

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 370 OF 2019

(Subject:-Regularization of Period/Retirement Benefits/Recovery)

DISTRICT: - AURANGABAD

Smt. Yasmin Hashmi w/o Vasim Hashmi,)
Age 63 Years, Occu: Retired as)
Public Health Nurse (P.H.N.),)
R/o Flat No.12, Haq Tower,)
Near Hotel New Samrat,)
Railway Station Aurangabad,)
Dist. Aurangabad.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through Secretary,)
Public Health Department,)
Mantralaya, Mumbai -32.)
 - 2. The Commissioner/The Director,**)
Public Health (Nursing), Director of)
Health Services, Arogya Bhuvan,)
St. George Hospital Compound,)
P. Damelo Road, Mumbai -400001.)
 - 3. The Joint Director Health Services,**)
301, 3rd Floor, New Administrative)
Building, Sasoon Road, Pune-6.)
 - 4. The Deputy Director Health Services**)
Division Aurangabad, Near Mahavir)
Chowk, Aurangabad)
Tq. Dist. Aurangabad.)
 - 5. District Health Officer,**)
Zilla Parishad, Jalna, District Jalna.)
 - 6. Civil Surgeon,**)
Civil Hospital, Parbhani, Dist. Parbhani)..**RESPONDENTS**
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APPEARANCE : Shri V.G. Pingle, learned Advocate for the applicant.

: Shri I.S. Thorat learned Presenting Officer for the respondent authorities.

: Shri M.S. Taur, learned Advocate for the respondent No.5.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **02.03.2023.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking following reliefs:-

- “(A) The Original Application may kindly be allowed.
- (B) By issuing an appropriate direction or order the impugned communication dated 21/29.06.2018 issued by the respondent No.2 authority and pursuant to it’s order dated 12.09.2018 passed by the respondent No.6 may kindly be quashed and set-aside and consequently the period mentioned at Sr. No.1 to 5 in communication dated 21/29.06.2018 may kindly be considered as leave with pay and same be counted for the purpose of pension.
- (C) It may be directed to the respondent authorities to forward pension papers of applicant to the concerned authority for grant of final pension to her as per Rules and Regulations.

- (D) It may be directed to the respondent authorities to grant difference amount as per Sixth Pay Commission to the applicant for period 18.07.2008 to 31.03.2014 in view of communication dated 24/27.10.2017 as per Rules and Regulations.
- (E) The respondents may be directed to pay interest on delayed payment from the date of retirement i.e. from 31.05.2014 till realization of the payment to the applicant.”

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

- (i) The applicant was initially appointed on the post of Nurse Midwife in the year 1984. She satisfactorily completed her training and probation period and was regularized in service. She was promoted as Public health Nurse in the year 1987.
- (ii) She discharged her duties upto the mark from 12.07.1984 to 22.10.2005 at her respective places of work as reflected in extract of Service Book (Annexure 'A-1'). She retired on superannuation w.e.f. 31.05.2014 while working with the respondent No.5 i.e. the District Health Officer, Zilla Parishad Jalna, Dist. Jalna.
- (iii) In the year 2005, the applicant was working at Civil Hospital Parbhani. ON 22.10.2005, she was required to be hospitalized for taking medical treatment as she had been

suffering from Schizophrenia. On account of that, her medical condition was not proper. She took treatment of Dr. Barhale, Psychiatrist from Aurangabad till 17.07.2008. She became mentally retarded and not in position to respond. She was unable to make any communication/application to the respondent authorities about her ill health and more particularly because of her mental ill health.

(iv) During that period, the applicant was transferred to the Health Department, Zilla Parishad Jalna by order dated 31.05.2006. When the applicant was fully recovered from her illness, after securing fitness certificate from Dr. Barhale with counter signature of Civil Surgeon, Aurangabad she requested the respondent authorities for allowing her to join her duties. The applicant however, did not allow to join her at transferred place i.e. the respondent No.5-District Health Officer, Zilla Parishad Jalna.

