

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 648 OF 2021

DISTRICT : JALGAON

Dr. Usha Narendra Bholane,)
Age : 70 years, Occu. : Nil,)
V.M. Ward, Beside Bazar Police Station,))
Bhusawal, Tah. Bhusawal,)
Dist. Jalgaon.)

...APPLICANT

V E R S U S

1) The State of Maharashtra,)
Secretary Public Health,)
Health Department, Mantralaya,)
G.T. Hospital Sankul Building,)
10th floor, Mantralaya, Mumbai-1.)

2) The Director of Health Services,)
Aarogya Bhavan, St. George's)
Hospital Compound,)
P.D. Mello Road, Mumbai -1.)

3) The Joint Director,)
Health Services, Central Building,))
Pune.)

4) The Deputy Director,)
Health services, Nashik Division,)
Nashik.)

5) The Medical Officer,)
Municipal Dispensary, Bhusawal,))
Tah. Bhusawal, Dist. Jalgaon.)

...RESPONDENTS

APPEARANCE : Shri A.P. Gase, learned counsel for the
applicant.

: Shri B.S. Deokar, learned Presenting Officer for respondent authorities.

: Shri N.R. Dayama, learned counsel for respondent no. 5.

CORAM : **JUSTICE P.R. BORA, VICE CHAIRMAN.**

RESERVED ON : **2.3.2023**

DECIDED ON : **2.5.2023**

ORDER:

1. Heard Shri A.P. Gase, learned counsel for the applicant, Shri B.S. Deokar, learned Presenting Officer for the respondent authorities and Shri N.R. Dayama, learned counsel for respondent no. 5.

2. The applicant has preferred the present Original Application seeking directions against the respondents to grant her pension and pensionary benefits having regard to her continuous service on the post of Medical Officer Class-III in the period between 25.12.1970 to 15.4.1983 along with other statutory benefits and interest on the said amounts at the rate of 12% for not granting the said benefits within the stipulated period. The applicant has also prayed for retirement gratuity along with interest at rate of 12% thereon.

3. **Facts as stated in the O.A.**

(i) The applicant entered into the Government services w.e.f. 25.12.1970 as a Medical Officer Class-III and was posted at Municipal Dispensary, Bhusawal. Vide order 19.9.1982 the applicant was promoted as Medical Officer Class-II and vide order dated 26.9.1982 was posted as Medical Officer, Primary Health Centre, Edlabad, Dist. Jalgaon. In the year 1982 children of the applicant were school going and studying at Bhusawal and there was nobody to look after them, so also, the father-in-law of the applicant was suffering from various diseases due to old age and was bedridden, the applicant, therefore, requested the Deputy Director of Health Services to revert her to Class-III post and to post her at Bhusawal. The Deputy Director of Health Services made endorsement on her said representation on 24.12.1982 and reverted the applicant as Class-III category Medical Officer on the same post at Bhusawal. The applicant was allowed to join duty as Class-III Medical Officer at Bhusawal Municipal Dispensary. On 15.4.1983 the Medical Officer of Municipal Dispensary, Bhusawal all of a sudden relieved her on the ground that one Smt. Narade was appointed as

Class-III Medical Officer in the Municipal Dispensary at Bhusawal.

(ii) After the applicant was relieved on 15.4.1983, she made several representations to the higher authorities. The Deputy Director of Health Services, Nashik forwarded her representation to the Director of Health Services, Mumbai and communicated that as per the request made by the applicant he (i.e. the Deputy Director) has allowed the reversion of the applicant in anticipation of the order of the Director of Health Services and requested for approval of the said action of reverting the applicant. In pursuance of the communication made by the Deputy Director of Health Services, Nashik, the Director of Health Services, Mumbai vide his letter dated 19.4.1983 informed to the Joint Director, Health Services, Pune that separate action is being taken to approve the reversion of the applicant and directed to transfer Dr. Narade, who was transferred and posted at Bhusawal in place of applicant, elsewhere. Thereafter, though, the applicant made many representations to the respondent authorities to give her posting, the authorities did not consider the same.

(iii) Since her request was not considered, the applicant filed Civil Suit No. 202/1986 before the Hon'ble Civil Judge Senior Division at Jalgaon praying for posting and arrears of salary. The said Civil Suit came to be decreed on 2.7.1990. The learned Civil Judge Senior Division, Jalgaon directed the defendants in the Suit i.e. the respondent authorities to give posting to the applicant as a Medical Officer in Municipal Dispensary at Bhusawal and also directed to pay sum of Rs. 39,618/- to the applicant with interest. Against the judgment and decree passed by the learned Civil Judge Senior Division, Bhusawal in Special Civil Suit No. 286/1986 the State Government preferred an appeal before the learned District Court at Jalgaon bearing R.C.A. No. 156/1990. The said appeal came to be transferred to the Maharashtra Administrative Tribunal, Aurangabad Bench. Upon receipt of said R.C.A., this Tribunal renumbered the said R.C.A. as Transferred Application No. 171/1993. This Tribunal allowed the said Appeal/T.A. vide its order dated 9.8.2002. It is the further contention of the applicant that because of communication-gap in between the applicant and her Advocate in the month of May, 2015

