IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.319 OF 2016

DISTRICT : PUNE

Dr. Narayan Dadasaheb Patil.)
Retired Professor and Head of the Department,)
B.J. Medical College, Pune and residing at)
Dhanoza Bk., Taluka : Ambejogai, Dist.: Beed.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education, Mantralaya,)
Mumbai – 400 032.)

2. The Director of Medical Education &)
Research, St. Georges Hospital Compound)
CST, Mumbai – 400 001.)

3. The Dean.)
B.J. Medical College, Pune.)**…Respondents**

Mr. R..M. Kolge, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 01.07.2019

JUDGMENT

1. The Applicant has challenged the order dated 31st January, 2011 issued by Respondent No.1 thereby rejecting his application to treat his earlier period of service for computation of pension.

2. Shortly stated facts are as follows :-

The Applicant was appointed as Blood Transfusion Officer by Director, Health Services, Mumbai on temporary basis by order dated 8th May, 1972 until further orders. After break, again he was appointed by another order dated 05.01.1973 for the period of one year or till the appointment of regular candidate through Maharashtra Public Service Commission (MPSC) whichever is earlier. Thus it was also temporary appointment. Then, he was transferred to J.J. Hospital as Medical Officer. In 1978, he was nominated through MPSC and by order dated 6th June, 1978, he was appointed on the post of Lecturer in Grant Medical College, Mumbai. He stands retired on 31.12.1996 on attaining the age of superannuation from B.J. Medical College, Pune. After retirement, he made representation on 06.12.2004 to count his earlier service from 02.02.1972 till 06.06.1978 for pension purposes and to condone the break in service in between the said period. There was break in service from 02.02.1972 to 09.05.1972 for 96 days and again from 22.04.1977 to 13.06.1977 for 53 days. Thus, there was total break of 149 days in temporary service prior to his appointment through MPSC. However, the Respondent No.1 rejected the representation of the Applicant on the ground that interruption of break in service cannot be condoned, as the appointment of the Applicant during the said period was not regular, but purely temporary and his case does not fit in Rule 33 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982' for brevity). The Applicant has challenged the impugned order dated 31.01.2011 in the present O.A.

3. The Respondent Nos.1 to 3 resisted the application by filing Affidavit-in-reply (Page 27 to 36 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents contend that the earlier period of service of the Applicant prior to appointment order dated 06.06.1978 was purely temporary, and therefore, it does not fulfill the requirement of Rule 33 of

'Pension Rules 1982'. In this behalf, the Respondents placed reliance on Rule 33 of 'Pension Rules 1982' which requires regular service without interruption to treat it as qualifying service for pension. The Respondents also referred to Circular dated 03.11.2008 issued by Finance Department about the applicability of Rule 33 of 'Pension Rules 1982' and contends that the Applicant's earlier service being purely temporary, it cannot be treated as qualifying service. The Respondents thus sought to justify the impugned order dated 31.01.2011 rejecting the request of the Applicant to count his earlier service for grant of pension.

4. Shri R.M. Kolge, learned Advocate for the Applicant sought to contend that the Respondents ought to have condoned the interruption in the service of the Applicant in terms of Rules 48 & 57 of 'Pension Rules 1982' and his service from 02.02.1972 upto 06.06.1978 ought to have been treated as regular service. He has further pointed out that in appointment order dated 06.06.1978, there is stipulation that past services will be counted for leave and pension, and therefore, now the Respondents cannot deny his entitlement to the same. He further sought to place reliance on the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.2046/2010 (Sachin Dawale & Ors. Vs. State of Maharashtra) decided on 19.10.2013***.

5. Per contra, Ms. N.G. Gohad, learned Presenting Officer urged that the earlier appointment of the Applicant from 02.02.1972 to 06.06.1978 was purely temporary, that too, with break of 149 days, and therefore, it does not qualify pensionable service in terms of Rule 33 of 'Pension Rules 1982'. As regard applicability of Rule 48 of 'Pension Rules 1982', she submits that it has no relevance in the present facts. She also referred to Circular issued by Finance Department dated 03.11.2008 as well as decision rendered by this Tribunal in ***O.A.Nos.568 & 569 of 2013 (Satish Mane Vs. Government of Maharashtra &***

Anr.) decided on 29.09.2015, wherein in similar situation, the O.A. for treating ad-hoc service for pension purposes was rejected.

