

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.434/2016

DISTRICT: - PARBHANI

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Dr. Abdul Salim Abdul Karim,  
Age : 60 years, Occu. : Live Stock Development  
Officer (Extension) (Now retired),  
R/o. Parbhani.

...APPLICANT

**V E R S U S**

- 1) The State of Maharashtra,  
Through the Secretary,  
Animal Husbandry, Dairy Development &  
Fisheries Department,  
Mantralaya, Mumbai-400 032.
- 2) The Commissioner,  
Animal Husbandry Department (MS)  
Pune.
- 3) The Joint Commissioner,  
Animal Husbandry Deptt. Aurangabad.
- 4) The District Animal Husbandry Officer,  
Zilla Parishad, Parbhani.
- 5) The District Animal Husbandry Officer,  
Zilla Parishad, Jalna.

...RESPONDENTS

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APPEARANCE :Shri J. B. Choudhary Advocate for  
Applicant  
:Smt. Priya Bharaswadkar Presenting  
Officer for respondents.

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CORAM : B. P. Patil, Member (J)

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DATE : 29<sup>th</sup> June, 2018  
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**J U D G M E N T**  
**[Delivered on 29<sup>th</sup> day of June 2018]**

1. The applicant has challenged the order dated 22-07-2015 issued by the respondent no.1 by filing the present O.A. and prayed to quash the said order and to declare that he is entitled to get pension and pensionary benefits in view of the corrigendum dated 15-10-2009.

2. The applicant was initially appointed as Live Stock Development Officer in the year 1984. He joined service on 01-06-1984. He worked as Live Stock Development Officer at various places up to 09-06-1995. Thereafter, he was transferred to Zari, Dist. Parbhani to Panchayat Samiti Jafrabad, Dist. Jalna. He was relieved from Zari on 09-06-1995. Before joining his new posting at Jalna, he suffered from "Anxiety and Disturbed Behavior Activities" from 11-06-1995. Therefore, he could not join his new posting. He took treatment at Parbhani and he was under medical treatment for a long period up to 10-05-2012. He recovered from the disease and thereafter on 11-05-2012 he filed application with respondent no.1 and requested to allow him to join his duties. On 02-07-2012, the applicant submitted detailed application to the Joint Commissioner

Animal Husbandry (HQ), Pune through District Animal Husbandry Officer, Zilla Parishad, Parbhani and requested to allow him to join duty. He attached medical certificates along with application and requested to allow him to join the duty immediately as he was going to retire with effect from 31-07-2012.

3. It is further submitted by the applicant that the District Animal Husbandry Officer, Zilla Parishad, Parbhani submitted proposal dated 03-07-2012 to the Joint Commissioner, Animal Husbandry (HQ), Pune who is working under the respondent no.2 wherein it has been mentioned that the applicant was under treatment from the year 1995 to 2012 and no departmental enquiry was initiated against him regarding absentee from duty. On 12-07-2012 Regional Joint Commissioner, Animal Husbandry, Aurangabad submitted proposal to respondent no.1 on the basis of proposal received from District Animal Husbandry Officer, Zilla Parishad, Parbhani. On 21-07-2012, respondent no.5 submitted the proposal and sought guidance from the Regional Joint Director, Animal Husbandry, Aurangabad Division, Aurangabad as to

whether the applicant should be allowed to join the duties as he was going to retire w.e.f. 31-07-2012.

4. On 20-07-2012, the applicant made request to the respondent no.1 and on 21-07-2012, he made representation with the respondent no.2 and requested to allow him to join duties as he was going to retire from 31-07-2012. On 27-07-2012 respondent no.2 submitted proposal before the respondent no.1 and office of respondent no.2 sent a letter to the Chairman, Medical Board, Government Medical College and Hospital, Aurangabad for medical check-up of the applicant regarding his fitness to resume duty. On 30-07-2012, the applicant made another representation with the respondent no.1 and requested to allow him to join duty immediately. In the said representation, he has mentioned that letter issued by respondent no.2 on 27-07-2012 for appearing before the Medical Board was served on him on 30-07-2012. Next date of the meeting of Medical Board was 02-08-2012 but in the meanwhile he retired on 31-07-2012. Therefore, it was not possible for him to get fitness certificate from Medical Board and hence he could not able to join duty for want of fitness certificate of the

Medical Board and prayed for time to produce fitness certificate by filing a representation.