(v) The applicant therefore, was required to approach the Deputy Director Health Services, Pune seeking directions to regularize her absentee period from 22.10.2005 to 17.07.2008. The applicant time and again submitted representations to the respondent authorities. The respondent authorities, however, did not allow her to join at

the post of Public Health Nurse. In view of that, the applicant filed Original Application No. 731/2013 before this Tribunal. The Original Application was allowed and by that order the respondent authorities were directed to allow the applicant to join her duties observing that there was gross lapse on the part of the respondent authorities in that regard.

(vi) Pursuant to that order, the applicant was allowed to join w.e.f. 01.04.2014 as per joining letter dated 01.04.2014 (part of Annexure 'A-2' collectively). Thereafter, within two months the applicant retired on superannuation w.e.f. 31.05.2014 as per relieving order dated 31.05.2014 (part of Annexure 'A-2' collectively).

(vii) The applicant was State Government servant and therefore she was entitled to receive all the pensionary and service benefit w.e.f. 01.06.2014. After retirement, the applicant has not received any service benefit from the respondent authorities. In that regard she made various representations (Annexure 'A-3' collectively) more particularly requesting to comply the order passed in O.A.No. 731/2013 and to regularize the absentee period, to grant salary etc.

(viii) Pursuant to that the respondent No.2 i.e. Office of Commissioner/Director, Public Health Nursing under the

signature of Deputy Director of Health Services (Nursing) issued communication dated 04.04.2016 (Annexure 'A-4') for taking necessary steps in respect of sanction of leave and grant of pension to the respondent No.4. However, thereafter, even after lapse of 8 years, inspite of continuous persuasion of the applicant, the concerned authorities did not take any necessary steps.

(ix) Meanwhile, the applicant filed Original Application No. 801/2015 for seeking regular pension. During pendency of the said Original Application, provisional pension w.e.f. 01.06.2014 to 30.11.2014 for 06 months only was released. In the affidavit in reply it was mentioned that the respondent No. 4 therein had submitted proposal dated 29.07.2015 to the respondent No.2 for considering pensionary benefits and other benefits claim of the applicant. In view of that, the said Original Application No. 801/2015 was disposed of by order dated 29.08.2016 (Annexure 'A-5') directing the respondent No.2 therein to take decision on the proposal dated 29.07.2015 within a period of two months.

(x) The respondent No.2 however, did not obey the said order. The applicant filed Contempt Petition No. 18/2017 before this Tribunal. During pendency of the said Contempt

Petition, the respondent No.2 informed to the Tribunal of having taken decision on the proposal dated 29.07.2015 as per order dated 24/27.10.2017 and thereby the applicant could get monetary relief to the extent of Rs.16,60,000/- (Rupees Sixteen Lac Sixty Thousand) as against the claim of Rs. 27.74 Lac. In view of that, the Contempt Petition No. 18/2017 was disposed of by order dated 05.03.2018 (Annexure 'A-7'), thereby granting liberty to the applicant to pursue the respondent, if the applicant has any grievance in respect of calculating the amount.

(xi) In view of order passed in Contempt Petition as above, the applicant submitted detailed representation dated 10.04.2018 (Annexure 'A-8'), thereby raising her grievance about service benefits and pensionary benefits which were not fully paid to her. The respondent authorities did not consider and decide her said representation. Hence, the applicant filed Original Application No. 302/2018 before this Tribunal. The said Original Application was disposed of by order dated 07.06.2018 (Annexure 'A-9') as being withdrawn as it was orally observed by the Tribunal that it was premature.

(xii) Thereafter, the respondent No.2 authority issued impugned communication dated 21/29.06.2018 (Annexure

'A-10'), thereby denying the claim of the applicant in respect of absentee period and thereby also ordered to recover of excessive payment. By the said order, absentee period of the applicant between 14.01.1996 to 02.04.2005 was not to be considered as qualifying service period for any purposes.