the applicant for the first time came to know that the Appeal filed by the State was allowed. After obtaining the certified copy of the said judgment the applicant again made a representation on 1.6.2015 to the respondent authorities and requested to give her service benefits and grant her pension since in the meanwhile period she had attained the age of superannuation on 17.11.2004. It is the further contention of the applicant that since she had rendered continuous service as a Medical Officer Class-III during the period between 25.12.1970 to 26.9.1982 and thereafter from 24.12.1982 to 15.4.1983, she was entitled for the pension and the pensionary benefits.

(iv) The applicant, therefore, had filed Original Application No. 284/2016 before this Tribunal seeking directions to grant pension and service benefits. The Tribunal after hearing the parties vide order passed on 15.12.2018 directed the respondents to take a conscious judicious decision on the representation of the applicant and to decide whether she is entitled for pension and pensionary benefits. On 12.4.2019 this Tribunal again directed respondent no. 2 to take decision on the proposal forwarded by the Deputy Director of Health Services,

Nashik Division in light of the provisions under M.C.S. (Pension) Rules, 1982 (for short the Pension Rules, 1982). Respondent no. 1 vide order dated 28.2.2020 rejected the representation of the applicant seeking pension and pensionary benefits. The applicant, therefore, sought amendment in O.A. No. 284/2016 by filing necessary amendment application in the said O.A. The then learned Bench instead of passing any order on amendment application disposed of O.A. No. 284/2016 on 20.8.2021 by granting liberty to the applicant for challenging the order dated 28.2.2020 by filing separate Original Application. The applicant has accordingly preferred the present Original Application.

4. It is the contention of the applicant in the present Original Application that the applicant is entitled for receiving pension as she had continuously served the Government for about 13 years and as she was not dismissed or removed from the services, she must be deemed to be in the Government services till her attaining the age of superannuation on 30.11.2004. it is her further contention that the respondents ought to have computed the period of absence without leave as against extraordinary leave of the applicant in view of the provisions

under sub-rule 2 of rule 47 of the Pension Rules, 1982. It is the further contention of the applicant that in view of rule 30 and the first note to rule 57 of the Pension Rules, 1982, the applicant is entitled for pensionary benefits. Reference is also made to rule 45 of Pension Rules, 1982. On all the aforesaid grounds the applicant has prayed for allowing her application.

5. The respondents have resisted the contentions raised and the prayers made in the Original Application by filing their joint affidavit in reply. The respondents have disputed the fact that the Deputy Director of Health Services allowed the request of the applicant to revert her from the post of Medical Officer Class-II to the Medical Officer Class-III stating that the Deputy Director was not having any such authority to pass such order. The respondents have further contended that as the applicant remained absent from duties for quite a long period without obtaining any prior permission or without getting the leave sanctioned, the said period of absence is to be treated as break in service and, as such, even the past services of the applicant cannot be considered. The respondents have, therefore, prayed for dismissal of the Original Application.

6. The learned counsel for the applicant argued that the order dated 28.2.2020 impugned in the present Original Application has been passed by the respondent no. 1 in utter disregard of the provisions of the Pension Rules, 1982, as well as, the M.C.S. (Leave) Rules, 1981. The learned counsel further argued that in view of rule 45 of the Pension Rules, 1982 the dismissal or removal of a Government servant from a service or post entails forfeiture of his past service. The learned counsel further submitted that in the instant matter the respondents have neither removed the applicant nor dismissed her from service and as such there is no question of forfeiture of her past service, which the applicant has rendered from 25.12.1970 to 15.4.1983. The learned counsel further submitted that since the applicant has rendered continuous service as the Medical Officer Class-III for the period of more than 10 years, she is entitled for the pension in accordance with the provisions of the Pension Rules, 1982. The learned counsel further submitted that the respondents ought to have considered the period of absence of the applicant as extraordinary leave in view of rule 47 of the Pension Rules, 1982. The learned counsel submitted that the respondents have, however, overlooked the said provision and wrongly rejected the representation of the

applicant. The learned counsel further submitted that in view of rule 30 and the first Note of rule 57 of the Pension Rules, 1982, the applicant is entitled for pensionary benefits for the period she has served with the respondents. The learned counsel further submitted that the respondents are responsible for not permitting the applicant to join the duties and for not offering her posting at any other place.

