

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

977 WRIT PETITION NO.9806 OF 2018

**ANIL VISHNU JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner:

**Mr. A. R. Syed h/f. Mr. Brahme Shailesh P.
AGP for Respondent Nos.1 to 3: Mr. S. G. Karlekar
Advocate for Respondent Nos.4 & 5:
Mr. S. N. Pagare**

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**CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATE: 03rd MARCH, 2022

PER COURT:

1. The grievance of the Petitioner is that the past service rendered by him is not considered for the purpose of pension.

2. From the facts on record it appears that the Petitioner was appointed in the year-1991 as a X-ray Technician with the Respondent / Institution. He continuously worked for 4 years. After 1994, the students were not available as such no work was allotted to the Petitioner. The Petitioner was again appointed as Lab Technician in 1999. On

attaining the age of superannuation in August-2002 the Petitioner had retired. The services rendered by the Petitioner since 1991 are not counted for the purpose of pensionary benefits on the ground that since 1994 to 1999 the Petitioner did not perform any duty.

3. Mr. Pagare, the learned Advocate and Mr. Karlekar, the learned A.G.P. submits that the Petitioner has not worked for the period after 1994 till 1999. Thereafter, the Petitioner accepted a fresh appointment from the Institution. As such, as there is break in service from 1994 to 1999. The past services of the Petitioner cannot be considered. The Petitioner on his own volition accepted the fresh appointment in the year-1999 of a different post. The impugned order cannot be faulted with.

4. It is not disputed by the learned Counsel for the parties that the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Maharashtra

Employees of Private Schools (Conditions of Service) Rules, 1981 are applicable in the present matter.

5. It is also not disputed that the Petitioner was appointed on 20.06.1991 on 100% grant-in-aid post as a X-ray Technician. It is also not disputed that the Petitioner continuously rendered service up to the year-1994. The Petitioner became deemed permanent. Because of the non availability of the students the Petitioner in fact was rendered surplus. It was the duty of the Management to submit the proposal for absorption of the Petitioner and Respondent Nos.2 and 3 ought to have taken decision to absorb the Petitioner in consonance with Rule 26(2)(iii) of the MEPS Rules, 1981. The Respondents failed to adhere to it. Again on or about 01.03.1999 the Petitioner was appointed as Lab Technician and in August-2002 retired on attaining the age of superannuation. On and from 21.06.1994 to 28.02.1999 the Petitioner was not having work. The report of the Deputy Director (Vocational Education and Training)

suggests that from 21.06.1994 to 28.02.1999 the students were not admitted, the Petitioner used to remain present in the Institution and used to sign the muster. At the relevant time, the Petitioner could not be absorbed in other place and this fact is admitted by the Institution and as such his services were continued. The services of the Petitioner were never retrenched or terminated. The Petitioner certainly was in service with the Institution but was not paid salary during the period as work was not available.

6. Again from 01.03.1999 the vacancy arose because of the retirement of one Mr. Odhekar and he was given the order on 01.03.1999 to join in place of Mr. Odhekar.

7. In fact, as per Rule 26 of the MEPS Rules, 1981 the Petitioner would be entitled for the salary for the period the Petitioner was surplus though was not absorbed in any other Institution. However, the same is not an issue in

the present matter nor we are inclined to consider the same at this stage.

8. The Petitioner certainly would be considered to be in service from the year-1991 i.e. since the date of his initial appointment till the date of retirement upon the superannuation i.e. August-2002. The services of the Petitioner shall be considered continuous from 1991 till the date of his superannuation for all purposes except the Petitioner now would not be entitled for the salary for the same period and as the claim has also not been made for that.

9. In the light of above, the impugned communications are set aside. The Respondents shall consider the services of the Petitioner from 20.06.1991 till the date of his retirement continuously for the purpose of pension and retiral benefits.

10. The Management shall forward the pension proposal of the Petitioner within a period of four

(04) weeks from today. The said pension proposal shall be processed accordingly within a period of three (03) months from the date of receipt of the proposal by the Authority.

11. The Writ Petition is accordingly allowed.

12. The Writ Petition accordingly stands disposed of.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

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