6. Now, the question posed for consideration whether the Applicant's service from 02.02.1972 to 06.06.1978 could be reckoned with as a qualifying service for pension purpose.

7. Before adverting to the facts, it would be apposite to refer Rules 30, 33 and 48 of 'Pension Rules 1982', which are as follows :

> "**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.
>
> **33. Service tendered under Government followed without interruption by confirmation counts in full as service qualifying for pension.**
>
> A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57.
>
> **48. Condonation of interruption in service.**
>
> (1) The appointing authority may, by order, condone interruptions in the service of a Government servant:
> Provided that-
>
> (a) the interruptions have been caused by reasons beyond the control of the Government servant;
>
> (b) the total service pensionary benefit in respect of which will be lost, is not less than five years duration, excluding one or two interruptions, if any; and

(c) the interruption including two or more interruptions if any, does not exceed one year:

*[Provided further that, such service of the Government Servant shall be count as qualified service for the purposes of rule 33.]

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the per interruption service treated as qualifying service.

(4) Nothing in sub-rule (3) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service.

*** Proviso inserted by Notification No. Senive. 2014/C.R. 100/Ser-4, dated 18.01.2016."**

8. Now, turning to the facts of the present case, initially, the Applicant was temporary appointed by order dated 08.05.1972 (Page No.11 of P.B.). The perusal of appointment order reveals that it was purely temporary appointment until further orders on the post of Blood Transfusion Officer at St. George's Hospital with specific stipulation therein that he will not entitle to substantive appointment and for the purposes of substantive appointment he need to apply independently when posts will be advertised. Thereafter, by order dated 05.01.1973, his appointment order dated 08.05.1972 was continued for one year or till the appointment of candidate on the post occupied by him through MPSC or by promotion, whichever is earlier. In this appointment order also, there is

specific stipulation that this will be purely temporary appointment and by the said appointment, the Applicant will not be entitled to claim absorption or permanency and he need not apply for the substantive post whenever there will be advertisement by MPSC. It is thus crystal clear from this appointment order that the appointment was purely temporary.

9. Here, what is significant to note that these appointment orders does not reveal that the appointment was done by following due process of law or any other kind of process for appointment in Government service. Significantly, the pleading of the Applicant is also conspicuously silent on this point. It is nowhere his case that the posts were advertised by the appointing authority and he was appointed after some examinations (written or oral) which required to be conducted by the appointing authority while filling the post. Suffice to say, there is nothing to show that the appointment was made by following due process of law. True, the Applicant had requisite qualification, but that itself is not enough. There has to be regular process to fill-in the posts in Government. This is one of the aspect to be borne in mind.

10. It is thus manifest from the appointment order itself that the appointment of the Applicant was purely temporary, which was not made with due process of law, that too, with break in temporary service. He was appointed through MPSC by order dated 6th June, 1978. As such, his earlier service period from 02.02.1972 to 06.06.1978 was purely temporary basis and in that period also, there was interruption of 149 days in his service.

11. As per Rule 30 quoted above, the qualifying service for the Government service shall commence from the date when he takes charge of the post to which his first appointed either substantively or inofficiating and temporary capacity. In the present matter, in terms of appointment orders dated 08.05.1972 and 05.01.1973, it is manifest that the Applicant was not appointed substantively or

inofficiating capacity and he was appointed on purely on temporary basis. As such, his appointment was on temporary capacity as contemplated in Rule 30 of 'Pension Rules 1982'. However, this Rule 30 cannot be read in isolation or as a self-contained rule as it is subject to the provisions of other Rules of 'Pension Rules 1982' which is explicit from the very opening words of Rule 30, which says that it is subject to provision of other Rules of 'Pension Rules 1982'. This being the position, the Applicant's case needs to be examined in the light of Rule 33, which is adverted to above.

