

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 972 OF 2015

DISTRICT : PUNE

Shri Dilip s/o Jagannath Ambilwade,)
Occ : Service as Chief Administrative)
Officer, R/o: Survey No. 167/1/1,)
Sahyadri Vihar, Wagholi Road, Lohogaon)
Pune-47.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Principal Secretary,)
Public Health Department,)
10th floor, G.T Hospital Compound,)
Mumbai.)
2. The Director of Health Services,)
Arogya Bhavan, Mumbai-01.)...**Respondents**

21

Shri D.J Ambilewade, Applicant in person.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 05.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri D.J Ambilwade, applicant in person and Shri K.B Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking condonation of break in service between the service as Assistant Registrar in the Yashwantrao Chavan Maharashtra Open University, Nasik after his retirement from the Indian Air Force on 29th February, 1992 and his appointment to the State Government post of Chief Administrative Officer in the Directorate of Public Health. He is calling the gap, when he resigned from Open University on 12.10.2000 and 27.3.2005, when he joined the present assignment as 'break in service.'

24

3. The Applicant stated that he retired from the Indian Air Force on 29.2.1992. Thereafter, he joined as Assistant Registrar in Yeshwantrao Chavan Maharashtra Open University, Nasik, on 2.3.1992 and worked there till 12th October, 2000. He was selected for the post of Chief Administrative Officer in the Directorate of Public Health by the Maharashtra Public Service Commission (M.P.S.C). He was informed by letter dated 22.2.1992 by M.P.S.C about his selection. The Applicant stated that though he was selected for the aforementioned post in February/March, 1999, he was actually given appointment by the Respondent no. 1 only on 27.3.2005. There was a dispute going on between the Applicant and his last employer, the Open University. After intervention of Hon'ble Bombay High Court in C.A 843 of 2002 in W.P no 6768 of 2000, the Applicant was given appointment. The Respondent no. 1 is responsible for delay in appointing the Applicant as Chief Administrative Officer. The Applicant argued that he should have been appointed to that post in 1999 itself. However, his resignation from the post of Assistant Registrar was accepted by the University on 12.10.2000. He joined as Chief Administrative Officer on 27.3.2005. The period from 13.10.2000 to 27.3.2005 should be treated as break in service and this break deserved to be condoned under Rule 46(2) of the Maharashtra Civil Services (Pension) Rules, 1982. The Applicant claims that the break is less than 5 years (it is 4 years, 5 months and 14 days) and as



per Rule 48(1) this break can be condoned. The Applicant has been making repeated representation for condonation of break in service from 30.8.2008 onwards. Last representation was on 15.7.2014. The representation was rejected by impugned communication dated 14.7.2015.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was working in the University and he was not an employee of the State Government. There is no provision in the Maharashtra Civil Service (Pension) Rules, 1982 for counting service in an autonomous body of the State Government for the purpose of pension, when an employee of the autonomous body resigns from that body and joins the State Government. In fact, once such an employee resigns from earlier service, the earlier service is forfeited as per Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982. The Applicant was informed accordingly by letter dated 11.11.2009. However, the Applicant is continuing to file repeated representations. He was again informed by letter dated 18.2.2015, that he has no claim for his service under Open University to be counted for pensionary benefits as he has forfeited his earlier service upon resignation under Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982. Hon'ble High Court had directed that the Applicant be paid his and University's share of



Contributory Provident Fund on his resignation from the post of Assistant Registrar being accepted so he has no claim to count his service in the University for pensionary purpose. Learned Presenting Officer argued that the Applicant has not approached this Tribunal with clean hands. He has suppressed the fact that he had earlier filed O.A no 545 of 2010 before the Aurangabad Bench of this Tribunal seeking pensionary benefits counting his service in the University as qualifying service. In that Original Application, he had also challenged the decision of the Respondents of not counting the period from 12.10.2000 to 27.3.2005 for pensionary purpose by condoning the 'break in service'. In short, he sought the same reliefs in that Original Application, which he is seeking here. Original Application no. 545/2010 was dismissed by this Tribunal. Now the Applicant has filed this Original Application seeking substantially the same reliefs. This Original Application is not maintainable on the principle of 'Res-judicata'.

5. A copy of the judgment and order of this Tribunal (Aurangabad Bench) in O.A no 545 of 2010 decided on 12.12.2014 is on record. It is observed in para 1 that:-

"The Original Application no. 545/2010 has been filed by the Applicant claiming seniority over one Shri Manik Shelke and Shri Satish Bagal. He has



also claimed that the Respondent no.1 is not accepting previous service for pension and therefore, the Respondent no. 1 be directed to count that service for pensionary benefits." (emphasis supplied).