5. Thereafter, applicant appeared before Medical Board as per direction given by the respondent no.2 on 31-10-2012. Medical Board issued certificates dated 31-10-2012 on 09-01-2013 but the said certificate was not given to him. Lastly, said certificate was received to him in June, 2013 wherein it has been observed that the applicant was diagnosed with "Mixed Anxiety and Depressive Disorder" and also certified that he was fit for resuming duty and medical leave was not recommended. It is contention of the applicant that he filed application to allow him to join duties well in advance but the respondents did not take a decision on it and meanwhile he retired on attaining age of superannuation.

6. It is contention of the applicant that in similar circumstances, one Dr. Kaizar Khan, who was working as Live Stock Development Officer and who was absent from duty from 1998 to 2010, was allowed to join duty without referring him to the Medical Board but the said procedure has not been followed while considering his case.

7. It is contention of the applicant that he was a permanent employee and he served from 01-06-1984 to 09-06-1995 continuously for more than 11 years. It is his contention that he made representation to the respondents and requested to regularize his absentee period as leave without pay and also to allow him to join duty. It is his contention that no departmental enquiry was initiated against him for his absentee period.

8. It is his further contention that in view of the corrigendum dated 15-12-2009 issued by the Finance Department of Government of Maharashtra, Government employees who retired after 27-02-2009, are entitled to certain reliefs and accordingly employees, who rendered service more than 10 years but less than 20 years, are entitled to get pensionary benefits. It is his contention that he is entitled to get pensionary benefits in view of the corrigendum dated 15-12-2009 as well as in view of the provisions of Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982. He is also entitled to get notional increments and other benefits of 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Pay Commissions' recommendations. He approached respondent nos.1 to 3 on many occasions after retirement

and requested them to give him pension and pensionary benefits. Lastly, on 22-04-2013 he filed an application with respondent no.2 and requested to pay the amount of G.P.F., G.I.S. and other pensionary benefits but the respondents had not passed any order on the same. Therefore, he was compelled to file O.A.No.531/2013 before this Tribunal and prayed to issue direction to the respondents to grant regular pension and pensionary benefits as he rendered 11 years of service on the post of Live Stock Development Officer.

9. The Tribunal after hearing the parties was pleased to pass order dated 25-09-2014 and allowed the O.A. partly and directed the respondents to take decision as to whether the applicant is entitled to pension and pensionary benefits as per rules and intimate the decision to the applicant within 3 months. In view of the order passed by the Tribunal in O.A.No.531/2013 it was incumbent upon the respondents to take decision till December, 2014 but no decision was taken in stipulated time. Therefore, applicant filed Contempt Petition before this Tribunal. On the first date of hearing of the Contempt Petition, respondents came with an order and placed the same on record. In view of the

said order, Tribunal was pleased to dispose of contempt petition. It is averred by the applicant that by the communication dated 22-07-2015 along with covering letter of the respondent no.2 dated 22-07-2015 it was informed to the applicant that his request for grant of pension and pensionary benefits is rejected in view of Rule 46(1)(a) and 47(1)(a) of the Maharashtra Civil Services (Pension) Rules, 1982.

10. Thereafter, on 28-10-2015 respondents passed order which was served on the applicant by communication dated 21-11-2015 issued by the respondent no.2. By the said order dated 28-10-2015 the respondent no.1 treated the period of unauthorized absence of the applicant from 10-06-1995 to 31-07-2012 as "dies-non". It has been further mentioned in the order that said period shall not be counted for any other purpose and it would not be considered as service period for any purpose. Period of absentee was treated as unauthorized. It is his contention that Rule 63(6) Remark (4) of the G.R. dated 02-06-2003 provides that said period will not be taken into account for any service purpose (pension). However, the rule does not provide about forfeiture of past service. It is contention of



the applicant that leave of the applicant is sanctioned, and therefore, earlier services of the applicant cannot be forfeited and consequently he is entitled to get pension and pensionary benefits in view of earlier service rendered by him.

