

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 281/2021

Avinash S/o Nashikrao Nagarare
Aged about 46 years, Occ : Nil,
R/o Takiya Ward, Bhandara, Tq. &
Dist. Bhandara.

Applicant.

Versus

- 1) State of Maharashtra through
Secretary, Revenue Department
Mantralaya, Mumbai-32
- 2) Sub Divisional Officer, Bhandara,
Tq. & Dist. Bhandara
- 3) Tahsildar, Bhandara,
Tq.& Dist. Bhandara
- 4) Office of Accountant General,
(Accounts & Entitlements) -1, Pension
Wing, Old Building, G.P.O. Civil Lines,
Nagpur.

Respondents

Shri S.S.Paliwal, Ld. counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 12th April 2022.

JUDGMENT

Judgment is reserved on 06th April, 2022.

Judgment is pronounced on 12th April, 2022.

Heard Shri S.S.Paliwal, learned counsel for the applicant and Shri S.A.Sainis, Ld. P.O. for the Respondents.

2. Case of the applicant is as follows :-

The applicant entered service on 29.9.1997. He was holding the post of Talathi. Departmental enquiry was proposed against him. He was placed under suspension by order dated 4.12.2015 by respondent no.2. On conclusion of enquiry, respondent no.2, passed the following order on 12.5.2017 (Annexure A-6) –

श्री. ए.एन. नगरारे, तलाठी माडगी यांचे विरुद्ध ठेवलेले दोषारोप व संचिकेतील उपलब्धे कागदपत्रे तसेच श्री.ए.एन.नगरारे, तलाठी यांनी दिलेले ज्ञापनातील परिशिष्ट १ ते ४ चे अनुषंगाने सादर केलेले स्पष्टीकरण पाहता तसेच दिनांक १७.०४.२०१७ रोजीच्या सुनावणीमध्ये ज्ञापनाचे अनुषंगाने सादर केलेल्या स्पष्टीकरणाचे अनुषंगाने कोणताही कागदोपत्री पुरावा सादर केलेला नाही. सबब, मी उपविभागीय अधिकारी भंडारा, मला महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ मधील नियम ६(२) अन्वये प्रदान करणेत आलेल्या अधिकाराचा वापर करून उक्त नियमाच्या नियम ५ (१) (४) नुसार श्री.ए. एन.नगरारे, तलाठी यांची दोन वर्षीक वेतनवाढ दोन वर्षाकरिता पुढील वेतनवाढीवर परीणाम करून रोखून ठेवणेची शिक्षा आदेशित करित आहे. तसेच त्यांचा निलंबन कालावधी हा असाधारण रजा म्हणून मान्य करण्यात यावा. परंतु, त्यांच्या सेवानिवृत्तीसाठी सेवा काळ समजण्यात यावा. सदर शिक्षेची नोंद श्री.ए.एन.नगरारे, तलाठी यांचे सेवापुस्तकामध्ये लाल शार्डने घेण्यात यावी.

The applicant applied for voluntary retirement. Vide order dated 25.4.2018 (Annexure A-3) respondent no.1 granted approval

to his application for voluntary retirement. Tehsildar, Tumsar and Tehsildar, Pawani issued certificates dated 26.06.2018 and 30.6.2018 (Annexure A-4 and A-5) respectively that no departmental enquiry was pending against the applicant. The applicant stood voluntary retired on 30-4-2018. Respondent no.3 forwarded pension case of the applicant (Annexure A-7) to respondent no.4. In reply, respondent no.4, vide letter dated 26.11.2020 (Annexure A-1), communicated as follows.

This office is unable to process the pension case for want of following :

I ON SCRUTINY OF THE SERVICE BOOK OF SHRI AVINASH NASHIKRAO NAGARARE, TALATHI WHO RETIRED VOLUNTARILY ON 30/04/2018, IT IS FOUND THAT SERVICE COMES TO 21 YEARS 3 MONTHS & 2 DAYS AND NON-QUALIFYING SERVICE COMES TO 3 YEARS 6 MONTHS 1 DAY DUE TO EXTRA ORDINARY LEAVE. HENCE NET QUALIFYING SERVICE COMES TO 17 YEARS 9 MONTHS 01 DAY WHICH IS LESS THAN 20 YEARS AND THEREFORE PENSION IS NOT ADMISSIBLE TO HIM AS PER MCS PENSION RULES 1982 SUB RULE 66.