It is quite clear that previous service can be counted for pensionary benefits, only when break in service is condoned. In the present Original Application, the Applicant is seeking following reliefs viz.

"(A) That this Original Application may kindly be allowed and Respondents be directed to condone the interruption in service of the applicant from 13th October, 2000 to 27th March 2005 and issue necessary orders accordingly.

(B) That this Original Application may kindly be allowed and Respondents be directed to consider past service of the applicant for the assured progressive scheme as per the G.R dated 19th January 2013.

(C) That the Original Application may kindly be allowed and the Respondents be directed to give notional increments for the period from 13.10.2000 to 27.3.2005 and make pay fixation accordingly.

34

(D) That this Original Application may kindly be allowed and Respondents be directed to give time scale promotion in the pay scales of Jt. Director (Budget & Administration) as per the Public Health Department G.R 03rd October, 2007.

(E) Any other appropriate relief or suitable order as may be deemed necessary by the Hon'ble Tribunal may kindly be granted in favour of the Applicant.

(F) Cost of this Original Application may kindly be awarded to the Applicant.”

It is clear that the Applicant in this Original Application is seeking substantially the same reliefs, as the purpose of seeking condonation of break in service from 13.10.2000 to 27.3.2005 is to get the pensionary benefits counting the service as Assistant Registrar, in the Open University. The Applicant had nowhere mentioned anything about his earlier Original Application in the present Original Application. He has clearly suppressed this vital information from this Tribunal and he has not approached this Tribunal with clean hands. On this ground, and on the ground of res-judicata, this Original Application is liable to be dismissed.



6. The Applicant's case was before Hon'ble Bombay High Court in Writ Petition no 6768/2000 wherein the Applicant had challenged his suspension and dismissal by the University. At the request of the Applicant, Hon'ble High Court set aside the order of termination of his service dated 12.10.2000 and he was treated as having resigned from service with effect from 12.10.2000. It was also ordered that:-

“In the aforesaid circumstances, we direct Respondent no. 1 to pay the petitioner his provident fund dues including employer's contribution. However, the petitioner will not be entitled to claim any other amount of any nature whatsoever, either towards his retirement dues or any other claim. We dispose of the present petition accordingly. However, there shall be no order as to costs.”
(emphasis supplied).

Respondent no. 1 was the Open University in the Writ Petition before the Hon'ble High Court. It is clear that the Applicant's service with University was not pensionable, and he was governed by Contributory Provident Fund. He has received employer's contribution to this fund as per orders of Hon'ble High Court. It is not understood, as to how he now can claim to count that service for pensionary benefits, having received the benefits already from the University. From the

representation dated 17.6.2015 of the Applicant (Annexure H-3, page 24 of the Paper Book), it is seen that he has stated that by G.R dated 19.10.2005, the pension scheme was made applicable to Yeshwantrao Chavan Maharashtra Open University, Nasik. The Applicant had already resigned from the University on 12.10.2000 much before that G.R came into force. He has given a solemn undertaking to Hon'ble High Court that he will not raise any claim against University except employer's share of Contributory Provident Fund, which must have been paid to him. There is no way, he can claim benefit of Pension Scheme, when it was not available to the employees of University before 19.10.2005, while the Applicant was deemed to have resigned from the University on 12.10.2000. There is no question of any of the Rules of Maharashtra Civil Services (Pension) Rules, 1982 being applicable in this case. The Applicant has obtained his retirement dues from University for the services rendered by way of employer's contribution to C.P.F.

7. In O.A no 545/2010 (Aurangabad Bench), the Applicant had stated that his request was rejected by the present Respondent no. 1 on 11.11.2009. He has claimed that there was no delay in filing O.A no 545/2010 and had prayed that delay, if any, may be condoned in the interest of justice. In the present Original Application, not only the Applicant had suppressed the information about

his earlier Original Application no 545/2010, he has not sought condonation of delay also.

8. The present Original Application is liable to be dismissed on merits. It is also liable to be dismissed on the principle of 'Res-judicata'. The Applicant has not disclosed full information while filing this Original Application and suppressed the information about earlier O.A no 545/2010, which was dismissed by Aurangabad Bench of this Tribunal. He has tried to mislead and deceive this Tribunal. On that count also, this Original Application is liable to be dismissed. A cost of Rs. 5000/- is imposed on the Applicant for abusing the process of law. This amount may be deposited within four weeks from the date of this order with the Registrar of this Tribunal.

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Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 05.08.2016
Dictation taken by : A.K. Nair.