

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 210 OF 2013

DIST. : JALNA

Madhukar s/o Rajaram Mapari,
Age 66 years, Occ. nil,
R/o Near Maruti Mandir,
At Post Ganpati Rajur,
Tal. Bhokardan, Dist. Jalna.

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APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Public Health Department,
M.S., Mantralaya, Mumbai . 32.
2. The Joint Director of Health Services,
(Malaria & Filariasis), Pune.
3. The District Malaria Officer,
Jalna.
4. The Accountant General,
M.S., Nagpur.

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RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, learned Advocate for
the applicant.

: Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for respondents.

CORAM : HON'BLE SHRI J. D. KULKARNI, MEMBER (J)

ORAL - ORDER

(Passed on this 30th day of January, 2017)

1. Heard Shri Avinash Deshmukh, learned Advocate for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for respondents.
2. In this original application the applicant Shri Madhukar s/o Rajaram Mapari has claimed directions to the respondents to forthwith finalize his pension case by taking requisite / necessary steps including regularization of his period of absence from duty and to extend him pension and all pensionary benefits. By amending the original application the applicant has also claimed that the impugned communications dated 3.2.2015 (Annex. I) and 18.4.2015 (Annex. J) issued by the res. nos. 1 & 3 respectively be quashed and set aside. He also claims a direction to the res. nos. 1 to 3 to condone the interruption in his service from 5.7.1986 to 2.11.1998 under rule 48 of the M.C.S. (Pension) Rules, 1982 and also to grant other consequential reliefs.
3. From the admitted facts on record, it seems that the applicant has worked as a Health Assistant / Basic Health Worker continuously from 3.12.1968 till 1986. While working as Health Assistant at Latur in the year 1986 the applicant sustained a paralytic attack. The applicant,

therefore, proceeded on medical leave from 1986 to 1995. In July, 1995, the applicant got recovered from paralytic attack and requested the Malaria Officer to allow him to join the duties, but he was not allowed.

4. The respondents, on the contrary, vide order dated 3.12.1998 terminated the services of the applicant. The applicant has challenged his termination by filing original application no. 1051/1999 before this Tribunal. This Tribunal vide its order dated 7.1.2000 was pleased observe as under :-

“Heard Shri AS Deshmukh, Id. Adv. for the petitioner and Smt. MN Deshpande, Id. PO for respondents. Admittedly the petitioner is terminated from the service w.e.f. 3.12.98 (Exh. B page 41). It is also admitted fact that only show cause notice was given to the petitioner and no departmental enquiry was held against him. Prima facie the order of termination of the petitioner without holding proper departmental enquiry is bad in law because termination of services contemplated a sort of major punishment under rule 5 of the MCS (Discipline and Appeal) Rules. It is also seen from the contents of the affidavit in reply that the petitioner was required to appear before the Medical Board for examination some time on or about 18.10.1998 and Medical Board certified on 28.10.1998 that the petitioner was eligible for temporary appointment for a period of one month (vide para 13 of the affidavit in reply). According to the Id. Adv. for the petitioner, the petitioner is medically fit to resume duties. However, before passing any further orders, it is

necessary to give directions to the petitioner to appear before the Medical Board in respect of his contentions and whether he is eligible for appointment and continuation on the post of Health Worker in Malaria Department.

2. As such, it is hereby ordered that the petitioner shall appear before the Medical Board at SRTR Medical College and Hospital, Ambajogai, Dist. Beed. The Medical Board shall examine the petitioner and send certificate in respect of the fitness of the petitioner on this post or otherwise within a month from today.

3. S.O. to 16.2.2000. Steno copy of this order be provided to the Id. Adv. for the petitioner, so as to enable him to produce the same before the Medical Board.”