(xiii) Upon receipt of the said impugned order/communication dated 21/29.06.2018 (Annexure 'A-10') issued by the respondent No.2, the respondent No.6 i.e. the Civil Surgeon, Civil Hospita, Parbhani issued further impugned order dated 12.09.2018 (Annexure 'A-11') on the basis of order/communication dated 21/29.06.2018 (Annexure 'A-10') and directed to recover excess payment amount for the period of 01.07.1996 to 21.06.2006 from the pensionary benefits of the applicant.

(xiv) Thereafter, the applicant submitted detailed reply dated 19.01.2019 (Annexure 'A-12') to the respondent No.2 against the impugned order/communications stating as to how those orders were wrong and requested to grant her claim. She also annexed various documents to substantiate the contentions raised in the said representation. It was pointed out that in impugned communication/order dated 21/29.06.2018 it was wrongly observed that (i) there is no date mentioned on leave

application, (ii) there is no inward number of office on it, (iii) no Medical Certificate is annexed to it.

(xv) According to the applicant in fact on 28.11.2003, respondent No.6 forwarded letter to respondent No.4 regarding sanction of leave of the applicant along with original Medical Certificate. Thereafter, on 23.09.2004 respondent No.6 addressed letter to respondent No.4 stating that regarding sanction of leave all documents and original service book of applicant submitted. Further, on 04.01.2005 respondent No.4 by its letter to respondent No.3 recommended proposal of leave for sanction along with Certificate issued by Medical Board. In letter dated 04.01.2015 further it is mentioned that, 49 days Earned Leave and 140 days half pay leave of the applicant is in balance in her leave account. Lastly it is mentioned in letter dated 04.01.2015 that, while shifting of office of the respondent No.6 as personal file of the applicant was misplaced, therefore delay was caused to forward the proposal of applicant and said fact is admitted by the respondent No.6 in letter date 18.05.2005.

(xvi) Further, the respondent No.6 issued letter dated 02.01.2018 to respondent No.5 giving reference of total 17

correspondences for calculation of duty period in respect of extraordinary leave and compulsory waiting period of the applicant. Accordingly, the respondent No.5 communicated to the respondent No.3 by its letter dated 18.01.2018. In this manner, the applicant pointed out that, the impugned communication dated 21/29.06.2018 is wrong and contrary to provisions of Rule 47 (1) of M.C.S. (Leave) Rules, 1982 for the reason though leave was in balance in the leave amount of applicant, the respondents granted extra ordinary leave to applicant. Further, the respondent No.6 based on communication dated 21/29.06.2018 passed order dated 12.09.2018 thereby caused injustice to the applicant and directed recovery of excess amount for the period of 01.07.1996 to 21.06.2006 from pension benefits of the applicant. It is pertinent to note here that, though the applicant is retired on 31.05.2014 till date pension case of the applicant is not yet finalized and before that the respondent No.6 surprisingly has passed order for recovery of excess amount from pension benefits of the applicant.

(xvii) However, the respondent authorities neither decided the said representation dated 19.01.2019 nor communicated anything to the applicant. Due to inaction on the part of the

respondent authorities in not deciding her representation dated 19.01.2019, the applicant is facing so many difficulties while leading day to day life after her retirement as no pension is granted to her. The applicant retired on 31.05.2014 and she is entitled for service and pensionary benefits as per Rules and Regulations. Hence, this application.

3. Affidavit in reply is filed on behalf of the respondent Nos. 1 to 4 by one Dr. Sunita Vijay Golhait working as Chief Administrative Officer, Office of the Deputy Director of Health Services, Aurangabad, thereby she denied the adverse contentions raised in the Original Application.

