

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.379 OF 2017

(Subject :- Condonation of Technical Break)

DISTRICT : AURANGABAD

Sanjay Natha Nade,)
Age:42 Yrs., Occu: Laboratory Assistant)
(Govt. Medical College), R/o. C/o. Govt.)
Medical College and Hospital, Aurangabad.)...**Applicant**

V E R S U S

1. **State of Maharashtra** ,)
Through: Secretary,)
Health Department Mantralaya,)
Mumbai – 32.)
2. **The Director,**)
Medical Education and Research,)
4th Floor, Saint George Hospital)
Complex Boribandar, Mumbai.)
3. **Dean,**)
Government Medical College)
and Hospital, Aurangabadd.) **....Respondents.**

Shri R.O. Awasarmol, learned Advocate for the Applicant.

Shri N.U. Yadav, learned Presenting Officer for the Respondents.

CORAM : B.P. Patil, VICE CHAIRMAN

RESERVED ON : 24.07.2019.

PRONOUNCED ON : 26.07.2019.

ORDER

1. The Applicant has challenged the communication dated 17.2.2016 issued by the Respondent No.2 rejecting his request for condonation of interruption in service and to extend the benefit in that regard by filing the present Original Application.

2. The Applicant was appointed as class IV employee on 3.10.1992 on compassionate ground. Before his regular appointment, he was given order of appointment of 29-29 and 90-90 days. When the Applicant was service at Paithan, he made representation with the concerned authority to condone the interruption in the service. On 27.3.2015, the reader, Incharge, Health Training, Paithan has addressed a communication to the Dean, Government Hospital and Medical College, Aurangabad stating that Applicant is seeking for condonation of interruption in service. On 18.5.2015, the Dean, Government Medical College, Aurangabad issued a letter to the reader, Health Training Squad, Paithan called information as to what action has been taken on the request made by the Applicant. On 14.9.2015, Assistant Professor, Incharge, Health Training Center, Paithan has communicated to Respondnet No.3 that the request made by the Applicant cannot be considered as it falls under Rule 48(b) of Maharashtra Civil Services

(Pension) Rules, 1982. On 12.1.2016, the Applicant moved one representation to the Director, Medical Education and Research Centre, Mumbai stating that Rule 48(1)(a) of the M.C.S. (Pension) Rules, 1982 speaks that the interruption in the service below 24 hours can be condoned. On 21.1.2016, the Dean, Government Medical College, Aurangabad has forwarded the proposal for review to the Director, Medical Education and Research, Mumbai. The Respondent No.2 by way of communication dated 17.2.2016 informed the Applicant that his request cannot be considered as his past service is less than three years and to condone the interruption of service, the period of service should not be less than five years.

3. It is contention of the Applicant that the interruption period in his service is only one or two days in whole service i.e. from the date of joining i.e. 03.10.1992 to 01.06.1995. It is his contention that the said interruption has been caused by reasons beyond his control. It is his further contention that the impugned order is in contravention of the provision of Rule 48 (1) (a) of the M.C.S. (Pension) Rules, 1982 and therefore, he has prayed to quash and set aside the impugned communication dated 17.02.2016 and direct the Respondent No.2 to condone the interruption in service and extend the benefit in that regard.

4. The Respondent Nos.1 to 3 have resisted the contention of the Applicant by filing the affidavit-in-reply. It is their contention that by order dated 3.10.1992, the Applicant was appointed as Class IV employee purely on temporary basis and the said employment was liable to be terminated without any notice and also with a specific condition that the said appointment shall not confer any right on the said employee including permanency in employment and seeking any benefits under the law. The Applicant was well aware about the fact that the same was not a regular employment in the Government establishment and no right or benefits will accrue or confer on him by virtue of the said order. It is their contention that that the Applicant was regularized in service by order dated 1.6.1995. The said order was fresh regular appointment order. The Applicant was not regular employee before 1.6.1995 and therefore he cannot claim any advantage under Rule 48 of MCS (Pension) Rules, 1982. It is their contention that the Applicant has worked during the said period on a temporary post in an non-continuous (i.e. with breaks) capacity with multiple spells of reappointment on the said post after received break of one or more days. Therefore, the period of interruption cannot be counted for qualifying service. The service of the Applicant on temporary basis does not confer any right to claim increment or any other benefits on the

Applicant. It is their contention that the Applicant's representation to condone the interruption of service is contrary to Rules and law. It does not fall within the parameter of Rule 48 of M.C.S. (Pension) Rules, 1982. As per the provision of Rule 48, interruption can be condoned in respect of those candidates who are eligible as per Rule 38. It means that the earlier service of the government employee should be of regular nature. The Applicant's earlier service was of temporary nature and therefore, he was not entitled to get benefit under provision of Rule 48. It is their contention that in view of the principle laid down in case of **Secretary, State of Karnataka & Others Vs. Umadevi and Others (2006 AIR SCW 1991)** those employees, who have been continued in service by court order are not entitled to get their such service regularized. The prior service rendered on temporary basis is not regular service and same cannot be tagged on to the subsequent/latter service for extending service benefits. It is their contention that the Respondent No.2 has rightly rejected the application of the Applicant and there is no illegality in it. Therefore, he has prayed to reject the Original Application.

