

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.36/2001.

Kamlakar Ramrao Ballal,
Occ- Retired Govt. servant,
R/o Near Ganesh Mandir, Ward No.5,
Darwaha, Dist. Yavatmal.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture & Co-operation,
Mantralaya, Mumbai-32.
2. The Divisional Special Auditor,
Co-operative Societies, Nagpur.
3. The District Special Auditor, Grade-I,
Co-operative Societies, Yavatmal.
4. The Divisional Special Auditor,
Co-operative Societies (Audit),
Amravati.

Respondents

Shri D.M. Surjuse, Advocate for the applicant.
Shri M.I. Khan, P.O. for the respondents.

Coram:- Justice M.N. Gilani,
Member (J).

Dated:- 4th December, 2015.

Order

The applicant, after 30 years of resigning from service, approached this Tribunal with a grievance that he has been deprived of pensionary benefits.

2. The applicant joined the department of Co-operation in 1959 on the post of Supervisor. In 1964, he was promoted as Senior Audit Officer. In 1969, he met with a serious accident and because of that he was required to be on leave for near about one year. After exhausting medical leave he joined, however, he was unable to discharge routine duties of the post. On 22.2.1971, he tendered resignation. It is his case that, he having had served for 12 years, ought to have been granted pensionary benefits.

3. This Tribunal, on the issue of limitation non-suited the applicant. The High Court in W.P. No. 1188/2015 decided on 3.9.2015 held that the issue of limitation is not applicable. This Tribunal has been directed to decide the O.A. on merits.

4. The respondent Nos. 1, 3 and 4 file counter, opposing the prayer of the applicant. It is submitted that, the applicant had voluntarily resigned from the service in the year 1971 and as such is not entitled for any pensionary benefits.

5. Relationship of employee and employer came to an end in the year 1971 when the applicant resigned. Therefore, his claim will have to be decided in terms of the provisions of the Bombay Civil Services Rules, 1959 (in short BCS Rules). It is noticed that, between the applicant and the department, there was some correspondence. In that, reference to the provision of the Maharashtra

Civil Services (Pension) Rules, 1982 has been made. It seems that this was in ignorance of the fact that the case of the applicant is squarely governed by the provisions of BCS Rules.

6. After going through the averments made in the O.A. and the entries in the service book, it is crystal clear that the applicant had resigned from the post. Earlier to that, he was on leave for 409 days. Entry dated 18.9.1971 made in the service book reads thus :

“Sanction / resignation of Shri K.R. Ballal, Special Auditor, Co-operative Societies, Yavatmal w.e.f. 22.2.9171 A.N.”

7. Annexure-A is the communication made after more than 20 years of he resigning from the post. In that, he stated that, “सन १९६९ मध्ये माझा अपघात झाला होता. करिता दि. १४.१२.१९६९ ते १५.२.१९७१ पर्यंत मी वेगवेगळ्या प्रकारच्या रजेवर होतो. (सर्व रजा मंजूर करण्यात आल्या आहेत) रजा उपभोगल्यावर मी पूर्ववत कामावर रूजु झालो. परंतु अपघातामध्ये माझा पाय आदु झाल्यावर शारीरिक त्रास जास्त प्रमाणात वाढला आणि अश्या कारणास्तव मी ऐच्छिक सेवानिवृत्तीची मागणी केली. माझ्या विनंतीस मान्यता प्रदान करण्यात आली आणि शासकीय सेवेतून दि. २२.२.१९७१ पासून मुक्त करण्यात आले.”

8. The learned P.O. has rightly relied upon the decision in case of Ilyas Yusuf Naikwadi V/s State of Maharashtra and others reported in 2006 (6) ALL MR 1. That was a case of rejection of pensionary benefits on the ground that he resigned from service

after rendering 20 years of continuous service and, therefore, it was claimed that he was entitled for retiral benefits. The case of the petitioner was also governed by BCS Rules, since he had resigned from service on 4.1.1978. Their Lordships considered all the relevant provisions particularly rules 186(A), 186 (B), 250 and 250 (A) and observed that there was no scope for the petitioner to claim retiral benefits. I am of the view that, the ratio laid down in the case (supra) aptly applies to the facts of the present case.

9. On behalf of the applicant, reliance is placed on the decision in **Atmaram Sawlaram Sawant V/s State of Maharashtra and another in W.P. No. 7089/1999 decided on 4th April 2007.** In that case, the petitioner had tendered resignation in 1974 and thus his case was governed by BCS Rules. As late as in 1987, he made representation for grant of pensionary benefits, mainly on the ground that he had rendered 26 years of continuous service. After considering the provisions of BCS Rules, their Lordships observed that, the petitioner cannot be benefitted by any of the provisions. However, it was observed that, it was a clear case of an employee resigning after rendering 26 years' of unblemished service. It was then observed that, under Rule 185 of the BCS Rules, which appears to be residuary provision, the Government can sanction grant of pension where

pension is not otherwise admissible. Thus, directions were issued to the State Government to sanction the pension under Rule 185.

10. I am of the considered view that the facts of the present case totally stand on different footings. The applicant has rendered just 12 years of service and resigned. Under rule 254, it was permissible for an employee to seek voluntary retirement after rendering 25 years of total service. In that view of the matter, the petitioner in **Atmaram Sawlaram Sawant V/s State of Maharashtra** (supra) was otherwise entitled for pensionary benefits, had he sought permission for retirement instead of resigning simplicitor. In the case in hand, the applicant having had rendered just 12 years of service, it was not permissible to seek voluntary retirement. Under rule 250 of BCS Rules, resignation of public service constitutes interruption in service. Under rule 251, varieties of pensions are provided. The case of the applicant does not fall in any of them.

11. The learned counsel for the applicant made feeble attempt to point out that, the applicant ought to have been granted disability / invalid pension. For that, there is an express provision under rules 200 to 206 of the BCS Rules. To claim invalid pension, an employee has to apply. Then, he is required to appear before the Medical Officer. Declaration is required to be given by the Medical Officer to the effect that, an employee has been completely and

permanently incapacitated for the further service. It is not known what was the nature of disability suffered by the applicant. Fact remains that the applicant, instead of availing the provision of applying for an invalid pension, chosen to resign which he did at his peril. It seems that, over a period of about 23 years he kept mum and did not at all agitate about not granting him pensionary benefits.

12. In the result, I do not find any merit in this O.A. Accordingly, it is dismissed with no order as to costs.

sd/-

(M.N.Gilani)
Member (J)

pdg