persuade ourselves to accept the submission of the learned Counsel for the petitioners that the present case is squarely covered by the decision of the Apex Court in the case of

Asger Ibrahim Amin (supra).

34. We find Rule 26(1) and (2) of the Central Civil Services (Pension) Rules, 1972 are *pari materia* provisions to Rule 46(1) and (2) of the Maharashtra Civil Services Rules. This decision of the Apex Court in the case of Union of India and ors. Vs. Braj Nandan Singh squarely covers the controversy in the present case. Thus, applying the very same analogy adopted by the Apex Court while construing Rule 26(1) and (2) of the Central Civil Services (Pension) Rules, 1972, we have no hesitation in holding that the language of Rule 46 is also couched in mandatory terms. Rule 46 of the said Rules in clear terms provide that resignation from a service or a post entails forfeiture of past service, unless it is allowed to be withdrawn in the public interest by the appointing authority. Sub Rule (2) of Rule 46 is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the government where service qualifies. The language of Rule 46 is very clear and unambiguous. As observed by the Apex Court it is trite law that all the provisions of a statute have to be read together and no particular provision is to be treated as superfluous. It is further observed by the Apex Court that it is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As observed in *Crawford v. Spooner* (1846) 6 Moo PC 1, Courts, cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words

into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

24. We therefore find it difficult to accept the contention of Dr. Deshpande that the notice dated 30.12.1984 was a notice of voluntary retirement.

25. Coming to the second ground of rejection namely non counting of service during 20.03.1965 to 15.07.1967 as qualifying service, it is undisputed that the said service was not regular or permanent. The petitioner was not even placed in regular pay scale during that period and was drawing merely a fixed pay. **Furthermore, the petitioner tendered the resignation in respect of the said service attracting the provisions of Rule 46 of the Pension Rules.** Even though Dr. Deshpande attempted to contend that the said reason for resignation in respect of service from 20.03.1965 to 15.07.1967 is not to be found in the impugned order dated 27.07.2016, but the petitioner cannot run away from the reality that he did tender resignation and did not make any efforts to get the service counted as qualifying service after joining respondent No. 5 school. It is too late in a day, while considering the issue of treatment of notice of resignation as notice for voluntary retirement, to also go into the question as to whether the service from 20.03.1965 to 15.07.1967 can be counted as qualifying service. In fact, there is no specific prayer in the present petition for counting that period of service as qualifying service.

26. We have already considered case of the petitioner on merits

and ordinarily, therefore, we would not have gone into the issue of delay in raising the claim for pension. However since the claim for pension is raised by him for the first time after lapse of 30 long years, it would be useful to make a reference to the judgment of this Court at its Principal seat at Bombay **dated 08.09.2021 in Writ Petition No. 8470 of 2019** in case of **Shri Maruti R. Wankhede Vs. Union of India and others**, in which this Court, after considering the entire law on the subject of continuous cause of action with regard to right to receive pension, has summarized the principles in para No. 12 which reads thus :

12. It would be proper for us, at this stage, to summarize the propositions of law deducible from the authorities cited at the bar and those considered therein for the purpose of consideration of its application to the present case. They are:

(I) When an order is passed by a Court/Tribunal to consider or deal with a representation of an individual raising a stale or a dead claim and such claim is rejected even on merits on an impression that failure to do so may amount to disobedience of the order of the Court/Tribunal, such an order does not revive the stale or dead claim, nor amount to some kind of "acknowledgment of a jural relationship" to give rise to a fresh cause of action. [C. Jacob (supra)];

(ii) Disposal of proceedings by seemingly innocuous orders directing consideration of representation though result in quick or easy disposal of cases in overburdened adjudicatory institutions but such orders do more disservice than service to the cause of justice. [P. Venkatesh (supra)];

(iii) Denial of pay fixation of an employee, while he is in service, not in accordance with the rules resulting in payment of a quantum of salary not computed in

accordance with the rules can give rise to assertion of a continuing wrong against such act giving rise to the cause of action each time he is paid less than his entitlement and so long as such employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of such wrong computation. [M.R. Gupta (supra)];

(iv) Even if a delayed claim relating to disability pension is found to be of substance on merits and succeeds, the arrears should be restricted to three years prior to filing of the writ petition. [Tarsem Singh (supra)];

(v) When the issue relates to fixation of salary or payment of any allowances, the challenge is not barred by limitation or doctrine of laches, as the denial of benefit occurs every month when the salary/allowances are paid thereby giving rise to a fresh cause of action based on continuing wrong. [Yogendra Shrivastava (supra)]; and

(vi) If a petition is filed beyond a reasonable period, say three years, normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.[Shiv Dass Vs. Union of India, reported in (2007) 9 SCC 274].

27. Applying the above principles, it would be difficult to accept the proposition that merely because the pension proposal of the petitioner was decided by the respondent No. 2 by communication dated 27.07.2016 a cause of action got created in favour of the petitioner to file the present petition. However, as stated earlier, considering the advance age at which the petitioner filed the present petition and the fact that he unfortunately expired during pendency of the writ petition, we consider it appropriate to consider the claim of the petitioner on merits rather than dismissing it only on the ground of delay and laches.

28. We therefore do not find any merit in the petition. It is accordingly dismissed without any order as to costs. Rule discharged.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/July 22