

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1024 of 2019 (SB)

J. Manoharan S/o K. Jegatheesan,
Aged 60 Years, Occu. Retired,
R/o C/o Anjela Netto Jeevan
Utkarsha Uttara, New Colony, Sadar, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Higher & Technical Education & Employment
Department, Mantralaya, Extension Building,
Mantralaya, Mumbai-32.
- 2) Director of Technical Education,
Maharashtra State, 3, Mahapalika Marg,
Mumbai-01.
- 3) Joint Director of Technical Education,
C/o Government Polytechnic Campus,
Mangalwari Bazar, Sadar, Nagpur-440 001.
- 4) Principal,
Government Institute and Hotel Management & Catering
Technology, C/o Government Polytechnic Campus,
Mangalwari Bazar, Sadar, Nagpur- 440 001.

Respondents.

Shri N.D. Thombre, Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 23rd March,2022.

Date of Pronouncement of Judgment : 1st April,2022.

JUDGMENT

(Delivered on this 1st day of April, 2022)

Heard Shri N.D. Thombre, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed on the post of Assistant Instructor (Bakery) in the Government Aided Institute namely Institute of Hotel Management and Catering Technology, Pune from 24/9/1980. Thereafter, he was appointed in the same Institute on the post of Lecturer in 1985. On 1/1/1993, the respondent no.1 has taken over the said Institute and same was renamed as Maharashtra State Institute of Hotel Management and Catering Technology, Pune. Thereafter, the services of applicant were absorbed vide Govt. G.R. dated 2/6/2008 on the post of Lecturer w.e.f. 1/1/1993 and was declared as a Government employee. The applicant was transferred to Nagpur and was working on the post of Lecturer with respondent no.4. The applicant is the original resident of Tamilnadu. He was absent from duty from 14/6/2004 to 12/4/2008 due to ill-health of his father. On 15/4/2008, applicant joined his duty, but he was not allowed to join his duty. On 17/6/2008, the applicant has given notice for grant of voluntary retirement. The respondent no.1 by order dated 27/12/2018 accepted the voluntary retirement of applicant with

retrospective effect from 18/6/2008. The applicant was declared retired w.e.f. 18/6/2008, but his pension was fixed on the pay scale based on 2004. Therefore, the applicant filed this O.A. for direction to the respondents to fix the pay as on 18/6/2008 according to 7th Pay Commission.

3. The application is strongly opposed by the respondents. It is submitted that applicant was absent for about four years without any intimation. The applicant had given application for voluntary retirement. It was accepted on 27/12/2018 with a specific condition that his leave period from 14/6/2004 to 17/6/2008, total 1465 days be treated as extra ordinary leave and that leave shall not be counted for pensionary benefits.

4. Heard Shri N.D. Thombre, learned counsel for the applicant. He has submitted that the applicant's voluntary retirement application was accepted on 27/12/2018 w.e.f. 18/6/2008. Therefore, the applicant is entitled for fixation of his pension as on 18/6/2008.

5. Heard Shri A.M. Ghogre, learned P.O. for the respondents. He has strongly objected the contention of applicant. He has pointed out the application for grant of leave (Page nos.67 to 72). The learned P.O. has submitted that the order dated 27/12/2018 is very specific. As per this order, voluntary retirement application given by applicant is accepted w.e.f. 18/6/2008 with specific condition that

extra ordinary leave granted from 14/6/2004 to 17/6/2008 total 1465 days shall not be counted for pensionary benefits as per the Rule 16 and 63 (1) of the Maharashtra Civil Services (Leave) Rules, 1981.

6. There is no dispute that applicant was absent for about four years. His leave of that period was granted as extra ordinary leave without pay with a specific condition that those leave shall not be taken into account for pensionary benefits. It is clear that from the year 2004, the applicant was not on duty and therefore pay fixation of his last pay of the year 2004, was taken into consideration. The applicant cannot claim that he shall be granted 7th Pay Commission by taking into consideration his duty in between 14/6/2004 to 17/6/2008. In that view of the matter, the following order -

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 01/04/2022

dnk.

(Justice M.G. Giratkar)
Member (J).

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 01/04/2022

Uploaded on : 04/04/2022*