

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.660/2017.

(S.B.)

Dhanraj Mahadeo Gotekar,
Aged about 70 years,
R/o Guruji, 15-A, Panchsheel Housing Society,
Kashi Nagar, Rameshwari Nagar,
Nagpur-27.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Women & Child Development,
New Administrative Building, 3rd floor,
Mumbai-32.
2. The Commissioner,
Women & Child Development, Pune-1.
3. The Deputy Commissioner,
Women & Child Development,
Nagpur Region, Patankar Chowk, Nari Road,
Nagpur-26.
4. The Superintendent,
Govt. Karuna Hostel for Women,
Patankar Chowk, Nari Road,
Nagpur-26.

Respondents

Shri Bharat Kulkarni, the Ld. Advocate for the applicant.
Shri H.K. Pande. the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

JUDGMENT

(Delivered on this 4th day of July 2018.)

Heard Shri Bharat Kulkarni, the learned counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents.

2. The applicant in this case has retired as Tailoring Instructor from the office of respondent No.4 i.e. the Superintendent, Govt. Karuna Hostel for Women, Nagpur on 31.5.2005. He received a letter dated 12.5.2017 whereby his past temporary service on a fixed pay w.e.f. 12.2.1973 to 7.1.1985 has not been considered for pension. The applicant is, therefore, getting less pension.

3. According to the applicant, his service for the period from 8.1.1985 to 31.5.2005 has only been considered for pension. The applicant made a representation under Rule 49 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "the Pension Rules of 1982") dated 11.9.2007. The said representation was not properly considered. The respondent Nos. 1 and 2 took benefit of Rule 57 (b) of the Pension Rules of 1982 and not Rule 49 (i) of the Pension Rules of 1982 and wrongly calculated the pension of the applicant. Vide letter dated 29.3.2008,

the applicant again requested the respondents to correct the mistake. But it was of no use. The applicant has prayed that the impugned communication dated 12.5.2017 and a letter dated 29.3.2008 whereby the applicant's claim has been rejected by applying Rule 57 (b) of the Pension Rules of 1982 be quashed and set aside and it be declared that the period for which the applicant has worked on the establishment i.e. from 12.2.1973 to 7.1.1985 shall be considered for calculating pension as per Rule 49 of the Pension Rules of 1982.

4. In the affidavit in reply filed by the respondents, the respondents have defended the impugned communication. It is stated that the applicant was not a regular employee, but a temporary employee and, therefore, the services rendered by him w.e.f. 12.2.1973 to 7.1.1985 cannot be treated as pensionable service or in other words, said period cannot be counted as continuous service for the purpose of pension.

5. It is further stated by the respondents that, the applicant stood retired on 31.5.2005 and has filed this O.A. after twelve years and, therefore, the application is barred by limitation. The respondents also placed reliance on Rule 52 (b) of the Pension Rules of 1982. It shows that the services rendered by a Government servant who are not in receipt of pay, but are remunerated by

honoraria, cannot be treated as pensionable service. It is further stated that Rule 49 (i) of the Pension Rules of 1982 is not applicable.

6. The applicant filed rejoinder and denied that he was working on honoraria.

7. From the pleadings as aforesaid, it is clear that it is not disputed that, the applicant was working w.e.f. 12.2.1973 to 7.1.1985 on temporary basis and admittedly the applicant is also getting pension. Only question is the period of temporary service has not been counted as pensionable service. The learned counsel for the applicant submits that the applicant never worked on honoraria. But his appointment was on regular pay scale and, therefore, provisions of Rule 57 (b) of the Pension Rules of 1982 are not applicable.

8. I have perused the Rule 57 and particularly 57 (b) of the Pension Rules of 1982. Rule 57 of the Pension Rules of 1982 deals with non-pensionable service and it is an exception of Rule 30 of the Pension Rules of 1982. Since the applicant's prayer has been rejected on the ground that he falls within the ambit of Rule 57 (b) of the Pension Rules of 1982, the same is reproduced for the purpose of convenience as under:-

“R. 57 Non-pensionable service:

(b) Government servants who are not in receipt of pay but are remunerated by honoraria.

9. In order to apply Rule 57 (b) of the Pension Rules of 1982, it is necessary for the respondents to show that the Government servant i.e. the applicant was not in receipt of any pay, but has been remunerated by *honoraria*. The respondents could not place on record any document to show that the applicant was getting *honoraria* from the respondents for his service. On the contrary, the appointment orders in respect of the applicant clearly show that he was appointed in a particular pay scale. For example, while he was working at Multipurpose Community Centre at Nagpur as an Occupational Teacher, he was getting the pay scale of Rs.290-540 and so on. No document is placed on record to show that the applicant was getting honoraria and, therefore, the application of Rule 57 (b) of the Pension Rules of 1982, in the present case, is not legal.

10. The applicant is claiming relief under Rule 49 (1i) of the Pension Rules of 1982, which reads as under:-

“49. Service on establishment paid by piece-work treated as pensionable- The service of a Govt. servant employed on a fixed establishment

which is paid by piece-work may be treated as qualifying service :

(i) if he is employed not casually but as a member of a fixed establishment.”

11. In the present case, admittedly the applicant was not employed casually. But he was on temporary basis. Similar point has been dealt with by this Tribunal in O.A. No. 647/2015 in case of Smt. Damayanti Shriram Duratkar V/s State of Maharashtra and four others. The said judgment was delivered by the undersigned on 19th January 2018 at Nagpur Bench.

12. The applicant maybe benefitted under Rule 30 of the Pension Rules of 1982 and the relevant rule is as under:-

“30. Commencement of qualifying service:-
Subject to the provision of these rules, qualifying service of a Govt. 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.”

13. From the aforesaid rule, it is clear that even the services of an employee when he was first appointed either substantively or in an officiating or temporary capacity, can be considered for giving retiral benefits to the employee. In the present case, as already stated; the applicant was appointed on temporary

basis w.e.f. 12.2.1973 to 7.1.1985 and he was not appointed on *honoraria* basis and, therefore, Rule 30 of the Pension Rules of 1982 should have been applied to the applicant's case. In any case, rejection of applicant's claim by applying Rule 57 (b) of the Pension Rules of 1982, is definitely not legal and proper, since the applicant was not appointed on *honoraria* basis.

14. The learned P.O. submitted that the applicant has filed this O.A. after twelve years of his retirement. However, it seems that the applicant's claim has been rejected vide communication dated 12.5.2017 and 29.3.2018. The claim for pension is a continuous claim and, therefore, it cannot be said to be barred by limitation. It is the duty of the Government to pay proper pension to the employee and cause of action for such claim is continuous. Since the matter is being decided on merit, it will not be proper to consider the question of limitation at this juncture. Hence, I proceed to pass the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned communication dated 12.5.2017 with Government letter dated 29.3.2008 stand quashed and set aside.

- (iii) The respondents are directed to consider the service period of the applicant w.e.f. 12.2.1973 to 7.1.1985 for giving pensioner benefits as per the provisions of Rule 30 read with Rule 49 of the Pension Rules of 1982 and to re-consider the pension case of the applicant within a period of **three months** from the date of this order.
- (iv) The respondents shall also pay the arrears, if any, on account of such revision of pension as aforesaid to the applicant.
- (v) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)
4.7.2018.