



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

**WRIT PETITION NO. 3813 OF 2024**

Dilip Laxman Bhimte,  
Age – 53 years, Occ.: Retired,  
R/o C/o Smt.Ravikanta Bai Surendra Meshram,  
Mukkam Post Bisoni,  
Tehsil Lanji, Zilla Balaghat,  
M.P. 481222.

.....PETITIONER

**-VERSUS-**

1. State of Maharashtra,  
Rural Development Department, Mumbai,  
Through Secretary, Bandhkam Bhavan, 25,  
Mezban Path, Fort, Ballard Estate, Fort,  
Mumbai, Maharashtra-400001.
2. Zilla Parishad Gondia,  
through Chief Executive Officer,  
Zilla Parishad, Gondia-441601.
3. Education Officer Primary,  
Zilla Parishad Gondia-441601.
4. Block Education Officer,  
Panchayat Samiti Sadak Arjuni,  
Tehsil Sadak Arjuni,  
District Gondia-441807.

.....RESPONDENTS

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Mr. S.I.Khan, Adv. for the petitioner.  
Mr. A.M.Kadukar, AGP for the respondents-State.  
Mr. A.M.Dixit, Adv.for the respondent Nos.2 to 4.  
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**CORAM : AVINASH G. GHAROTE &  
ABHAY J. MANTRI, JJ.**

**DATE : 21<sup>ST</sup> APRIL, 2025**

**ORAL JUDGMENT (PER : AVINASH G. GHAROTE, J.)**

Heard.

2. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. The petitioner, who was appointed as an assistant teacher with the respondent No.3-zilla parishad on 03/09/1997, tendered his resignation from the post of assistant teacher by the communication dated 01/11/2019 (Pg.25) on the ground, that though a departmental enquiry had been initiated against him, the same was not progressing in any manner whatsoever, which was leading to severe mental pressure, in view of which, he was unable to perform his duties as an assistant teacher. This resignation came to be accepted by the respondent No.3 on 20/03/2019 (Pg.30). The petitioner, thereafter on 18/03/2022 (Pg.34) made an application for withdrawal of his resignation on the ground that it was incorrectly accepted, and since no action has been taken on this, the present petition has been filed, seeking a declaration, that the resignation dated 01/01/2019 be treated as an application for VRS. A relief is also sought for pensionary benefits, gratuity and leave encashment.

4. Mr.Khan, learned counsel for the petitioner submits, that the resignation was given by the petitioner, in the circumstances, as indicated therein, as there was no substantial progress in the department enquiry

initiated against him, which was causing serious severe mental strain to the petitioner on account of which he found himself unable to discharge his duties and therefore, in view of the language of rule 46(5) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short “MCS (Pension) Rules”), the petitioner was entitled to the benefit thereof being taken back in service. We are not able to agree with this plea for the reason, that there is no application by the petitioner under rule 46(5) in the first place. Secondly, rule 45(5) can be invoked, on compliance with the requirements as indicated in rule 46(4)(a) to (d). Rule 46(4)(c) indicates, that the period of absence from duty between the date on which resignation became effective and the date on which the person is allowed to resume duty, as a result of permission to withdraw resignation should not be more than 90 days, which would indicate, that any application for withdrawal of resignation, should be made within a period of 90 days, from the date on which the resignation is accepted. In the instant case, it is an admitted position, that the application for treating the resignation as an application for VRS, even presuming, that it could be so treated as an application for withdrawal of the resignation, had been made on 18/03/2022, which is beyond the aforesaid period, as contemplated by aforesaid period of 90 days and as contemplated by rule 46(4)(c) of the MCS (Pension) Rules, on account of which, we do not see any reason to accept this contention.

5. It is further contended by Mr.Khan, learned counsel for the petitioner, that even if the request of the petitioner either to treat the application for resignation as an application for VRS or resumption in terms of rule 46(4) of the MCS (Pension) Rules, is not considered, still the petitioner would be entitled for grant of all the benefits, which a person retiring from employment would be entitled, on account of the fact, that the petitioner was appointed on 03/09/1997, & has completed the qualifying service of 20 years in terms of rule 30 of the MCS (Pension) Rules, read with rule 46(1).

6. The learned counsel for the respondents submit that once the petitioner has resigned from the employment, there is no question of granting pensionary or other benefits as resignation, entails forfeiture of such benefits.

7. It is not in dispute, that the petitioner who was appointed on 03/09/1997 as an assistant teacher had submitted his resignation on 01/01/2019, which would indicate that the petitioner had put in more than 20 years of service, which otherwise in terms of rule 30 of the MCS (Pension) Rules entitles him to the retiral benefits. What is, therefore, necessary to consider, is whether rule 46(1) results in forfeiture of such benefits on resignation. The language of rule 46(1), therefore, being material, is necessary to be considered, which reads as under:-

**“46. Forfeiture of service on resignation.**

- (1) The Government Servant who is appointed as per the procedure prescribed in recruitment rules, resigns from service before completion of 5 years of qualifying service his service shall be forfeited.”

8. A perusal of the language of rule 46(1) would indicate, that forfeiture of the service, on account of resignation, would be the result, in case such employee resigns before completion of five years of qualifying service. This to us would indicate, that forfeiture, is contemplated, if the resignation is at any time prior to the completion of five years of qualifying service and in case the resignation is consequent thereto, the same would not entail forfeiture and the employee would be entitled to all the benefits, which such services, would provide him in terms of the rule applicable. Neither learned AGP Ms Khan for the respondents-State, nor Mr.Dixit, learned counsel for the respondent Nos.2 and 3, have been able to point out to us any rule in the MCS (Pension) Rules, which entails forfeiture of the entire benefits, which an employee would be otherwise entitled to receive, in case the resignation, is beyond the period of five years of qualifying service.

9. In the instant case, since it is not disputed that the petitioner was appointed on 03/09/1997 and therefore, as on the date of the resignation dated 01/01/2019 had already completed 20 years of employment, we find, that the language of rule 46(1) does not entail forfeiture of his

services, on his resignation, so as to dis-entitle him, from the benefits, which would otherwise accrue to him, on account of completion of qualifying service.

10. In view of the above discussion, we partly allow the petition, by directing the respondents to consider the claim, of the petitioner for grant of benefits on account of completion of the qualifying service in terms of rule 30 of the MCS (Pension) Rules, and grant the same, if there is no other impediment in that regard.

11. Rules is made absolute in the above terms. Considering the circumstances, there shall be no order as to costs.

**(ABHAY J. MANTRI, J)**

**(AVINASH G. GHAROTE, J)**