7. The learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of **Dayal Saran Sanan Vs. Union of India and Others, (1980) 3 SCC 25** in order to buttress his contention that in absence of dismissal or removal from service the applicant shall be deemed to be holding a substantive post and cannot be deprived of her pension and gratuity merely because of her absence from duty. The learned counsel read out the last paragraph of the said judgment and submitted that the facts involved in the instant matter are identical with the facts which existed in the matter before the Hon'ble Supreme Court. According to the learned counsel, the law laid down in the said judgment therefore would squarely apply to the facts of the present case.

8. The learned counsel further relied upon the judgment of the Hon'ble Division Bench of Bombay High Court, Bench at Aurangabad in the case of **Kalyani Sangappa Sadashivappa Vs. State of Maharashtra & Ors., 2012 (3) Bom. C.R. 298.** The learned counsel submitted that the Hon'ble Division Bench in the aforesaid matter has clearly held that the Government servant who renders continuous service for the period of more than 10 years is entitled for the pensionary benefits.

9. The learned counsel also relied upon the another judgment of the Hon'ble Supreme Court in the case of **Basic Shiksha Parishad and another Vs. Smt. Sugna Devi and others, 2004 AIR SCW 119.** The learned counsel pointed out that the respondent in the said matter i.e. the Government servant was prevented from joining as Teacher after she went on leave due to her prolonged illness, however, no order of termination or dismissal was produced. In the aforesaid facts the Hon'ble Supreme Court held the petitioner in continuous service and also held her entitled for compensation equivalent to salary for three preceding years before the date of her superannuation on basis of the revised pay. The learned counsel submitted that in the present matter the applicant was not given any further posting and as such was prevented from discharging her duties.

10. The learned counsel also relied upon the judgment delivered by the Division Bench of Hon'ble Bombay High Court in the case of **Muktabai w/o Chandrakant Parwat Vs. State of Maharashtra & Ors., 2022(5) Mh. L.J.128**. The learned counsel submitted that in the said matter the Hon'ble Bombay High Court has gone one step ahead in taking into account the temporary or officiating service to be counted for the qualifying service, if the qualifying service falls short to that extent. The learned counsel, in the circumstances and in view of the ratio laid down in the judgments relied upon by him, prayed for setting aside the impugned order and also prayed for directions against the respondents to grant the pension to the applicant for her continuous service for the period from 1970 to 1983.

11. The learned Presenting Officer in his argument reiterated the contentions raised in the affidavit in reply submitted on behalf of the respondents. The learned Presenting Officer submitted that having regard to the conduct of the applicant there is every reason to believe that the applicant at her own remained absent un-authorizedly for quite a long period and the entire said period has to be considered as the break in service of the applicant thereby forfeiting her past services. The learned

Presenting Officer submitted that the ratio laid down in the judgments relied upon by the applicant is altogether different and would not apply to the facts of the present case. The learned Presenting Officer therefore prayed for dismissal of the present application.

12. I have duly considered the submissions advanced on behalf of the applicant, as well as, the respondents i.e. the State authorities. I have carefully gone through the pleadings of the parties and the documents filed on record. It is not in dispute that the applicant continuously worked during the period between 25.12.1970 to 31.12.1982 i.e. for the period more than 10 years. As such, it is the contention of the applicant that she is entitled for the pension proportionate to the period of service rendered by her. As against it, the respondents have raised the plea that the prolong unauthorized absence of the applicant from duties is held as break in her service because of which her past service stand forfeited and cannot be considered for the purpose of pension. According to the respondents, they have not committed any error in rejecting the request of the applicant.

13. As noted hereinabove, it is the case of the applicant that while working at Edlabad, Dist. Jalgaon as Class-II Medical Officer, she had requested the Deputy Director of Health Services, Nashik for her reversion to Class-III Medical Officer at Municipal Dispensary, Bhusaval due to family difficulties. It is the further case of the applicant that accordingly Shri Wanere the then Deputy Director of Health Services, Nashik passed an order on 24.12.1982 and thereby reverted the applicant to the post of Class-III Medical Officer and directed her to resume at Bhusaval. It is the further contention of the applicant that accordingly she resumed at Bhusaval Municipal Dispensary as Class-III Medical Officer and worked in the said Dispensary till 15.4.1983. It is the further contention of the applicant that on 15.4.1983 she was relieved from the post of Medical Officer Class-III, Municipal Dispensary, Bhusaval. It is the further contention of the applicant that thereafter she was not given any posting despite representations made by her and in the circumstances she was constrained to file Special Civil Suit in the Court of learned Civil Judge Senior Division at Bhusaval.

