

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 746 of 2011 (D.B.)**

Rupesh S/o Suresh Salankar,
Aged about 39 years, Occ. Service,
R/o Ward No.2, Gandhinagar, near Vikas Vidyalaya,
Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Technical Education,
Mantralaya, Mumbai-4000 032.
- 2) Joint Director (Old Nomenclature Dy. Director),
Industrial Education and Training, Regional
Office, near S.P. (Rural) Office, Civil Lines,
Nagpur.
- 3) The Principal,
Government Industrial Education & Training
Institute, Ashti, Tahsil – Ashti,
District Wardha.

Respondents.

**S/Shri A.M. Kukday, Gaurav Singh Sengar, Advocates for the
applicant.**

Shri A.M. Khadatkar, P.O. for the respondents.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri A.D. Karanjkar, Member (J).**

JUDGMENT**Per : Member (J).****(Delivered on this 30th day of January,2019)**

Heard Shri A.M. Kukday, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. In year 2000, resignation was submitted by the applicant, but it was not acted upon and the applicant was directed by the higher authority to submit the resignation in the prescribed proforma. Thereafter, the applicant went to the office to join the duty, but he was not allowed and for the reasons to the knowledge of the respondents, all of a sudden the authority acted on the resignation and accepted it. This action of the respondents was challenged by the applicant in O.A.No.575/2000 and the O.A. was allowed and direction was given to the respondents to reinstate the applicant on his post.

3. It is contention of the applicant that after this order, the respondent no.2 passed the order on 23/10/2009 and by this order he held that 30 days absence of the applicant from the duty from 18/01/2000 was unauthorised and it be treated as extra ordinary leave as per the Rule 63 (6) of the Maharashtra Civil Services (Leave) Rules, 1981. The respondent no.2 also held that the absence be treated as break in the service and it should not be

considered for calculating the qualifying service for the pension. Being aggrieved by this order the present O.A. is filed. It is submitted that the impugned order passed by the respondent no.2 is contrary to the decision passed in earlier O.A.No. 575/2000. The second submission is that the absence of the applicant was for the legitimate reason, due to illness and without considering this fact the harsh order is passed, it will adversely affect the career of the applicant, therefore, it be set aside.

4. We have heard the submissions of both the sides and we have perused the impugned order at Annex-A-14. It seems that the respondent no.2 has placed reliance to pass this order on the Rule 63 (6) of the Maharashtra Civil Services (Leave) Rules, 1981. The Rule 63 (6) of the Maharashtra Civil Services (Leave) Rules, 1981 is as under :-

“63 (6) The authority competent to grant leave may commute retrospectively periods of absence without leave into extraordinary leave.”

5. After reading this sub-rule, it is clear that the respondent no.2 was permitted to grant leave, or may decide about the absence of the employees from the duty or may treat it as extra ordinary leave. In the present case in the impugned order at Annex-A-14 it is mentioned by the respondent no.2 that there was no leave at the

credit of the applicant and therefore his absence was treated as extra ordinary leave.

6. Now we would come to the latter part of this order, by the latter part of the order, the respondent no.2 directed not to consider this period of absence for calculating the qualifying service for granting pension. In this regard, it must be mentioned that throughout the whole order the respondent no.2 nowhere mentioned due to which reasons the applicant was compelled to remain absent from duty. It is submitted that the total period of absence was only about three months and the applicant was told to submit resignation in the prescribed proforma, his resignation was not acted upon. Thereafter, when the applicant went to resume duty, he was not permitted to join and later on the authority all of a sudden accepted the resignation due to which the applicant filed the O.A.No. 575/2000. In our opinion the break in the service is a stigma and serious punishment, therefore, before passing such order, some special reasons were to be recorded by the respondent no.2 to justify such harsh action. After reading the impugned order, it seems that only because there was no leave at the credit this order was passed. It was not case of the department that the applicant without any reasonable cause remained absent from the duty and his act was misconduct. The service Rules do not contemplate such harsh action when the employee remained absent due to his illness and if

there is no leave at his credit. It is not case of the department that the applicant was not ill and he falsely shown the illness as reason for his long absence. In absence of this material the impugned order was passed by the respondent no.2 and it was held that the absence should not be considered while determining the qualifying service. In our opinion, this approach of the respondent no.2 is illegal, hence, it is necessary to set aside that part of the order. In the result, the following order :-

ORDER

The O.A. is partly allowed. The direction in the impugned order at Annex-A-14 not to consider the absence period while determining the qualifying service for the pension, is hereby set aside. No order as to costs.

(A.D. Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 30/01/2019.

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