11. It is his contention that he is the only earning member in the family and his children are taking education. He rendered more than 11 years' service with the Government but the respondents without considering the said aspect declared that he is not entitled to get pensionary benefits by order dated 22-07-2015. Therefore, he filed O.A. and prayed to quash and set aside the order dated 22-07-2015 and to declare that he is not entitled get pension and pensionary benefits.

12. Respondent nos.1 to 3 have filed their affidavit in reply and resisted the contentions raised by the applicant. It is their contention that the applicant remained absent unauthorizedly since 10-06-1995 and he had not made any correspondence with the department. It is their further contention that the applicant remained absent since 10-06-1995 without asking for leave of any kind. Thereafter, he approached to the respondents and applied

for medical leave. Therefore, respondents referred him to the Chairman, Medical Board, Government Medical College and Hospital, Aurangabad for medical examination vide letter No.pava-2/cr-543/507/2012/ps-2, Pune-1 dated 27-07-2013.

13. Meanwhile, the applicant retired on 31-07-2012 on attaining age of his superannuation. It is their contention that in the year 1995, the applicant was transferred to Panchayat Samiti, Jafrabad, Dist. Jalna from Veterinary Dispensary, Zari, Dist. Parbhani. He was relieved from Zari on 09-06-1995 but he had not joined his new posting at Jafrabad till this date. He remained absent unauthorizedly. He had not filed medical certificate regarding his illness from time to time though it was his duty to file medical certificate/s to avail leave. It is their contention that as the applicant remained absent without obtaining leave and without prior approval of the higher authorities for 17 years and submitted false reasons for absenteeism and also obtained passport without taking "no objection certificate" from the department, the respondents proposed initiation of departmental enquiry against him in view of the provisions of Maharashtra Civil Services (Discipline & Appeal) Rules,

1979 and forwarded chargesheet to the Government for its approval. But the Government has not approved the proposal and closed his case as the applicant retired and the enquiry could not be initiated after 4 years from the date of incident.

14. It is their contention that the applicant has completed only 11 years and 9 months service and he had not rendered qualifying service of 20 years, and therefore, he is not entitled to get pension. It is their contention that Annexure II of corrigendum dated 15-12-2009 to the G.R. is applicable to the employees who are superannuated immediately after completing qualifying service of ten years or more but less than twenty years. Those employees who are entitled to continue in service but retired due to superannuation are eligible for pension. It is their contention that the applicant has completed 11 years qualifying service and he remained absent for 17 years till his superannuation. It amounts to break or interruption in service, and therefore, he is not entitled to get pension in view of the Rule 47(1) of the Maharashtra Civil Services (Pension) Rules, 1982. As there is interruption in service of the applicant, applicant is not entitled to get pension in

view of the said provisions. Therefore, respondents have rightly rejected his request for grant of pension.

15. It is their further contention that the absentee of the applicant from 10-06-1995 to 31-07-2012 is treated as "dies-non" vide communication dated 28-10-2015 and it cannot be termed as sanction or regularization of the unauthorized leave. It is their contention that as per the G.R. dated 02-06-2015, such period cannot be counted for any service benefits including pensionary benefits. Therefore, the applicant cannot take benefit of the said G.R. It is their contention that the respondents have rightly issued communications dated 22-07-2015 and 28-10-2015, and therefore, question of quashing the order dated 22-07-2015 does not arise. Therefore, they have prayed to reject the O.A.