14. It is the matter of record that the Special Civil Suit so filed by the applicant was decreed by the learned Civil Judge Senior Division at Bhusaval. It is also the matter of record that the

appeal filed against the judgment and decree passed in the Special civil Suit No. 200/1986 was challenged by the State by filing Regular Civil Appeal No. 156/1990 in the District Court at Bhusaval. It is also the matter of record that the said RCA came to be transferred for its decision in accordance with law to this Tribunal and was numbered as Transfer Application No. 171/1993. It is also the matter of record that this Tribunal vide its judgment and order passed on 9.8.2002 allowed the said Transfer Application and dismissed the Suit filed by the applicant. There is no dispute that the order dated 9.8.2002 passed by this Tribunal in T.A. No. 171/1993 has not been challenged by the applicant before the Hon'ble High Court. It is thus evident that the findings recorded in the said T.A. have attained the finality.

15. It is the case of the applicant that she came to know about the judgment and order passed in T.A. No. 171/1993 in May, 2015 and thereafter on 1.6.2015 she made representation with the respondent authorities to give her service benefits and grant her the pension. It is the grievance of the applicant that since there was no response from the respondents, she was constrained to approach this Tribunal by filing Original Application No. 283/2016. It is the matter of record that during

the pendency of the said Original Application the order came to be passed on 28.2.2020 by the respondents thereby rejecting the request of the applicant. Thereafter the said Original Application was permitted to be withdrawn by this Tribunal giving liberty to the applicant to file fresh Original Application challenging the order dated 28.2.2020 passed by the respondents. In the present Original Application, as has been argued by the learned counsel for the applicant, the applicant has prayed for grant of pension having regard to the continuous service rendered by the applicant on the post of Medical Officer Class-III during the period between 25.12.1970 to 15.4.1983. It has been argued that as per rule 45 of the Pension Rules, 1982 past services can be forfeited only in the event of dismissal or removal of the Government servant from the service/post. As noted earlier, it has also been argued that the applicant has neither been dismissed nor removed from the services by the respondents and in the circumstances the service rendered by the applicant during the period from 25.12.1970 to 15.4.1983 are to be taken into account for grant of proportionate pension to the applicant.

16. From the pleadings in the application and the prayer as has been made, it is quite evident that the applicant is seeking

superannuation pension. Rule 63 of the Pension Rules, 1982 reads thus :-

“63. Superannuation Pension.

A Government servant who retires on his attaining age of superannuation fixed by the relevant sub-rule of rule 10 shall be granted a Superannuation Pension.”

17. As provided under rule 10 of the Pension Rules, 1982, the age of retirement insofar as the applicant is concerned was 58 years. According to her own contention the applicant attained the age of superannuation on 30.11.2004. Further, there is no dispute that the applicant claims to have worked in the period between 25.12.1970 to 15.4.1983 and not beyond that. According to the applicant, she is entitled for the pension as she had continuously worked for more than 12 years with the respondents. According to the applicant, the Government employee rendering services for more than 10 years becomes eligible for getting the pension. The applicant has referred to rule 30 of the Pension Rules, 1982, which pertains to qualifying service. According to the applicant, she fulfills the criteria laid down under rule 30 of the Pension Rules, 1982 and as such is entitled for the superannuation pension. I deem it appropriate to reproduce herein below the relevant portion of rule 30 of the Pension Rules, 1982, which reads thus :-

“30. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:

[Provided further that, in cases where a temporary Government servant retires, on Superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of Superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.]”

18. In view of the fact that the applicant is claiming superannuation pension, as provided under rule 30 of the Pension Rules, 1982, she has to establish that at the time of retirement she was holding substantively a permanent post in Government service. As has been argued on behalf of the applicant since the applicant was neither dismissed nor removed from the Government services, she must be deemed to be in service till the date of her superannuation i.e. 30.11.2004. The contention so raised on behalf of the applicant is refuted by the respondents.

19. The provisions under the Pension Rules, 1982 reveal that for a person claiming superannuation pension on the basis of qualifying service of more than 10 years, he has to establish that on the date of his superannuation he was holding substantively a permanent post. According to the applicant, on the date of retirement on attaining the age of superannuation i.e. on 30.11.2004, the applicant was holding substantively a permanent post in the Government. As has been argued on behalf of the applicant, since the respondents did not give any posting to the applicant after she was relieved on 15.4.1983 from the post of Medical Officer Class-III, she shall be deemed to be in service till her superannuation on 30.11.2004. It has also been argued on behalf of the applicant and such ground is taken by the applicant in the O.A. that the respondents must have computed the period of absence without pay as extraordinary leave granted to the applicant in view of sub-rule (2) of rule 47 of the Pension Rules, 1982. It has also been argued that since the respondents have not removed or dismissed the applicant from service and not even issued any show cause notice or conducted any departmental enquiry against the applicant, she shall be deemed to be in the

employment of the respondents till the date of her superannuation i.e. 30.11.2004.