(i) It is specifically submitted that this office has taken every possible efforts in respect of sanction of admissible leave to the applicant. In fact the applicant preferred leave applications (Exh. 'R-1' collectively) as per Rule 24 of Maharashtra Civil Services (Leave) Rules, 1981 for grant of extraordinary leave. After perusal of the said applications it was found that there was no outward number and date on the aforesaid applications and Medical Certificates were also not supported with them. Hence, by the impugned order, the aforesaid period was sanctioned as a unauthorized absence

as well as uncountable for any purpose. Previous litigations filed by the applicant as mentioned in the Original Application are not denied. The applicant was relieved from the Civil Hospital Parbhani from 21.06.2006.

(ii) It is further submitted that in respect of grievance of the applicant, the Deputy Director Nursing Mumbai issued letter dated 14.02.2018 (part of Exh. 'R-2' collectively) by which the applicant and responsible officer were directed to remain present personally on 21.02.2018 for rectifying the lacunas in respect of leave sanction case of the applicant along with the requisite documents. Upon that, the respondent No.4 i.e. the Deputy Director Health services, Aurangabad issued letter dated 16.02.2018 (part of Exh. 'R-2' collectively) to Civil Surgeon, Parbhani and Civil Surgeon, Parbhani issued letter dated 20.02.2018 (part of Exh. 'R-2' collectively) to the applicant for remaining present on 21.02.2018 in the office of respondent No.2 with requisite documents. The applicant however, did not remain present personally. Therefore, the office of Deputy Director Health Services, Mumbai and Aurangabad issued letters dated 13.03.2018 and 23.03.2018 (part of Exh. 'R-3' collectively). The official from the Civil Hospital, Parbhani remained present with office record. He

tried to contact applicant personally, but contact could not be made. Therefore, the respondent No.6 addressed letter dated 09.02.2018 (part of Exh. 'R-4' collectively) to the respondent No. 4 thereby placing on record status of the leave period of the applicant. It is submitted that no recovery of excess payment will be done from the applicant. Moreover, the office of Civil Surgeon, Parbhani handed over service book of the applicant to the office of respondent No.5 i.e. District Health Officer, Jalna.

4. The applicant filed affidavit in rejoinder to the affidavit in reply filed on behalf of the respondent Nos. 1 to 4 and denied the adverse contentions raised therein and placed on record the fact that the respondent No.6 i.e. the Civil Surgeon, Parbhani by letter dated 18.10.2003 (part of Annexure 'RJ-1') addressed to the respondent No.4 i.e. the Deputy Director Health Services, Aurangabad communicated that as on that date 49 days Earned Leave and 70 days Half Pay leave were balance in the leave account of the applicant. The applicant also placed on record the letter dated 21.05.2018 (part of Annexure 'RJ-1' collectively) addressed by the respondent No. 4 i.e. the Deputy Director of Health Services, Aurangabad to respondent No.2 i.e. the

Commissioner/Director Public Health (Nursing), Mumbai dealing with treatment of various leave periods of the applicant.

5. Separate affidavit in reply is filed on behalf of the respondent No. 5 by Dr. Vivek Baburao Khatgaonkar working as District Health Officer, Zilla Parishad Jalna, Tq. & Dist. Jalna, thereby he denied the adverse contentions raised in the Original Application.

(i) It is specifically submitted that the respondent No.3 transferred the applicant from the office of respondent No.6 to respondent No.5. The respondent No.6 by its order dated 21.07.2006 (Exh. 'R-1') relieved the applicant while the applicant was absent from duty since 22.10.2005. The applicant joined at transferred place as per transfer order and relieving order. He came to join in the office of respondent No.5 for the first time on 18.07.2008 i.e. after about two years. Therefore, the respondent No.2 sought guidance from the higher office but no guidance was received. Thereafter, the applicant was allowed to join her duty on 01.04.2014 as per the order passed in O.A.No. 731/2013 and she retired on superannuation on 31.05.2014.