5. According to the applicant, he appeared before the Medical Board, Ambajogai and the said board examined the applicant on 9.2.2000 and referred the applicant to Sasoon Hospital, Pune. Consequently, the report of competent authority of the Sasoon Hospital, Pune was received, whereby the applicant was held fit to join the duties and on the basis of the said report, the applicant was allowed to join duties. Accordingly, the applicant worked in the office of the respondents again from April, 2000 to 31.3.2005 and ultimately, on 31.3.2005, the applicant got retired on superannuation. Not only that, the provisional pension in 2 installments of 6 months each was also granted to the applicant for the

period from 1.4.2005 to 31.3.2006, though in the year 2010-11. 75% gratuity amount was also paid to the applicant in the year 2006, whereas G.P.F. amount was paid in two installments in the year 2007 and 2011 respectively. However, neither the regular pension was granted to the applicant nor, his absence period was regularized and, therefore, the applicant is constrained to file the present original application.

6. During the pendency of the original application, the respondent no. 1 issued communication dated 3.2.2015 (Annex. I) and the res. no. 3 issued another communication acting on the communication issued by the res. no. 1, on 18.4.2015 (Annex. J). Vide communication at annex. J dated 3.2.2015 the res. no. 1 informed the applicant as under :-

“3. आता श्री. एम.आर. मापारी, सेवानिवृत्त आरोग्य कर्मचारी, जिल्हा हिवताप अधिकारी, जालना यांनी त्यांना दिनांक ०१.०४.२००६ पासून तात्पुरते सेवानिवृत्ती वेतन अथवा निवृत्तीवेतन मिळत नसल्यामुळे मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण मुंबई खंडपीठ औरंगाबाद येथे मुळ अर्ज क्रमांक २१०/२०१३ दाखल केलेला आहे.

श्री. एम.आर.मापारी, सेवानिवृत्त आरोग्य कर्मचारी, जिल्हा हिवताप अधिकारी, जालना यांनी त्यांच्या एकूण ४५०४ दिवसांची (साधारणतः १२ वर्षे ३ महिने २७ दिवस) हा विनापरवाना अनधिकृत गैरहजेरीबाबत जिल्हा हिवताप अधिकारी, लातूर यांना काहीही कळविलेले नाही. तसेच महाराष्ट्र नागरी सेवा (रजा) नियम १९८१ मधील नियम १६ नुसार श्री. एम.आर.मापारी, सेवानिवृत्त आरोग्य कर्मचारी, जिल्हा हिवताप अधिकारी, जालना यांच्या एकूण ४५०४ दिवसांची (साधारणतः १२ वर्षे ३ महिने २७ दिवस) हा विनापरवाना अनधिकृत कालावधी नियमित करण्याकरीता कोणतीही अपवादात्मक परिस्थिती नाही.

आरोग्य कर्मचा-यांची सेवा ही अत्यावश्यक व तातडीची सेवा असुन श्री. एम.आर.मापारी, सेवानिवृत्त आरोग्य कर्मचारी यांच्या एकूण ४५०४ दिवसांच्या विनापरवाना अनधिकृत गैरहजेरीमुळे ग्रामीण जनता आरोग्य सेवेच्या सुविधेपासून वंचित राहिलेली आहे ही वस्तुस्थिती आहे.

४. उपरोक्त “परिच्छेद ३” मधील वस्तुस्थिती विचारात घेता श्री. एम.आर. मापारी, सेवानिवृत्त आरोग्य कर्मचारी यांची दिनांक ०५/०७/१९८६ ते दिनांक ०२/११/१९९८ अशा एकूण ४५०४ दिवसाची विनापरवाना कार्यालयीन अनुपस्थिती अनधिकृत गैरहजेरी ठरविण्यात यावी व त्याप्रमाणे तात्काळ कार्यवाही करण्यात यावी.”

7. In consequence of the aforesaid communication, the res. no. 3 has issued another communication on 18.4.2015 (Annex. J), which reads as under :-