12. In so far as Rule 57 is concerned, it has absolutely no application in the present situation. Rule 57 is as follows :-

> "**57. Non-Pensionable service.**
>
> As exceptions to rule 30, the following are not in pensionable service:-
>
> (a) government servants who are paid for work done for Government but whose whole time is not retained for the public service.
>
> (b) Government servants who are not in receipt of pay but are remunerated by honoraria,
> (c) Government servants who are paid from contingencies.
>
> (d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable,
>
> (e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government."

Thus, Rule 57 speaks about the non-pensionable service which has no relevance in the present situation.

13. Here, the issue revolves on Rules 30 & 33 of 'Pension Rules 1982'. Admittedly, the Applicant's appointment prior to 6th June, 1978 was temporary. As such, such service rendered by a person, that too, with interruption cannot be said regular service. Such service by virtue of temporary appointment which was

done without following the relevant Recruitment Rules or due process of law will have to be termed as 'irregular service'. The word 'temporary service' in Rule 33 will have to be understood in the context that it was in pursuance of appointment following due process of law. Whereas, in the present case, the appointment of the Applicant cannot be termed with due process of law. This being the position, the temporary service of the Applicant which is in fact irregular service in pursuance of appointment without following due process of law is irregular service and it cannot be counted as qualifying service. It is more so, when the said temporary service period was marred with interruption or break.

14. The above situation gets confirmation in view of clarification issued by Circular dated 03.11.2008. As per this Circular, it has been clarified as follows :-

अ. क्र.	म.ना.से. (निवृती वेतन) नियम १९८२ मधील नियम क्रमांक	मुद्दा	स्पष्टीकरण
१	नियम ३३	आयोग अपुरस्कृत, हंगामी/कंत्राटी सेवा/संपकालीन सेवा इ. प्रकारे केलेली तात्पुरती सेवा निवृतिवेतनार्ह सेवा म्हणून हिशोबात घेण्यात यावी किंवा कसे ?	१) खालील अटींची पूर्तता होत असल्यासच पूर्वीची सेवा निवृतीवेतनासाठी विचारात घेता येते: अ) संबधित सेवा निवृतिवेतनार्ह असणे आवश्यक आहे. ब) अशा सेवेबद्दलच्या वेतनाबाबतचे प्रदान राज्याच्या एकत्रित निधीतून झाले असले पाहिजे. क) या सेवेचे निवृतीवेतन विषयक दायित्व राज्य शासनाकडे जमा झालं असले पाहिजे. २) फक्त निवृतीवेतनार्ह असलेल्या सेवेसाठी या तरतुदी लागु राहतील. त्याचप्रमाणे नियम ५७ मध्ये नमूद केलेल्या सेवांना निवृतीवेतन लागु नाही व याप्रकारच्या पूर्वीच्या सेवा जोडून देता येणार नाही. ३) पूर्वीची सेवा नवीन निवृतीवेतनार्ह सेवेस जाडून देण्याकरिता खालील अटींची पूर्तता होणेही आवश्यक आहे.: अ) शासकीय कर्मचा-याची पूर्वीची नियुक्ती

			नियमित स्वरूपाची असावी, म्हणजेच त्या शासकीय कर्मचा-याची संबंधित पदासाठी विहीत करण्यात आलेल्या नियुक्ती नियमांच्या तरतूदींची (उदा. वयोमर्यादा, शैक्षणिक अर्हता, महाराष्ट्र लोकसेवा आयागामार्फत / निवड मंडळामार्फत नियुक्ती इत्यादीबाबीची) पूर्तता करून नियुक्ती झालेली आसावी. ब) शासकीय कर्मचा-याने नवीन पदासाठी केलेला अर्ज संबंधित कार्यालयाद्वारे/संबंधित प्रशासकीय प्रधिका-याची योग्यरित्या पूर्वपरवानगी घेऊन वा विहित पध्दतीचे पालन करून केलेला असावा. क) उपरोक्त दोन नियुक्त्यांमध्ये जर खंड असेल तर त्या खंडाचा कालावधी बदलीच्या नियमांनुसार अनुज्ञेय पदंग्रहण अवधीहून अधिक नसावा.