(ii) It is further submitted that as per order dated 27.10.2017 passed by respondent No.2 the absentee period of the applicant from 22.10.2005 to 17.07.2008 (2 year 8 months 25 days) came to be sanctioned as ordinary leave on medical ground. Further the period from 18.07.2008 to 31.03.2014 (5 years 8 months and 12 days) came to be regularized as compulsory waiting period as duty period. In view of the same, the applicant was paid salary and allowance of Rs.18,74,359/- by deducting income tax of Rs.1,85,0000/- by demand draft no. 767808 dated 31.03.2018 (Exh. 'R-2'). The impugned order/communication treating absentee period as unauthorized absentee is justified. There is no merit in the Original Application and it is liable to be dismissed.

6. I have heard at length the arguments advanced by Shri V.G. Pingle, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer representing the respondent authorities and Shri M.S. Taur, learned Advocate for the respondent No.5 on other hand.

7. Undisputedly the applicant worked as Government servant from 12.07.1984 to 21.06.2006 at various places as reflected in extract of her service book (Annexure 'A-1'). As

per these documents, the applicant worked at Civil Hospital, Parbhani from 21.12.1995 to 21.06.2006.

8. This Original Application is filed challenging the impugned communication dated 21/29.06.2018 (Annexure 'A-10') issued by the respondent No.2 whereby her absence period from duty from 14.01.1996 to 01.07.1997 (535 days), 24.01.2002 to 23.04.2002 (90 days), 24.04.2002 to 19.01.2003 (271 days), 16.04.2004 to 11.05.2004 (26 days) and 02.06.2004 to 02.04.2005 (304 days) is stated to be not to be counted as qualifying service for any purpose. In view of that the applicant has pleaded monetary benefits of arrears of pay for the said period by incorporating the same in later part of prayer clause 'B' as already reproduced in the beginning. However, in paragraph No. 9 of the written submissions filed by the applicant it is stated as under:-

"9. It is submitted that, apart from above mentioned facts and relevant provisions of law though the applicant has prayed to grant her claim with pay as mentioned in prayer Clause-B; of the application, the applicant waives her claim in respect of pay for the period under challenge and requests the Hon'ble Tribunal to direct the respondent authorities to consider and treat her Medical Leave period from 14.01.1996 to 02.04.2005 as duty period and same may be counted for the purpose of pension as qualifying service from her date of appointment i.e. 12.07.1984 till her retirement on 31.03.2014 (total 30 years) taking into consideration

her past period and future period as detail mention in above Para No.2.”

9. In view of above, the applicant is giving up her prayer to the effect of claiming monetary reliefs for the period from 14.01.1996 to 02.04.2005 and has limited the said prayer only for counting the said period as qualifying service for the purpose of pension.

10. This Original Application is also filed seeking difference of pay as per 6th Pay Commission for the period of 18.07.2008 to 31.03.2014 in respect of which absence period from duty is already regularized.

11. The applicant had earlier filed O.A.No. 801/2015 seeking direction to the respondent authorities to regularize absence period from duty of the applicant from 22.10.2005 to 17.07.2008 and period from 18.07.2008 to 01.04.2014 as extraordinary leave/medical leave and to pay her salary.

12. The said O.A.No. 801/2015 was disposed of by this Tribunal by order dated 29.08.2016 (Annexure 'A-5') directing the respondent No.2 to take decision on the proposal (Exh. 'R-1') as per Rules and regulations within two months from the date of this order.

13. The said order was not complied with. Hence, the applicant filed Contempt Petition No. 18/2017. During pendency of the said Contempt Petition, the respondent No.2 took decision on the concerned proposal dated 29.07.2015 as per order dated 24/27.10.2017 and thereby monetary relief was granted partly. Thereby liberty was granted to the applicant to pursue with the respondent authorities about his remaining monetary claim.

14. The applicant in that respect made application dated 10.04.2018 (Annexure 'A-8'). However it was not considered. Hence, the applicant filed Original Application No. 302/2018 before this Tribunal. The said Original Application was disposed of by order dated 07.06.2018 (Annexure 'A-9') as being withdrawn as it was orally observed by the Tribunal that it was premature. Thereafter the respondent No.2 said to have issued impugned order 21/29.06.2018. The applicant admittedly stood retired on superannuation on 31.05.2014.