20. It has to be examined whether the contentions as are raised above by the applicant are sustainable. It is the matter of record that in the Special Civil Suit No. 202/1986 filed by the applicant in the Court of learned Civil Judge Sr. Division the main prayer of the applicant was that the defendant shall give her suitable posting preferably in the Municipal Hospital at Bhusaval. It is also a matter of record that the learned Civil Judge Senior Division, Bhusaval decreed the said Special Civil Suit with the following order :-

“O R D E R

The plaintiff's suit is decreed with proportionate costs.

The defendant shall post the plaintiff as Medical Officer in the suitable cadre in the services of Health Department of Government of Maharashtra possibly in Hospital at Bhusawal, district Jalgaon.

The defendant shall also pay Rs, 39,618=00 to the plaintiff.

The amount of Rs. 35,820=00 shall carry interest at 6% p.a. from the date of suit till realization.

A decree be drawn accordingly. ”

21. The judgment and decree passed by the learned Civil Judge Senior Division, Bhusaval was under scrutiny in T.A. No. 171/1993 before this Tribunal. It is not in dispute that the Division Bench of this Tribunal had allowed the said T.A. and set aside the judgment and decree passed in Special Civil Suit No. 202/1986.

22. While setting aside the judgment and decree passed by the Civil Court and thereby dismissing the suit filed by the applicant, this Tribunal has recorded the following findings: -

- (i) Contention that Dr. Wanere reverted the applicant to Class-III post and posted her at Bhusaval is not borne out by any official record;
- (ii) Whole case set out by the applicant is highly doubtful and suspicious;
- (iii) Applicant has failed to make out any proper case that she was reverted from Class-II to Class-III post by any valid order passed by a competent authority;
- (iv) The applicant has failed to prove that she discharged the duties after 19.12.1982 at Bhusaval;
- (v) Applicant's evidence shows that she is practicing at Bhusaval for so many years along with her husband, even though she was working till her promotion to Class-II

post, at Municipal Dispensary at Bhusaval as an employee;

(vi) In any event, we are of the view that applicant has totally failed to establish the vital fact that she was reverted validly from Class-II to Class-III post and was posted back to Bhusawal from 19.12.1982 onwards;

(vii) The applicant's claim for salary post 19.12.1982 is untenable;

(viii) In our view, the suit claim never deserved any success; and

(ix) It is clear that applicant has abandoned her service.

23. It is undisputed that the applicant has not challenged the order passed by the Division Bench of this Tribunal in T.A. No. 171/1993. It is thus, evident that the findings recorded by the Division Bench noted hereinabove have attained the finality.

24. In view of the fact that the applicant has not challenged the order passed by the Division Bench in T.A. No. 171/1993, as per the conclusions recorded by the Tribunal it has to be held that the applicant has abandoned her services. Abandonment of services is voluntary act of employee which brings about cessation of relationship between employer and

the employee. In the case of **G.T. Lad Vs. Chemical and Fibers of India Ltd. (1979) 1 SCC 590** one of the specific question before the Hon'ble Supreme Court was : what was the true meaning of the expression abandonment of service. The Court said :

“In the Act, we do not find any definition of the expression, ‘abandonment of service’. In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word ‘abandon’ has been explained as meaning ‘to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concerned in something. According to the Dictionary of English Law by Earl Jowitt (1959 edition), ‘abandonment’ means ‘relinquishment’ of an interest or claim’. According to Black’s Law Dictionary ‘abandonment’ when used in relation to an office means ‘voluntary relinquishment’. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with the actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an ‘abandonment of office’.”

The Division Bench of this Tribunal while deciding T.A. No. 171/1993 after having considered the surrounding facts and circumstances has recorded a finding that applicant has abandoned her services.

25. In the case of **Vijay S. Sathaye Vs. Indian Airlines Limited and others, (2013) 10 SCC 253**, the Hon'ble Supreme Court has held that,

“the employee has right to abandon the service at any time voluntarily either by submitting resignation or by not joining or reporting for duty or remaining absent from duty for a long period. Absence from duty may initially amount to misconduct but when such absence is for a long period, it may amount to voluntary abandonment of service. On abandonment the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

26. In view of the fact that the finding recorded by the Division Bench of this Tribunal that the applicant has abandoned her services has not been challenged by the applicant in the Hon'ble High Court and hence has attained the finality, the contention raised by the applicant and the arguments advanced in that regard that since the respondents have not dismissed or removed or discharged the applicant, she shall be deemed to be in the employment of the respondent till the date of her attaining the age of superannuation, has to be rejected at the threshold. The applicant cannot raise any such plea that she shall be deemed to be in the employment of the respondents till her attaining the age of superannuation, as she has not challenged the finding recorded by the Tribunal that she abandoned her service.