“उपरोक्त संदर्भ क्र.२ व ३ अन्वये आपण जिल्हा हिवताप अधिकारी कार्यालय लातूर यांच्या आस्थापनेवर कार्यरत असतांना दिनांक ०५/०७/१९८६ ते दिनांक ०२/११/१९९८ अशी एकूण ४५०४ दिवस कार्यालयास कुठल्याही प्रकारची पूर्वसुचना व वरीष्ठांची पुर्व परवानगी न घेता जाणीवपुर्वक व हेतुपुरस्कर कर्तव्यावर गैरहजर राहिले. तसेच आपणास या कार्यालयाने व जिल्हा हिवताप अधिकारी, लातूर कार्यालयाकडून वारंवार लेखी सुचना देऊनही आपण कर्तव्यावर हजर राहिले नाहीत. यावरून आपणास शासकीय सेवेची आस्था तसेच शासकीय कामात स्वारस नसल्याचे स्पष्ट होते. ही बाब विचारात घेता आपला दिनांक ०५/०७/१९८६ ते ०२/११/१९९८ अशी एकूण ४५०४ दिवसाचा अनधिकृत गैरहजर कालावधी नियमित करण्या करीता महाराष्ट्र नागरी सेवा (रजा) नियम - १९८१ मधील नियम (१६) नुसार कोणतीही परिस्थिती नाही. आरोग्य कर्मचा-यांची सेवा ही अत्यावश्यक व तातडीची सेवा असुन आपण दिनांक ०५/०७/१९८६ ते दिनांक

०२/११/१९९८ अशी एकूण-४५०४ दिवसांच्या म्हणजेच (१२ वर्षे ३ महिने २७ दिवस) अनाधिकृत गैरहजर कालावधीत ग्रामीण जनतेस प्रभावीपणे आरोग्य सेवा/सुविधा पुरविण्यास अडचणी निर्माण केलेल्या आहेत ही वस्तुस्थिती आहे. तरी सुध्दा आपण अर्जात नमुद केल्या प्रमाणे माझ्यावर कुटील कारस्थानातून मला गैरहजर दाखविण्यात आले आहे. असे म्हणने नियमानुसार संयुक्तीत वाटत नाही.

त्या अर्थी शासनाने वरील संदर्भ क्रं. १ अन्वये आदेशीत केल्यानुसार व उपरोक्त वस्तुस्थिती विचारात घेता आपला दिनांक ०५/०७/१९८६ ते दिनांक ०२/११/१९९८ अशी एकूण-४५०४ दिवसांची अनाधिकृत गैरहजर कालावधी अनाधिकृत गैरहजेरी ठरविण्यात येत आहे. तसेच सदरचा (एकूण-४५०४) दिवसाचा अनाधिकृत गैरहजेरी कालावधी हा महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम-१९८२ मधील नियम-४७ (१) नुसार सेवा खंड म्हणून ठरविण्यात आल्यामुळे सदरील अनाधिकृत गैरहजेरी कालावधीचे वेतन देण्याचा प्रश्न उदभवत नाही. कृपया याची नोंद घ्यावी.

सही/-
जिल्हा हिवताप अधिकारी,
जालना”

8. The res. nos. 1 & 3 respectively have issued the aforesaid both the communications during the pendency of the original application and, therefore, the applicant has challenged these communications by amending the original application.

9. The res. no. 3 initially filed reply affidavit and admitted most of the facts as regards termination of the applicant, his reinstatement in service and retirement and also payment of gratuity and provisional pension amount. It is stated that the applicant was absent from duty from

5.7.1986 to 2.11.1998 (4321 days) and from 3.12.1998 to 10.4.2000 (495 days) and thus total absence period of the applicant was 4816 days and a proposal has been sent to the Govt. of Maharashtra In Public Health Department, Mantralaya, Mumbai by the res. no. 2 on 6.7.2006 for regularization of absence period of the applicant. The copy of the said proposal is also placed on record at Exh. R.3. It seems that again reminder letter was sent for regularization of absence period of the applicant on 9.12.2013 and the same was pending before the Government.

10. The res. no. 2 also files reply affidavit and submitted that the applicant was absent unauthorizedly from 5.7.1986 to 2.11.1998 and from 3.12.1998 to 10.4.2000 and also reiterated about sending of proposal to the Government for regularization of absence period of the applicant. It is further stated that the Govt. vide its order dated 25.5.2012 asks some documents viz. medical certificates, recommendation on medical certificates etc. and the same were submitted.

11. The res. no. 1 also filed reply affidavit and confirmed the fact that the proposal regarding unauthorized absent period of the applicant has been forwarded to the Finance Department on 24.3.2014 and approval of the Finance Department is awaited. it is further submitted that without approval of Finance Department in respect of unauthorized absence

period of the applicant, it is not possible to sent the pension case of the applicant to the Accountant General.