15. Perusal of the record would show that the subsequent absence period from duty w.e.f. 22.10.2005 to 17.07.2008 (2 year 8 months 25 days) came to be sanctioned as extraordinary leave on medical ground. Further the period from 18.07.2008 to 31.03.2014 (5 years 8 months and 12

days) was considered as duty period of the applicant vide order dated 24/27.10.2017 (Annexure 'A-6'). In view of that, the applicant has no grievance about the said period.

16. In these circumstances as above, the matter is required to be considered in respect of the period of absence from duty as mentioned above during the period of 14.01.1996 to 02.04.2005 as reflected in impugned communication dated 21/29.06.2018 (Annexure 'A-10').

17. In these circumstances as above, the matter would fall under the provisions of Rule 47 of the Maharashtra Civil Services (Pension) rules, 1982 which is regarding the effect of interruption in service. The said Rule 47 is as follows:-

“47. Effect of interruption in service.

- (1) An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases:-
 - (a) authorized leave of absence;
 - (b) unauthorized absence in continuation of authorized leave of absence so long as the post held by the absentee is not filled substantively;
 - (c) Suspension, where it is immediately followed by reinstatement, whether in the same or a difference post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of superannuation while under suspension;
 - (d) transfer to non-qualifying service in an establishment under the control of the

Government if such transfer has been ordered by a competent authority in the public interest;

(e) joining time while on transfer from one post to another.

(2) Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute [retrospectively] the periods of absence without leave as extraordinary leave.

Rule 35 is also relevant for counting of leave for pension which is as follows:-

“35. Counting of leave for pension.-

All leave during the period of continuous service for which leave salary is payable and all extra-ordinary leave granted on medical certificate shall count as qualifying service for pension.”

18. Upon perusal of the abovesaid two provisions, it is clear that unless the absentee is filled substantively, such unauthorized absence period from duty cannot be considered as period of interruption in service for making the same not qualifying service for pension and other service benefits.

19. Perusal of the record in respect of abovesaid period of 14.01.1996 to 02.04.2005 would show that from time to time, applications for leave on medical ground were made along with requisite medical certificates. However, in the impugned communication dated 21/29.06.2018 (Annexure ‘A-10’) it is observed that the leave applications made by the applicant do

not bare date, inward number of office on it and medical certificates were not annexed.

20. The applicant has placed on record the copies of applications made by her seeking leave during these periods as part of annexure to her representation dated 19.01.2019 (Annexure 'A-12' collectively). Those documents would show the acknowledgement of those applications by the concerned office and medical certificates being annexed. No record is produced by the respondents to falsify those documents. Copies of the said applications are also produced by the respondents along with affidavit in reply filed on behalf of the respondent Nos. 1 to 4 and 6 as part of Exh. 'R-1' collectively (page Nos. 68 to 84 of P.B.).

21. Perusal of those documents would show that though there is mention of annexing medical certificate, the same are not available in the concerned office. It is a failure on the part of the respondents and for that the applicant cannot be held responsible. Prima-face it seems that the applicant submitted leave applications along with requisite documents. Had the applicant not annexed those documents, the same would have been reflected somewhere between the interdepartmental correspondents, which is placed on record.

In the circumstances irresistible inference is to be drawn that the applicant filed requisite leave applications along with requisite documents for those periods seeking extraordinary leave on medical ground.

22. The applicant belongs to non-Gazetted Government servant category. In that regard Rule 41 of Maharashtra Civil Services (Leave) Rules, 1981 would come into play which deals with grant of leave on medical grounds to non-gazetted Government servants which is as follows:-

“41. Grant of leave on medical grounds to non-gazetted Government servants.- (1) An application for leave on medical grounds made by a non-gazetted Government servant, shall be accompanied by a medical certificate in Form 4 in Appendix V given by an Authorized Medical Attendant or a Registered Medical Practitioner defining as clearly as possible the nature and probable duration of the illness.