27. The applicant has heavily relied upon the judgment of the Hon'ble Supreme Court in the case of **Dayal Saran Sanan Vs. Union of India and Others** (cited supra). There cannot be any dispute about the law laid down by the Hon'ble Supreme Court in the aforesaid judgment. However, having regard to the facts involved in the present matter it does not appear to me that the law laid down in the aforesaid judgment would apply to the present case. In the said matter appellant was holding the post of Superintendent substantively till the date of his superannuation, whereas in the present matter as has been observed by the Division Bench of this Tribunal in T.A. No. 171/1993 the applicant has failed to prove that she discharged the duties after 19.12.1982 at Bhusaval. As has been further held by the Division Bench, the whole case set out by the applicant is highly doubtful and suspicious. It has also been recorded by the Tribunal that the claim of the applicant for salary post 19.12.1982 was untenable. After having recorded the aforesaid finding the Tribunal has recorded the ultimate finding that the applicant has abandoned her service.

28. The decision in the matter of **Kalyani Sangappa Sadashivappa Vs. State of Maharashtra & Ors.** (cited supra) also

may not be applicable to the facts of the present case. In the said matter the Hon'ble Bombay High Court has recorded the findings that the case of the petitioner therein of unauthorized absence would be covered under rule 47 of the Pension Rules, 1982 by observing that the unauthorized absence of the petitioner therein was in continuation of authorized leave of absence. In the instant matter the applicant did not apply for any leave and has remained un-authorizedly absent for quite a long period and in the circumstances she is held to have abandoned her services by the Division of this Tribunal as I have noted hereinabove.

29. The judgment of the Hon'ble Supreme Court in the case of **Basic Shiksha Parishad and another Vs. Smt. Sugna Devi and others** (cited supra) also may not apply to the facts of the present case. In the said matter 'whether the employee concerned (respondent no. 1 in the said matter) was in service or not on the relevant date' was the only point for consideration before the Hon'ble Supreme Court and it was recorded in favour of the employee. As against it in the instant matter the applicant is held to have abandoned her service and was not thus holding any substantive post on the date of her superannuation.

30. The another judgment relied upon by the applicant in the case of **Muktabai w/o Chandrakant Parwat Vs. State of Maharashtra & Ors.** (cited supra), the Division Bench has recorded an unambiguous finding that for grant of pension on the basis of qualifying service, the Government servant at the time of his retirement must be holding substantively a permanent post. It is thus evident that the said judgment cannot in any way support the case of the applicant.

31. In the instant matter the applicant though has taken a plea that on 24.12.1982 she was reverted to the post of Class-III Medical Officer and was posted at Municipal Dispensary at Bhusawal, the Division Bench of this Tribunal in T.A. No. 171/1993 has negated her said contention. The discussion in that regard is made by the Tribunal in para 8 of the said judgment. I deem it appropriate to reproduce the entire said paragraph, which reads thus :-

“8. Admittedly the plaintiff was appointed on the post of Class-III by Director of Health Services, State of Maharashtra. Thus the appointing authority is admittedly the Director of Health Services. It is nowhere averred or alleged that the Director of Health Services had ever reverted the plaintiff, as prayed by her, from Class-II post to Class-III post. We fail to understand as to how a person of a grade of Deputy Director could by a mere endorsement on some representation pass order of reversion of applicant

from the Post of Class-II to the post of Class-III and change her posting which was given to her on promotion obviously by the Director of Health Services. Therefore, there is inherent improbability in the whole case. We have already pointed out that the applicant did not examine any witness except herself. If Dr. Wanere had reverted her on her request, as contended by her, we would expect Dr. Wanere to be called as a witness by the applicant to prove the same. She has not called Dr. Wanere in the witness box at all. The applicant contends that she was promoted as Class-II and was posted at Edlabad on 26-9-1982. Obviously this was done by the appropriate authority. It is surprising and unexpected as to how the applicant on 24-12-1982 happened to make a representation to Shri Wanere when Shri Wanere had come at Bhusaval and not at Edlabad. It is not the contention of the applicant that she never worked at Edlabad. On the other hand, her evidence shows that after joining at Edlabad she made correspondence with superior officers at several times. It is her own case that her promotion was on 26-9-1982. Therefore, there was no occasion for her on 24.12.1982 to make any representation at Bhusaval because she was posted at Edlabad at that time. Her contention that Shri Wanere on 24-12-1982 accepted her representation and immediately reverted her on Class-III post and posted her to Bhusaval is not borne out by any official record except some endorsement on a loose paper produced by the applicant. The said loose paper is at Exhibit-30. The Plaintiff says that she had made this representation to Shri Wanere. It is not at all proved as to how this representation was made at Bhusaval that too in the Municipal Dispensary of Bhusaval by any outward number or inward number when she was yet working at Edlabad. The State has strongly denied that Shri Wanere has passed any order. It was for the plaintiff to prove that the endorsement was of Shri Wanere. As we know the working of the Government offices, no gazetted officer like Class-II can be reserved by a subordinate officer like Deputy Director of Health Services to Class-III post. Class-II posts are gazetted posts and only Government can pass appropriate orders of reversion. The whole case set out by the plaintiff is highly doubtful and suspicious.”