While making the impugned communication respondent no.3 lost sight of the fact that for computing qualifying service for grant of pension period of suspension and extraordinary leave were required to be considered as per the M.C.S. (Pension) Rules, 1982. Hence, this application.

3. Reply of respondents 2 and 3 is at pp.97 to 100. They have defended the impugned communication. To this reply show cause notice issued to the applicant, and order of suspension (Annexure R-1 collectively) are attached.

4. To decide the matter following provisions of the M.C.S. (Pension) Rules, 1982 are required to be considered.

66. Retirement on completion of 20 years qualifying service.

(1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(7) * * *

35. Counting of all leave for pension

All leave including extra-ordinary leave during the period of continuous service shall count as qualifying service for pension.

5. The applicant has relied on "***Tukaram M. Dharpawar v/s Bombay Municipal Corporation 2011(1) Mh.L.J.617***". In this case it is held-

4. What is further pertinent to be noted is that it is nobody's case that the services of the original petitioner were terminated at any point of time. He was merely placed under suspension because of the pending criminal prosecution. It implies that the petitioner continued in service till he was reinstated on 7th June, 1984. Therefore, the period during which the petitioner was under suspension, he continued to be in service of the Corporation. What is further pertinent to be noted is that by a letter dated 3rd May, 1995 the petitioner has been informed that the period from 16th November, 1977, i.e. the date on which the petitioner was placed under suspension, till 10th July, 1984 is treated as leave. If that period is treated as leave, it obviously means that the petitioner was in the service of the Corporation. If the petitioner was in the service of the Corporation during that period, obviously that period will have to be counted towards qualifying service for pension. In our opinion, therefore, the Corporation was not justified in saying that the petitioner had not, by 1st June, 1988,

completed 20 years of qualifying service for pension to his credit.

6. The applicant has also relied on the judgment dated 3.10.2018 delivered by the **Bombay High Court in Writ Petition No.5224/2017 (Meenakshi wife of Suresh Katare v/s State of Maharashtra)**. In this case, by relying on Rule 35 quoted above, it was held that the period of extra-ordinary leave should have been included while computing the period of qualifying service for the purpose of pension.

7. The applicant has further relied on the judgment dated 23.9.2019 delivered by the **Bombay High Court in Writ Petition No.14845/2017 (Ganpat Sambhaji Modalwad v/s Regional Executive Director - 3 and Competent Authority, MSEDCL and others)**. In this case it is held-

6. Extract of section 2-A (1) of Payment of Gratuity Act read with section 4 as reproduced here-in-below would show that benefit of payment of gratuity for whole of the period of services would not be detained for the reasons as have been given under aforesaid communications : -

“2-A. Continuous Service – (1) For the purpose of this Act - (1) An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of

sickness, accident, leave absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employees whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

(2) x x x x x

4. Payment of Gratuity – (1) *Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years –*

(a) on his superannuation, or

(b) on his retirement or resignation,

(c) on his death or disablement due to accident or disease;

(2) x x x x x

(3) x x x x x

(4) x x x x x

(5) x x x x x

(6) *Notwithstanding anything contained in sub-section (i)-*

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited.

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.” .

As such, while the period of 734 days is ordered to be considered as extra-ordinary leave, and would not be excluded from computation of continuous service and case not being falling under sub-section 6 of section 4 of Payment of Gratuity Act, negation of benefit of gratuity for the period is unsustainable.

8. It may be reiterated that period of suspension of the applicant was directed to be treated as extra-ordinary leaves and it was further directed that it was to be treated duty period for the purpose of pension. Considering these facts, relevant Rules and the rulings the application deserves to be allowed. Hence, the order.

ORDER

- (i) The O.A. is allowed in terms of prayers (i), (ii) and (iii).
- (ii) No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 12/04/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 12/04/2022.
and pronounced on
Uploaded on : 12/04/2022.**