

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

WRIT PETITION NO.1285 OF 2024

Dr. Rajiv Haribhau Pawar	] .. Petitioner
Vs.	
1. The State of Maharashtra,	]
Through Public Health Department	]
2. The Additional Secretary,	]
Public Health Department	]
3. The Director General of Health Services	]
4. The Deputy Director of Health Services	]
5. The District Civil Surgeon, Satara	]
6. The Medical Superintendent,	]
Sub-District Hospital, Karad, Satara	]
7. The Desk Officer,	]
Public Health Department	]
8. The Deputy Director,	]
Health Services, Pune	] .. Respondents

Mr. N.V. Bandiwadekar, Sr. Advocate, with Mr. Kirankumar Phakode and Mr. Rajendra Khaire, i/by Mr. Sagar A. Mane, for the Petitioner.
Mr. N.C. Walimbe, Addl. G.P., with Smt. Priyanka B. Chavan, AGP for the Respondent-State of Maharashtra.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 11TH MARCH, 2024.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. RULE. Rule made returnable forthwith and heard learned counsel for the parties.

2. The challenge raised in this writ petition is to the judgment of the Maharashtra Administrative Tribunal dated 23rd August 2023 by which the Original Application preferred by the petitioner challenging the communication dated 19th November 2019, thereby rejecting the request

for voluntary retirement on the ground that the petitioner has not rendered qualifying service of twenty years, came to be dismissed on the ground that the petitioner had a long history of absenteeism.

3. We have heard the learned Senior Advocate for the petitioner and the learned Additional Government Pleader for the respondent-State of Maharashtra. It is not in dispute that the petitioner was appointed on ad-hoc basis on 2nd August 1991 and he served as such till 14th June 1995. Though his service was ad-hoc in nature, the petitioner was selected through the Maharashtra Public Service Commission and immediately joined his duties. In this context, Rule 33 of the Maharashtra Civil Services (Pension) Rules, 1982 is required to be taken into consideration.

4. During the period from 16th October 1998 to 31st May 2000, the petitioner remained absent from the duty. By an order dated 7th November 2008, his period of absence was treated to be as extra-ordinary leave without pay. A further period of absence from 21st March 2010 to 9th March 2015 has also been treated to be leave without pay by virtue of the order dated 9th March 2015. In this context, the provisions of Rule 35 of the Rules of 1982 are relevant and the said Rule is also required to be taken into consideration.

5. It is seen from the impugned order that except for referring to the absenteeism of the petitioner, there is no consideration of the aforesaid aspects and the effect of the same on the petitioner's request for grant of pensionary benefits. This is clear on a reading of paragraphs 8 and 9 of the impugned judgment. We find that the Rules of 1982 have to be considered in their entirety and especially Rules 33 and 35 thereof.

6. Since we find that these relevant aspects have not been gone into by the Maharashtra Administrative Tribunal, it would be necessary to direct reconsideration of the petitioner's prayer. Hence, for aforesaid reasons, we pass the following order :-

- (i) The judgment of the Maharashtra Administrative Tribunal in Original Application No.350 of 2022 dated 23rd August 2023 is set aside.
- (ii) The proceedings are remitted to the Tribunal for a fresh consideration in the light of the observations made hereinabove.
- (iii) The petitioner is at liberty to amend the Original Application by raising additional grounds. The petitioner is at liberty to place on record additional documents before the Maharashtra Administrative Tribunal. Similarly, the respondents are also at liberty to file additional affidavit, if found necessary.
- (iv) The Original Application be decided on its own merits in accordance with law expeditiously.

7. Rule is made absolute in the above terms with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]