



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 2628 OF 2024

(Kishor Narayan Borkar Vs. The State of Maharashtra and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.P. Joshi, Advocate for petitioner.

Mr. A.V. Palshikar, AGP for respondent Nos. 1,2,5 to 7/State.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATED : 04-02-2025

The petitioner who was working as a Warden with respondent No. 4 from 1990 till 2.7.2015, when he took voluntary retirement, has been denied pension on the ground, that the respondent No. 4 was put on 100% grant in aid on 4.1.1996 and therefore, the employment of the petitioner as a Warden from 1.6.1990 to 4.1.1996 could not be taken into consideration. If the period between 1.6.1990 to 4.1.1996 is ignored, the petitioner would be completing 19 yrs and some months and therefore, would be short of approximately 6 months for completing the qualifying service, in terms of Rule 30 of the Maharashtra Civil Services (Pension) Rules. It is therefore, necessary to consider the language of Rule 30, which reads as under:

“(30) Commencement of qualifying service.

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:

[Provided further that, in cases where a

temporary Government servant retires, on Superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of Superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.]

Exception-

The rules regarding grant of terminal benefits to temporary Government servants [except those mentioned in the second proviso] who retire being confirmed in any post in Government service are embodied in Appendix II.

A perusal of Rule 30 would indicate that what is material is the employment of an employee in a post, either substantively, or in an officiating or temporary capacity, the proviso contemplating that at the time of the retirement he holds substantive or permanent post in the government service. In so far as the proviso is concerned, it is not disputed by Mr. Palshikar, the learned AGP that at the time of taking voluntary retirement on 2.7.2015, the petitioner was holding a permanent post with respondent No. 4 which was then 100% grant in aid institution.

2. It is further material to note, that Rule 30, does not make any distinction dependent upon whether an institution was on grant in aid or non grant basis in which post was held. What is material is the holding of post in the capacity as indicated in Rule 30 and not the grant or non-grant of any aid. We are supported in this view, by what has been held in ***Sister Ansela D'mellow and anr Vs. The State of Maharashtra and ors***

(Writ Petition St. No. 9011/2017) decided on 16.4.2019. In that view of the matter, since there is no dispute that the post occupied by the petitioner for the duration 1.6.1990 to 4.1.1996, was a permanent post and the petitioner was appointed in a substantive capacity then, the denial of consideration of that period, for the purpose of determining the pensionable service, cannot be justified. In that view of the matter, the impugned communication dated 31.7.2023 (page 60), which denies pension to the petitioner on the ground that the petitioner does not complete pensionable service on account of exclusion of the aforesaid duration, cannot be justified and sustained and is hereby quashed and set aside. The respondents are therefore, directed to calculate the pensionable service of the petitioner by taking into account the aforesaid duration and ensure that the pension is released within a period of six weeks from today. The petition is accordingly allowed in the above terms. No costs. The claim for interest, is turned down on account of the delay on part of the petitioner to approach this Court.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)