

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6890 OF 2018

K. V. Kumaran

..Petitioner

V/s.

The State of Maharashtra and Ors.

..Respondents

Mr. Ramesh Ramamurthy a/w. Mr. Saikumar Ramamurthy for the
Petitioner.

Mrs. P. N. Diwan, AGP for Respondent Nos.1 and 2-State

Mr. Samarth R. Moray for Respondent No.3.

**CORAM : SUNIL B. SHUKRE AND
G. A. SANAP, JJ.**

DATE : 21 MARCH 2022.

P. C.

Heard. Rule. Rule is made returnable forthwith by
consent of the parties.

2. This is a case wherein it is quiet clear that the petitioner, having tendered his resignation from the services of Respondent No.3 and his resignation letter having been accepted by Respondent No.3, would not be entitled to receive any benefit of Pension and gratuity. Rule 46 (1) of the Maharashtra Civil Services Pension Rules, 1982 is clear. It states that resignation from service or post would entail forfeiture of past service. It only means that resignation tendered by an employee and accepted by an employer, would result in forfeiture of past service rendered by an employee and thus benefit of pension and gratuity to such an employee cannot be given. It may be clarified here

that as per Rule 9(37) of the Maharashtra Civil Services General Conditions of Service Rules 1981 pension includes gratuity.

3. Learned counsel for the Petitioner invited our attention to the approval granted on 8/1/2010 by Respondent No.1 to the continuity of service of the petitioner. By this approval (page No.127) the Technical Education Director, State of Maharashtra has granted this approval to continuity in service to the petitioner. The petitioner was initially appointed as a Lab-cum-Drawing Assistant in 9/10/1968 in VJTI and since the petitioner switched over his service in Respondent No.3-Institute as a Lecturer after obtaining due permission from the erstwhile employer of VJTI, Respondent No.1 thought it fit to accord approval to the continuity in service to the Petitioner.

4. This has been done in terms of Rule 46 (2) of said Rules, 1982. But, granting of such continuity in service would not mitigate in any manner the consequences that followed after acceptance of resignation tendered by the petitioner to Respondent No.3. Of course, the petitioner in his resignation letter had also made a request for considering his resignation as an application seeking permission to voluntarily retire from the services of Respondent No.3.

5. While accepting the resignation submitted by the petitioner, Respondent No.3 made it clear that as the petitioner had resigned from the post of Head of the Department there would not be any question of reserving any option at a later date for being part of

voluntary retirement scheme. Not only that, while accepting resignation, respondent No. 3 also informed the petitioner that his retirement dues would be paid after adjusting the three months pay in lieu of notice. The Petitioner had tendered his resignation on 12/1/1995 and acceptance of resignation was on 13/1/1995. In his resignation letter the petitioner had also made a request for his being relieved at the earliest possible time and the petitioner also made a further request to pay to him basic pay in lieu of notice period as per Rules. These specific words with particular requests made in the resignation letter has made the intention of the petitioner very clear. The petitioner intended to resign from service with immediate effect and thus, the Petitioner undertook to pay basic pay in lieu of notice period as per Rules. So, the application of resignation by the Petitioner is in clear terms and its acceptance by Respondent No.3 on 13/1/1995 is also in clear terms. This has resulted in forfeiture of past service of the petitioner by virtue of the consequences stated in Rule 46(1) of said Rules, 1982.

6. After forfeiture of past service of the petitioner, what remains is only the issue of payment of provident fund to the petitioner as per Rules. For that matter, we would say that Respondent No.1 having already granted continuity in service to the Petitioner vide its letter dated 8/1/2010, the Petitioner would be entitled to receive the benefit of contributory provident fund as per Rules. But, except this benefit, the petitioner would not be entitled to receive anything else.

7. In the result, we find no substance in the Petition. The Petition is therefore, dismissed. However, we direct Respondents to make available to the petitioner all the benefits of contributory provident fund scheme as per applicable Rules, especially when the petitioner has already complied with the requirement of deposit of his contribution with interest from 26/11/2009. The benefits of contributory provident fund scheme, if any, shall be paid to the petitioner within a period of 3 months from the date of receipt of the order.

8. Rule is discharged. No costs.

(G. A. SANAP, J.)

(SUNIL B. SHUKRE, J.)