

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 644 of 2020 (S.B.)

Shri Suresh S/o Ramchandra Shirbhate,
Aged about 68 years, Occ. Retired,
R/o Tilakwadi, Yavatmal, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Department of Revenue &
Forest, Mantralaya, Mumbai.
- 2) The Collector, Yavatmal, Dist. Yavatmal.
- 3) The Tahsildar, Wani, Dist. Yavatmal.

Respondents.

S/Shri G.G. Bade, P.P. Khaparde, Adv. for the applicant.

Shri A.M. Khadatkhar, P.O. for respondents.

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

Dated :- 24/11/2021.

JUDGMENT

Heard Shri G.G. Bade, Id. counsel for the applicant and
Shri A.M. Khadatkhar, Id. P.O. for the respondents.

2. The applicant was initially appointed as Muster Assistant
vide order dated 7/11/1979. He came to be absorbed and accordingly
joined on 20/07/2001 as Talathi in the Department of the respondent
no.3. The applicant retired on 31/7/2010 after attaining the age of

superannuation. The applicant worked as regular employee with the respondents for a period of 9 years, 11 days.

3. It is submitted that in similar situated person preferred the Writ Petition before the Hon'ble High Court, Aurangabad Bench. On 13/8/2015, the Hon'ble High Court, Bench at Aurangabad directed the department to condone the deficiency in service as per Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "MCS (Pension) Rules"). Thereafter, the Department granted pensionary benefits to one Shri Vitthal Kulkarni. Therefore, the applicant prayed to direct the respondents to condone the deficiency in service and grant pensionary benefits.

4. The application is strongly opposed by the respondents side. It is submitted that the applicant has not completed 10 years service and therefore he is not entitled for pensionary benefits.

5. Heard learned counsel for the applicant. He pointed out the Rule 54 of the MCS (Pension) Rules. He has also pointed out the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.2589/2012 along with other W.Ps., decided on 13/08/2015. The learned counsel has also pointed out the decision of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.4581/2019, decided on 12/02/2020 and submitted that in view of the Judgements of Hon'ble Bombay High Court, the applicant is

entitled for addition of service as per the Rule 54 (2) of the MCS (Pension) Rules.

6. Heard the learned P.O. He has submitted that as the applicant has not completed 10 years service, he cannot get benefit of Rule 54 of the MCS (Pension) Rules, therefore, he is not entitled for the pensionary benefits.

7. There is no dispute that the applicant has completed 9 years, 11 days regular service with the respondent department. The applicant joined as Talathi on 20/7/2001 in the Department of the respondent no.3 and he retired on 31/7/2010. The applicant has completed 9 years, 11 days regular service in the department of the respondents. The respondents have not granted the pensionary benefits on the ground that the applicant has not completed 10 years qualifying service.

8. The Rule 54 of the MCS (Pension) Rules reads as under –

(54) Condonation of deficiency and addition in service –

Government may, for special reasons to be recorded in writing –

(1) condone a deficiency, which may not ordinarily exceed one year, in the period of service qualifying for pension performed by a Government servant in order to qualify him to receive a Retiring Pension or to receive a pension as distinct from a gratuity; or

(2) make an addition, which may not ordinarily exceed one year, to the period of service qualifying for pension, performed by a retiring

Government servant which under the provisions of these rules may be counted for pension.”

9. The Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.2589/2012 along with other connected W.Ps. in paras-16 & 17 observed as under –

“16. It is submitted that, some of the petitioners qualifying service of pension is nine years and more and the respondent/State be directed to consider condoning one year service for grant of pension under Rule 54 of the Maharashtra Civil Services (Pension) Rules.

17. The petitioners may make representations to that effect with the respondent No. 1/State, which representations would be considered by the respondent No. 1/State sympathetically, considering the fact that, it was the State who was not in a position to absorb the petitioners well within time”.

10. In case of **Arun K. Dhobe Vs. State of Maharashtra & Ors.**, the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.4581/2019, decided on 12/02/2020 held in para-4 as under-

“4] The Deputy Director of Education has obviously judged the case of petitioner with reference to Clause – (1) under Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982. Obviously, it applies only in respect of low paid Government Servants retiring on Invalid or Compensation pension. The petitioner is not the low paid Government Servant. The petitioner is working as an Assistant

Teacher, which falls in Class-III post and would, therefore, be governed by Clause - (2) of Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 reproduced above, which enables the Competent Authority to make

addition, which may not ordinarily exceed one year, to the period of service qualifying for pension, performed by a retiring Government Servant which under the provisions of these Rules may be counted for pension. The petitioner is running short of five months and two days to complete the period of qualifying service of ten years for getting pension. The Deputy Director of Education shall examine the matter from this aspect of the matter”.

11. The applicant was working as Talathi on Class-III post. As per the observations of Hon’ble Bombay High Court, Bench at Nagpur in the case of **Arun K. Dhobe Vs. State of Maharashtra & Ors.**, it is clear that the Class-III post would be governed by Clause (2) of Rule 54 of the MCS (Pension) Rules, which enables the Competent Authority to make addition, which may not ordinarily exceed one year, to the period of service qualifying for pension, performed by a retiring Government Servant which under the provisions of these Rules may be counted for pension.

12. In the present case, the applicant has completed 9 years, 11 days continuous service with the respondents and nearabout one year service was short to get the pensionary benefits. As per the Rule 54 (2) of the MCS (Pension) Rules, the respondents can make an addition of one year to the service of the applicant, so that he can get the pensionary benefits. In view of above, the following order is passed –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The applicant shall move the representation before the respondent nos.1&2 praying addition of service as per the Rule 54 (2) of the MCS (Pension) Rules.
- (iii) The respondents are directed to decide representation of the applicant within a period of two months from the date receipt of the representation.
- (iv) No order as to costs.

Dated :- 24/11/2021.

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

dnk*.

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 : 24/11/2021.

Uploaded on : 25 /11/2021.