32. The further contention of the applicant that she started working at Bhusawal on the strength of so called order of reversion, but was relieved from the said post and thereafter was not given any posting though she had made several applications is also held to be false by this Tribunal. In para 9 of the said judgment the discussion is made in that regard. I deem it appropriate to reproduce said para 9, which reads thus

:-

“9. The plaintiff has further contended that after the so called order/endorsement made by Shri Wanere on 24-12-1982 she started discharging her duties immediately at Bhusawal in compliance of the said endorsement/order from 24-12-1982 itself. This is also falsified by her own documents. She has produced applications for leave presented by her to the appropriate authorities. These applications are at exhibits 54 to 58. These applications are for seeking leave we.f. 21-10-1982 onwards. All these applications show that the applicant described herself as Medical Officer, Edlabad. Even the stamp is of Medical Officer, Edlabad. It is thus clear that from September 1982 till 19-1-1983 when the last application for leave (20-12-1982 to 19-1-1983) was filed, the plaintiff was showing her to be Medical Officer, Edlabad. The leave application Exhibit-57 is for medical leave for the period 20-12-1982 to 19-1-1983. If the contention of the applicant that she started discharging her duties from 24-12-1982 at Bhusawal is to be accepted, then she has to explain as to how she sought leave as a Medical Officer, Edlabad for the period 20-12-1982 to 19-1-1983. Further her own document Exhibit -58 shows that she had made a representation that she was not in a position to accept promotion of Class-II Medical Officer and was seeking order of continuing her as Class-III officer at Bhusawal. If on 24-12-1982 she had obtained an order of her reversion to Class-III post and posting at Bhusawal, we fail to understand as to how again vide Exhibit -58 on 19-3-1983

she made application that she should be reverted to Class-III and be posted at Bhusaval. It is thus clear from her own documents that so called order of Shri Wanere dated 19-12-1980 is concerned, it is not a proper order passed by any appropriate authority. We are not sure whether Shri Wanere had passed said order or not.

It appears from the manner in which the whole claim is pressed and the manner in which it is tried to be proved that there is something very fishy about the whole incident. If really the plaintiff was working at Bhusaval, the official record could have been got produced to show that she was discharging the duties at Bhusaval. A proper order issued by the Government showing her reversion could have been produced. All this is missing. We are, therefore, of the view that the plaintiff had failed to make out any proper case that she was reverted from Class-II to Class-III post by any valid order passed by a competent authority. She has also failed to prove that she discharged the duties after 19-12-1983 at Bhusaval. On the other hand, her leave applications clearly show that she did not discharge her duties at Bhusaval. Her evidence shows that she is practicing at Bhusaval for so many years along with her husband, even though she was working till her promotion to Class-II post, at Municipal Dispensary, Bhusaval as an employee. It is understandable that she does not want posting at Edlabad. Her oral evidence shows that she is paying income tax on income which was earned by her husband also. All these facts are quite speaking. In any event, we are of the view that the plaintiff has totally failed to establish the vital fact that she was reverted validly from Class-II to Class-III post and was posted back to Bhusaval from 19-12-1982 onwards. Her claim for salary post 19-12-1982 is untenable. It is beyond comprehension as to how she waited for claiming salary till filing of suit in December 1986, if her salary was not paid to her since December 1982, as claimed by her. In our view, the suit claim never deserved any success. As far as question of seeking reposting at Bhusaval is concerned, in view of the fact that we have held that there is no proof that any valid order was passed by the competent authority reverting the plaintiff from the post of Class-II to Class-III or that the plaintiff was posted from Edlabad to Bhusaval in Class-III

*post, the question of granting that relief does not arise. **It is clear that she has abandoned her service.***”

33. From the discussion made and the findings recorded by this Tribunal it is quite evident that from 24.12.1982 onwards the applicant remained absent unauthorizedly. Though by filing a Special Civil Suit in the Civil Court an attempt was made by the applicant to show that she was not being given the posting, ultimately said attempt also failed because of the dismissal of the said suit by this Tribunal in T.A. Noi. 171/1993. It is not the case of the applicant that during pendency of the Civil Suit she had applied for any interim relief seeking directions against the respondents to give her posting subject to the decision of the said Suit. The said Suit was decided on 2.7.1990. The applicant thus did not work with the respondents in the entire said period i.e. from 24.12.1982 to 2.7.1990. It is the matter of record that against the decision in the Special Civil Suit the respondents had preferred Regular Civil Appeal No. 156/1990 and the same was converted into Transfer Application no. 171/1993. The said T.A. was decided on 9.8.2002. The applicant was admittedly away from duty in the said period i.e. up to 9.8.2002. After dismissal of the Regular Civil Appeal/T.A. the applicant did not make any effort to resume the duties. It is