15. In so far as Rule 48 relied by the learned Advocate for the Applicant is concerned, the power of condonation of interruption in service is with the Government. Furthermore, such interruption to be condoned pertain to regular service and not irregular service. It applied where a person is appointed in regular service, and thereafter, there was some interruption in his service for some reasons and if it satisfies the conditions laid down in Rule 48, then the Government may condone such interruption. In fact, the period of interruption shall not be counted as a qualifying service as expressly provided in Rule 48. Suffice to say, Rule 48 applies in case of interruption in regular service. Whereas, in the present case, the Applicant's service being irregular, Rule 48 have no application. Apart, the Competent Authority for condoning such interruption is appointing authority.

16. True, in appointment order dated 6th June, 1978, there is Clause No.7 to the effect that their past services will be counted for leave and pension. The learned Advocate for the Applicant was much harping on this Clause to bolster-up his contention that the previous service of the Applicant will have to be

treated as pensionable on the basis of this Clause in the appointment order dated 6th June, 1978. Thus submission of learned Advocate for the Applicant is misconceived. The past service referred in Clause 3 is necessarily in context of regular service and not irregular service. It is incomprehendible to say that the word 'past service' used in appointment order dated 6th June, 1978 includes irregular service. Therefore, Clause 3 in appointment order dated 6th June, 1978 cannot be interpreted to confer pensionable benefits of irregular service. Apart, we need to examine the entitlement of the Applicant to the relief claimed, on the touch stone of 'Pension Rules 1982' and solitary sentence from the appointment order dated 6th June, 1978 cannot be relied upon, as if it is statutory provision.

17. The reliance placed by the learned Advocate for the Applicant on the Judgment in ***Writ Petition No.2046/2010 (Sachin A. Dawale and 90 others Vs. State of Maharashtra and one another) dated 19.10.2013*** is misplaced. The subject matter of Writ Petition was of absorption of the Lecturers, who were appointed on contractual basis for a long period. They were appointed after following due procedure of issuance of advertisement and conducting interviews by duly constituted Selection Committee in terms of GRs. As such, having found that they were appointed with due process of law, their services were regularized. Whereas, in the present case, as stated above, the Applicant's appointment was not with due process of law and secondly, there were interruption in his service. Therefore, the decision in ***Sachin Dawale's*** case is quite distinguishable and is of no assistance to the Applicant.

18. The learned Advocate for the Applicant also raised the plea of discrimination contending that his counter-part viz. Shri R.P. Shinde and Shri S.V. Kelshikar, who were appointed along with the Applicant by common order dated 6th June, 1978 have been granted benefit of their earlier service period. However, in this behalf, except oral submission of the learned Advocate for the Applicant, there is nothing on record to substantiate the same. Indeed, there is

no such pleading on the point of discrimination, which he raised for the first time in oral submission. Secondly, he has not produced any documentary evidence to substantiate that the earlier service period of these two employees has been considered for pension purpose. Apart, some wrong orders, if any, cannot be the ground of discrimination, as it would amount to perpetuate the wrong which cannot be done in law.

19. Indeed, the issue posed for consideration in the present O.A. has been already dealt with by this Tribunal in ***Satish Mane's*** case (cited supra) as relied upon by the learned P.O. wherein the claim to count temporary service for pension purpose has been rejected on the ground of interpretation of Rule 33 of 'Pension Rules 1982'. I see no reason to deviate from the view taken by this Tribunal.

20. The necessary corollary of aforesaid discussion leads me to sum-up that the claim of the Applicant is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

O R D E R

The Original Application stands dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 01.07.2019
Dictation taken by :
S.K. Wamanse.
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