

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

**REVIEW APPLICATION (CIVIL) NO.83 OF 2018
IN
WRIT PETITION NO.12061 OF 2016**

**WITH
CIVIL APPLICATION NO.4133/2023
IN
REVIEW APPLICATION NO.83 OF 2018**

**SIDDIQUI AMINODDIN GULAM RASOOL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Applicant : Shri Anand V. Patil Indrale
AGP for the Respondents/State : Shri P.S. Patil
...

**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 28th March, 2023

Per Court :-

1. The grounds raised by the Petitioner in this Review
Petition are set out in paragraphs 3 to 9, which read as under:-

“03. The petitioner states that, this Hon'ble Court while passing the order dated 05th December, 2016 has not considered the provision of Rule 47 of the Maharashtra Civil Services (Pension) Rules, 1982, particularly, Clause - (b) and Sub-rule 2 of Rule 47. Inasmuch as, as per the said rules, the earlier service of petitioner cannot be forfeited and the respondents may have treated

the absence of petitioner without leave as extraordinary leave. In that view of the matter, the impugned order passed by this Hon'ble Court deserves to be reviewed in the interest of justice.

04. *The petitioner further says and submits that, it is pertinent to note that, the contention and stand of respondents regarding abandonment of service of petitioner as he was absent from duty from the year, 1980 till attaining the age of superannuation is concerned, it is necessary to consider the Circular dated 20th May, 1977 issued by the Government of Maharashtra. As per said circular, it is contemplated that, if a Government servant tenders resignation and his resignation is not accepted but he remains absent then it is open to the competent authority to treat the period from date of absence to the date of acceptance of the resignation as leave without pay or an unauthorized absence or to take suitable department action for his unauthorized absence. Hence, as per the aforesaid circular no action being taken against the petitioner, while he was absent, it is not open for the respondents to contend that, the earlier service of petitioner has been forfeited in absence of any opportunity of hearing to the petitioner. In that view of the matter, the impugned action of respondents being per- se illegal is violative of Article 311 of the Constitution of India. The copy of circular dated 20th May, 1977 is annexed herewith and marked as ANNEXURE-"P-2".*
05. *The petitioner says and submits that, the above aspect of the matter has been specifically raised by the petitioner in the writ petition, however, same has not been considered in the impugned order.*
06. *The petitioner further says and submits that, in the facts and circumstances of the case, the*

respondents are not entitled to contend that, the past service rendered by petitioner is forfeited for grant of pensionary benefits, since, admittedly, after the petitioner tendered his resignation in the year, 1980, same was neither accepted nor rejected till the petitioner attained the age of superannuation in the year, 2003. In that view of the matter, the petitioner is entitled for pensionary benefits by considering his earlier service as per law. This material aspect of the matter has not been considered and appreciated by this Hon'ble Court while passing the impugned order; therefore, the impugned order deserves to be reviewed.

07. *The petitioner says and submits that, the petitioner is entitled for benefit of Rule 48 and 63 of Maharashtra Civil Services (Leave) Rules, 1981. Since, as per the said rules for willful absence from duty after the expiry of the leave renders the Government servant liable to disciplinary action, however, in the present case no such action is taken against the petitioner till he attained the age of superannuation. Hence, in the present case, the petitioner is entitled for pensionary benefits for the qualifying service rendered by him.*
08. *The petitioner respectfully says and submits that, in the light of above stated facts and circumstances; he is approaching this Hon'ble Court by way of present review application. Considering the grounds raised in the review application, it would be in the interest of justice to review the order dated 05th December, 2016 passed by this Hon'ble Court.*
09. *The petitioner states that, considering the grounds raised in the review application, it is clear that, the respondents are vested with the powers to submit appropriate proposal with the Government for treating the absence period of petitioner as extraordinary leave as per the Circular dated 12th August, 1994, however,*

without following the said course, the respondents have unilaterally concluded that, the earlier service rendered by petitioner is forfeited in absence of any legal and justifiable reason.”

2. We have considered the strenuous submissions of the learned Advocate for the Review Petitioner/ original Petitioner. Reliance is placed on the circular dated 20.05.1977 issued by the General Administration Department, Government of Maharashtra, pertaining to “*Resignation from Government Service, Acceptance, Procedure and Various other conditions*”. More particularly, the Petitioner points out clause 6 of the circular, which reads thus:-

“6. *If the person is on duty, he is not to be relieved till his resignation is accepted. But if he remains absent and tenders resignation. it is open to the competent authority to treat the period from the date of absence to the date of accepting the resignation as Leave without Pay or as unauthorised absence or to take suitable departmental action for his unauthorised absence.”*

3. It is contended that after the Petitioner was employed on 26.05.1964 as a Soil Conservator, he was on medical leave from 05.08.1975 till 03.09.1975. He claims to have sought continuation of medical leave by an application,

which was tendered on completion of three years after the earlier medical leave. Admittedly, the Petitioner was away from duties for a period of 10315 days (Ten Thousand Three Hundred Fifteen days) between 05.07.1975 till 31.10.2003. He tendered a resignation letter for seeking a voluntary exit, on 04.07.1980. His resignation was, according to the Management, not accepted. According to the Petitioner, there was no communication whether, the same has been allowed or not.

4. The Petitioner had approached this Court in Writ Petition No.1085/2010 on the ground that his representation dated 07.07.2007 was not decided. By an order dated 22.02.2010, the Writ Petition was disposed off expecting the Respondents to dispose off the representation of the Petitioner within three months.

5. The Petitioner approached the learned Maharashtra Administrative Tribunal by preferring Original Application No.407/2014 challenging the order dated 20.05.2010 passed by the competent authority, which was after the order of this Court dated 22.02.2010. By the judgment dated 08.06.2015, the Original Application was dismissed and the Petitioner was granted liberty to make an application for payment of gratuity.

6. Thereafter, the Petitioner approached this Court in Writ Petition No.12061/2016. The grievance that was raised in Writ Petition No.12061/2016, which is practically after 36 years of the Petitioner's resignation, is that an enquiry was not conducted in the purported absence of the Petitioner for a period of 28 years in between 05.07.1975 to 31.10.2003. It is not controverted that the Petitioner had not worked during this period, had not discharged his duties and had not marked his presence. This Court has recorded in its order dated 05.12.2016, which is sought to be reviewed, that as the Petitioner did not turn up to the place of work after 05.07.1975 for a period of 28 years, it was deemed that he has abandoned the service.

7. It would be far fetched to expect that the employer would keep pursuing the employee to report for duties. It is the bounden duty of the employee to report for duties since he can earn salary only if he performs his duties. When he has disappeared for 28 years, it would be too much to expect from the employer to pursue the employee to report for duties or conduct an enquiry as to why he was absent for 28 years.

8. In view of the above, we do not find that the order sought to be reviewed suffers from any error apparent on the face

of record. **The Review Petition is, therefore, dismissed.**

9. The pending Civil Application does not survive and stands disposed off.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)