thus evident that on 30.11.2004 the applicant was neither on duty nor any evidence has been produced by her showing that she was on authorized leave. From the facts noted as above, it is explicit that from 24.12.1982 till her date of superannuation on 30.11.2004 the applicant was not on work nor had applied for any leave of the said period. In fact when this Tribunal has recorded a clear finding that the applicant abandoned her services, the applicant must have made all efforts to get the said finding set aside. Admittedly the applicant did not make any such effort. The applicant also did not make any attempt to join the duties by approaching the respondents. It is significant to note that the very first request or representation praying for pension and pensionary benefits was made by the applicant after more than 13 years of the decision in T.A. No. 171/1993 and about 11 years after her alleged date of superannuation. In the said representation again the same allegation is made by her that after 15.4.1983 she was not given any posting when the aforesaid contention was already turned down by this Tribunal in T.A. No. 171/1993.

34. After having considered the entire facts and circumstances involved in the present matter there appears no substance in the contentions raised by the applicant that she is entitled for

pension on account of the continuous service rendered by her for the period of more than 10 years during 25.12.1970 to 15.4.1983. The abandonment of service by the applicant has entailed in forfeiture of her past service. The applicant did not make any effort for condonation of interruption in her services after the decision was rendered in T.A. No. 171/1993. As noted by me hereinabove abandonment of service is voluntary act of employee which brings about cessation of relationship between employer and employee. Thus, on the date of her superannuation there was no employee-employer relationship between the applicant and the respondents. The evidence on record shows that the applicant did nothing though her Special Civil Suit was dismissed by this Tribunal on 9.8.2002 for the period of more than 2 years to get back her job till she attained the age of superannuation. Even thereafter up to year 2015 the applicant did nothing and remained completely silent. The said conduct of the applicant shows that the applicant was never anxious and/or interested in getting back her job. In a very leisurely manner she raised a demand for grant of pension vide her notice dated 1.6.2015. There is absolutely no explanation for this inordinate delay on her part.

35. The Hon'ble Supreme court in the case of **Vijay S. Sathaye vs. Indian Airlines Ltd. & Ors., 2013 (10) SCC 253** has held that:-

'absence from duty in the beginning may be a misconduct but when absence is for very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to and automatically without requiring any order to be passed by the employer.'

In the present matter unauthorized absence of the applicant from her duty is of the period of about 19 years. Such a long absence from duty has been held by the Division Bench of this Tribunal as abandonment of service by the applicant. In the circumstances, as held by the Hon'ble Supreme Court the respondents were not required to pass any order of dismissal or removal of the applicant from service.

36. The Hon'ble Supreme Court in the case of **M/s Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen, AIR 1961 SC 1567** has held that :-

"long unauthorized absence may reasonably give rise to draw inference that such service is intended to be abandoned by the employee."

37. The Hon'ble Supreme Court in the case of **Vijay S. Sathaye Vs. Indian Airlines Limited and others** (cited supra) has observed that *"abandonment of service is consequence of unilateral action on behalf of the employee and the employer has*

no role in it". The Hon'ble Supreme Court in **Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association, 2000 (5) SCC 65** and in the case of **Aligarh Muslim University Vs. Mansoor Ali Khan, 2000 (7) SCC 529** has ruled that "*if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities.*"

38. It has to be stated that abandonment or relinquishment of service always a question of intention and normally such an intention cannot be attributed to a employee without adequate reasons therefor. In view of the fact that the applicant did not raise any challenge to the judgment and order passed in T.A. No. 171/1993 wherein this Tribunal has recorded an unambitious finding that the applicant abandoned her service, no other evidence is required to attribute an intention on part of the applicant.

39. Rule 47 of the Pension Rules, 1982 provides that :

"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 filed substantively;

(c) Suspension, where it is immediately followed by reinstatement, whether in the same or a different 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.”

40. In the instant matter the prolonged unauthorized absence of the applicant has resulted in break in service of the applicant. The applicant never prayed for condonation of interruption in service. The case of the applicant, thus, does not fall within the exceptions as provided under rule 47(1) of the Pension Rules, 1982. In the circumstances, the interruption in service of the applicant has entailed forfeiture of her past service. The applicant, therefore, is not entitled for any relief as claimed in the O.A.

41. After having considered the entire facts and circumstances, as well as, the relevant provisions under the Pension Rules, 1982 I have no hesitation in arriving at conclusion that since at the time of her retirement i.e. on the date of her superannuation the applicant was not substantively holding the permanent post in Government service, her past service cannot be considered for grant of pension as prayed by her though the period of her past service is more than 10 years. In the result the following order is passed :-

ORDER

The Original Application is dismissed, however, without any order as to costs.

VICE CHAIRMAN

PLACE : Aurangabad.

DATE : 2.5.2023