5. I have heard Shri R.O. Awasarmol, learned Advocate for the Applicant and Shri N.U. Yadav, learned Presenting Officer for the Respondents. I have perused the documents on record.

6. Admittedly, the Applicant was initially appointed on temporary basis for the period of 29-29 and 90-90 days on compassionate ground on class IV post during the period from 3.10.1992 to 1.6.1995. On 1.6.1995, he was appointed on regular post. Admittedly, after regularization of service, the Applicant moved the application with the Respondents for condonation of interruption in service and to count prior service for extending the benefit of service. Admittedly, his application came to be rejected by the Respondents by order dated 14.9.2015. Admittedly, the Applicant moved another representation dated 12.1.2016 being aggrieved by the said order. The said representation came to be rejected by the Respondent No.2 by the impugned order dated 17.2.2016. Admittedly, the Applicant has not challenged initial order rejecting his claim dated 14.9.2015 before this Tribunal. But he has chosen to file the representation dated 12.1.2016 with the Respondents.

7. Learned Advocate for the Applicant has submitted that the Respondent No.2 has not considered the provision of Rule 48 of M.C.S.R. (Pension) Rules, 1982 with proper perspective.

8. He has submitted that the case of the Applicant is squarely covered under Rule 48(1) proviso (a) and (b) of M.C.S. (Pension) Rules, 1982. But the Respondent No.2 had not considered the said rule and rejected his representation dated 12.1.2016 by impugned communication dated 17.2.2016. He has submitted that the Government has issued G.R. dated 7.10.2016 by which the temporary service has been considered for granting benefit under Assured Career Progression Scheme. He has submitted that the Respondent No.2 ought to have allowed the representation of the Applicant and condone the interruption in service.

9. Learned P.O. for the Respondents has submitted that the Respondent No.2 has rightly rejected the representation of the Applicant in view of the provision of Rule 48 of M.C.S. (Pension) Rules, 1982. He has submitted that the Applicant was not in regular service and continued in service prior to 1.6.1995. Therefore, his earlier service which was temporary for specific period cannot be considered for condoning the interruption in the service. He has submitted that the case of the Applicant is governed by the Rule 38 and 48 of M.C.S. (Pension) Rules, 1982 and the Respondent No.2 has rightly rejected the representation

of the Applicant. He has submitted that the Applicant has not challenged the earlier order dated 14.9.2015. Without challenging the said order, he has filed the representation dated 12.1.2016. Therefore, the present Original Application is not maintainable. On these grounds, he has prayed to reject the Original Application.

10. Rule 48 of M.C.S. (Pension) Rules, 1982 deals with the provisions regarding condonation of interruption in service. Said Rule is material to decide issue involved in this Original Application. Hence, I reproduce the same as follows:-

“48. Condonation of interruption in service-

- (1) *The appointing authority may, by order, condone interruption in service of Government servant:
Provided that-*
- (a) *the interruptions have been caused by reasons beyond the control of the Government servant;*
 - (b) *the total service pensionery benefit in respect of which will be lost, is not less than five years duration, excluding one or two interruption, if any; and*
 - (c) *the interruption including two or more interruptions if any, does not exceed one year.”*

11. On going through the said Rule, it is crystal clear that proviso (b) to Rule 48 provides that for condoning the

interruption the total service pensionary benefit in respect of which will be lost, is not less than five years duration, excluding one or two interruptions, if any. The Applicant has rendered 2 years and 8 months service only before his regularization in the service. Therefore his case does not fall under Rule 48 proviso 1(b). Accordingly, the Respondent No.2 has rightly rejected the representation of the Applicant by impugned order.

12. It is also material to note here that the earlier representation of the Applicant has been rejected by the Respondents on 14.9.2015. The Applicant has not challenged the said order, but he chosen to file the representation against the said order and he filed the representation dated 12.1.2016 with the Respondents to which the Respondent No.2 had given reply by communication dated 17.2.2016 and rejected his request. There is no illegality in the impugned order. Therefore, no interference is called for in the impugned order.

13. I have gone through the G.R. dated 7.10.2016 on which the Applicant has placed reliance. The said G.R. is applicable to the Government servants working in the cadre of Clerk, Stenographers and equivalent cadres and working in Mantralaya and Greater Mumbai. The said G.R. is respect of

extension of benefit of Time Bound Promotion/Assured Career Progression scheme and for considering temporary service rendered by employer prior to regularization. The said G.R. is not applicable to the Applicant and the present case. Therefore, the same is not much useful to the Applicant. Therefore, I do not find substance in the submission advanced by the learned Advocate for the Applicant in that regard.

14. Considering the above said facts and circumstances, in my view, there is no illegality in the impugned order issued by the Respondent No.2 in rejecting the claim of the Applicant. The said order is in accordance with provisions of Rule 48 proviso (1) (b) of M.C.S. (Pension) Rules, 1982. Therefore, no interference is called for in it. There is no merit in the Original Application. Hence, the same deserves to be dismissed.

15 In view of the discussion in the foregoing paragraphs, the Original Application is dismissed. No order as to costs.

PLACE :- AURANGABAD.
DATE :- 23.07.2019

(B.P. PATIL)
VICE CHAIRMAN