12. The res. nos. 1 to 3 then filed joint reply affidavit and submitted that the service period of the applicant from 3.11.1998 to 31.3.2005 is 6 years, 4 months and 29 days only and, therefore, the applicant has not completed minimum qualifying service of 10 years to make him entitle for pension. It is stated that the Dist. Malaria Officer, Jalna i. e. the res. no. 3 without verifying the service record of the applicant illegally and in contravention of M.C.S. (Pension) Rules sanctioned the provisional pension to the applicant from 1.4.2005 to 31.3.2006 and, therefore, a D.E. has been initiated against the said res. no. 3.

13. The res. nos. 1 to 3 have filed affidavit in reply to the amended original application and in the said reply it has been stated that the proposal for regularization of the absent period of the applicant has been decided on 3.2.2015 and thereby it was decided that the applicant is not entitled for regularization of the said absentee period. The applicant has not rendered continuous service of 20 years and there was break in service from 5.7.1986 to 2.11.1998 and, therefore, he is not entitled for the pension. It is stated that the applicant or his family members never informed the office about paralysis attack sustained by the applicant from 1986 to 1998.

14. The learned Advocate for the applicant submits that even for the sake of argument, it is accepted that the applicant was absent from the

duty for long period of 12 years, still the fact remains that the applicant was suffering from paralytic attack and, therefore, he was unable to attend the duty.

15. There is no dispute of the fact that the applicant has continuously worked in the office of respondents from 31.12.1968 to 4.7.1986 and thereafter from April, 2000 to 31.3.2005. The question is about regularization of his absence period from 5.7.1986. He resumed his duty in April, 2000. The absence period as interpreted by the respondents is from 5.7.1986 to 2.11.1998.

16. There is no dispute of the fact that since the applicant was absent his service came to be terminated from 3.12.1998 and being aggrieved by the said order of termination, the applicant preferred O.A. no. 1051/1999 before this Tribunal. In the said matter this Tribunal directed the respondents to allow the applicant to appear before the Medical Board at Ambajogai, Dist. Beed. It is thus admitted fact that thereafter the applicant was examined by the Medical Board and then the said Medical Board directed the applicant to approach at Sasoon Hospital, Pune and after getting fitness certificate from Sasoon Hospital, Pune, the applicant was allowed to resume the duties. Accordingly the applicant resumed duties in April, 2000 and got retired on superannuation on 31.3.2005.

17. There is nothing on record to show that any D.E. was initiated against the applicant for his so called unauthorized absence from

5.7.1986 to 2.11.1998. Admittedly, on 3.12.1998, the applicant's services were terminated and the said termination has been quashed by this Tribunal. In such circumstances, the continuous service of the applicant is from 31.12.1968 till 4.7.1986 and from April 2000 to 31.3.2005. Since no D.E. was initiated against the applicant for his absenteeism, the only fact which was required to be taken into consideration by the respondents was to regularize the unauthorized absence period of the applicant and since it was not done, this original application has been filed by the applicant.

18. In view of the aforesaid circumstances, it is necessary to see as to whether the communication vide which the absent period of the applicant was treated as break in service is legal and proper ?

19. In the impugned communication dated 3.12.2015, it has been mentioned that the applicant's absent period is 12 years 3 months and 27 days (total 4504 days) and there was no exceptional circumstances to regularize the said absent period. It is however, material to note that the respondents have not considered following facts :-

- (i) the applicant sustained the paralysis attack.
- (ii) He was medically unfit to resume the duties.

- (iii) After getting medically fit, the applicant requested the authorities to allow him to join the duties, but the applicant was not allowed to join the duties.
- (iv) No D.E. was initiated against the applicant except issuing some notices.
- (v) The observations of this Tribunal in O.A. no. 1051/1999 regarding allowing the applicant to appear before the Medical Board
- (vi) The Maliria Officer has recommended the case of the applicant for regularization of his absence period.
- (vii) The fact that the Malaria Officer has sanctioned provisional pension to the applicant.
- (vii) The fact that the applicant was allowed to join the duties and ultimately got retired on superannuation on 31.3.2005.
- (ix) The res. no. 1 has also not considered the fact that the applicant was in continuous service from 31.12.1968 to 4.7.1986 and thereafter from July, 2000 to 31.3.2005.