(2) A Medical Officer shall not recommend the grant of leave in any case in which there appears to be no reasonable prospect that the Government servant concerned will ever be fit to resume his duties and in such case, the opinion that the Government servant is permanently unfit for Government service shall be recorded in the medical certificate.

(3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon, to have the applicant medically examined on the earliest possible date. Non-gazetted female Government servant in Greater Bombay may be examined by the Medical

Officer-in-charge Cama and Albless Hospitals, Bombay.

(4) It shall be the duty of the Government Medical Officer referred to in sub-rule (3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose he may either require the applicant to appear before himself or before a Medical Officer nominated by himself.

(5) The grant of a medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.

(6) The authority competent to grant leave may, in its discretion, waive the production of a medical certificate in Form 4 in case of an application for leave for a period not exceeding three days at a time. Such leave shall not be treated as commuted leave and shall be debited against leave other than commuted leave.”

23. In view of the requirement of the abovesaid Rule 41, onus was upon the respondents to show that there were infirmities or lacunae in the medical certificate produced by the applicant along with leave applications while considering such leave applications. The respondents are and were under obligation to consider leave applications of the applicant. The respondents, however, have failed to discharge the onus and have passed the impugned order dated 21/29.06.2018 (Annexure 'A-10') on superficial grounds.

24. No doubt, the respondent No.2 has referred to Rule 47 (1) of M.C.S. (Pension) Rules, 1982. However, observations made by respondents in the impugned order are totally misconceived even by taking into consideration the said provisions.

25. As per the observations made earlier, the applicant is not claiming any monetary reliefs in respect of absence period from duty of 14.01.1996 to 02.04.2005. In such circumstances, I hold that the impugned communication dated 21/29.06.2018 (Annexure 'A-10') is illegal being in contravention of Rule 47 (1) of M.C.S. (Pension) Rules, 1982 and Rule 41 of M.C.S. (Leave) Rules, 1981, as per which provisions, it was incumbent upon the respondent No.2 to consider the said absence period from duty as uninterrupted period for any purpose even though whole part of the said absence period is considered as unauthorized absence period as the post held by the applicant was not filled substantively.

26. Moreover, the respondent authorities are bound to consider and extend 6th pay Commission benefits to the applicant for the period of 18.07.2008 to 31.03.2014 in view of communication dated 24/27.10.2017 (Annexure 'A-6') issued by the respondent No.2 as per Rules and Regulations.

27. Further it appears that nothing is shown by the respondents to attribute the role of the applicant for dealing with the matter belatedly. In view of the same, the applicant shall be entitled for grant of interest @ 8% p.a. for 31.05.2014 till realization of payment to the applicant about the monetary reliefs in respect of the period of 18.07.2008 to 31.03.2014. I therefore, proceed to pass the following order.

ORDER

The Original Application is partly allowed in following terms:-

- (A) Impugned communication dated 21/29.06.2018 (Annexure 'A-10') issued by the respondent No.2 and consequential order dated 12.09.2018 (Annexure 'A-11') issued by the respondent No.6 are quashed and set aside and the respondent authorities are directed to consider the period of absence mentioned in the said impugned communication to treat it as extraordinary leave without pay and qualifying service for the purposes of pension under Rule 47 of M.C.S. (Pension) Rules, 1982.

- (B) The respondent authorities are further directed to forward the pension papers of the applicant to concerned authority for grant of final pension and requisite pensionary benefits to her as per Rules and Regulations.
- (C) The respondent authorities are further directed to grant difference of pay as per 6th Pay Commission to the applicant for the period of 18.07.2008 to 31.03.2014 in view of the communication dated 24/27.10.2017 as per the Rules and Regulations and to pay interest on the said amount @ 8% p.a. from 31.05.2014 till realization of payment.
- (D) The Original Application stands disposed of accordingly with no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad
Date : 02.03.2023.
SAS O.A.370/2019