20. From the impugned communication dated 18.4.2015 it seems that the applicant was absent for total period of 4504 days and this period has been shown as break in service as per rule 47 of the M.C.S. (Pension)

Rules, 1982. It seems that the respondent authorities have not taken into consideration the M.C.S. (Leave) Rules, 1981. Even for the sake of argument it is accepted that the applicant remained absent unauthorizedly, it seems that the applicant sustained paralytic attack and was on medical leave is not disputed. Rule 48 of the M.C.S. (Leave) Rules, 1981 states as under :-

48. Absence after expiry of leave – (1) Unless the authority competent to grant leave extends the leave, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.+

21. In view of rule 48 of the M.C.S. (Leave) Rules, 1981, the absence of the applicant can be treated as a extraordinary leave as may be admissible.

22. Rule 16 of the M.C.S. (Leave) Rules, 1981 states about maximum amount of continuous leave it reads as under :-

16. Maximum amount of continuous leave. . Unless Government in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years.+

The aforesaid rule says that the Government can sanction leave under exceptional circumstances even for more than 5 years.

23. Rule 4 of the M.C.S. (Leave) Rules, 1981 is a power of relaxation in favour of the Government, which reads thus :-

4) Power of relaxation. . Where Government is satisfied that the operation of any of these rules causes or is likely to cause undue hardship in the case of any Government servant or class of Government servants, it may, by an order in writing, exempt any such Government servant or class of Government servants from any provisions of these rules or may direct that such provisions shall apply to such Government servant or class of Government servants with such modifications not affecting the substance thereof as may be specified in such order.+

24. From the aforesaid discussion, it will be clear that the Govt. has ample power to relax the provisions of the Rules and also to interpret the rules in favour of the Govt. employee in the interest of justice and in the exception circumstances.

25. In my opinion, the respondent no. 1 ought to have considered the fact that the applicant has sustained paralytic attack and the said decease was for a prolonged period. After getting medically fit the applicant approached the respondent authorities and requested to allow him to join the duties, but he was not allowed and on the contrary he was terminated. The said termination was quashed and set aside by the Tribunal and the applicant was allowed to join the duties that too after appearing before the Medical Board at Ambajogai and before Sasoon Hospital at Pune. The competent authority of Sasoon Hospital, Pune certified the applicant fit to join the duties and thereafter the applicant joined the duties and worked for 5 years in the department. Apart from the said absent period the continuous service of the applicant is from 31.12.1968 to 4.7.1986 and from April, 2000 to 31.3.2005. If absentee period of the applicant is treated as extraordinary leave for which the applicant may not be entitled to claim salary and other benefits, still it can be counted for pensionary benefits i. e. length of service. So also the applicant's continuous service from 1968 to 1986 and from April 2000 to 31.3.2005 may be sufficient to grant him pension under M.C.S. (Pension) rules, 1982. In my opinion, none of these circumstances along with the circumstances referred hereinabove have been considered by the respondent authorities. Hence, I pass following order :-

ORDER

- (i) The original application is partly allowed.
- (ii) The impugned communication dated 3.2.2015 (Annex. I) and 18.4.2015 (Annex. J) issued by the res. nos. 1 & 3 respectively are quashed and set aside.
- (iii) The res. nos. 1 to 3 in general and res. no. 1 in particular are directed to consider the circumstances mentioned hereinabove and to take fresh decision on the point of condonation of interruption of applicant's service from 1986 to 1998 under rule 48 of M.C.S. (Pension) Rules, 1982 and also to take into consideration various provisions of M.C.S. (Pension) Rules, 1982 and M.C.S. (Leave) Rules, 1981 and to extend the pension and pensionary benefits to the applicant as admissible thereunder.
- (iv) The decision as mentioned above be taken within a period of 3 months from the date of this order considering the fact that the applicant has almost reached the age of 70 years and the said decision shall be communicated to the applicant in writing by speed post.

There shall be no order as to costs.

MEMBER (J)