16. The applicant has filed affidavit in rejoinder and contended that he remained absent on the duty as he was suffering from "Anxiety and Mental Disorder" and he was under medical treatment. He has contended that certificate had been issued by the Doctor on 31-12-2001. He approached the concerned authorities with the request to allow him to join on getting fitness certificate from the

Doctors on 11-05-2012. However, respondents did not allow him to join on the post. Meanwhile, he stood retired on 31-07-2012 on superannuation. It is his contention that thereafter he appeared before medical board but the medical board had not recommended past leave. Medical Board diagnosed disease of the applicant as "Mixed Anxiety and Mental Disorder". It is his contention that the said diagnosis of the Medical Board supports his contention. It is his contention that he appeared before the medical board on the scheduled date which was fixed after the date of his retirement and there was no fault on his part for the same and the respondents are responsible for it. It is his contention that as per the G.R. dated 27-02-2009 and G.R. dated 31-10-2009, he is entitled to get pension as he rendered service for more than 10 years. Therefore, he prayed to allow the O.A.

17. Respondents filed their sur-rejoinder and reiterated their contentions raised in the affidavit in reply. It is their contention that in view of the provisions of Rule 47(1) of Maharashtra Civil Services (Pension) Rules, 1982 interruption in service of a Government servant entails forfeiture of his past service. As there is interruption in service of the applicant he is not eligible for any pensionary

benefits as his past service has been forfeited, and accordingly, he was informed by the respondents vide communication dated 22-07-2015. Therefore, they prayed to reject the O.A.

18. I have heard Shri J.B.Choudhary learned Advocate for the applicant and Smt. Priya Bharaswadkar learned Presenting Officer for the respondents. Perused documents placed on record by the parties.

19. Admittedly, the applicant was initially appointed as Live Stock Development Officer in the year 1984 and he joined his duty on 01-06-1984. Thereafter, he continued to work as Live Stock Development Officer at various places up to 09-06-1995. In the year 1995, he was serving as Live Stock Development Officer at Veterinary Dispensary at Zari, Dist. Parbhani. By order dated 30-05-1995, he was transferred from Zari to Panchayat Samiti Jafrabad, Dist. Jalna and had been relieved from the post from Veterinary Dispensary Zari on 09-06-1995. Since 10-06-1995, he remained absent without filing any application for leave till 11-05-2012.

20. Admittedly, he had not applied for leave of any kind during that period. On 11-05-2012, he approached to the

respondents with an application to allow him to join his posting by filing medical certificate. Thereafter, he filed several applications with the respondents with a request to allow him to join the post. Admittedly he had been referred to the Medical Board for examination but meanwhile on 31-07-2012 he retired on attaining age of superannuation. Thereafter, he appeared before Medical Board and on examination Medical Board opined that he was suffering from "Mixed Anxiety and Depressive Disorder" and is fit to join duty but his Medical Leave was not recommended.

21. Thereafter, the applicant approached to the respondents by filing several applications and requested to grant pension and pensionary benefits to him but no decision had been taken by the respondents on his applications. Therefore, he approached to this Tribunal by filing O.A.No.531/2013 seeking directions to the respondents to grant him regular pension and pensionary benefits on the ground that he has rendered 11 years of service on the post of Live Stock Development Officer. Said O.A. came to be disposed of on 25-09-2014 with a direction to the respondents to take decision as to whether the applicant is entitled to pension and pensionary benefits as per Rules and to intimate decision to the applicant within a

period of 3 months. Accordingly, the respondent no.3 took decision on 22-07-2015 and informed the applicant that his request for grant of pension and pensionary benefits was rejected in view of Rule 47(1)(a) of the Maharashtra Civil Services (Pension) Rules, 1982. Thereafter, on 28-10-2015, respondent no.1 issued another order regarding the absentee period of the applicant with effect from 10-06-1995 to 31-07-2012.

22. Learned Advocate for the applicant has submitted that the applicant joined the service as Live Stock Development Officer on 01-06-1984. He rendered services continuously till 09-06-2015. Thereafter, he was ill and could not able to attend duty till 11-05-2012. On 11-05-2012, he approached the respondents with a request to allow him to join the post but his application was not decided till his retirement, and thereafter, the impugned order has been passed by the respondents. He has submitted that after passing the impugned order dated 22-07-2015, respondent no.1 passed another order dated 28-10-2015 by which it regularized absentee period of the applicant and also mentioned in the order that said period will not be counted for any other purpose by treating it as "dies-non". He has submitted that in view of the order



dated 28-10-2015, respondent no.1 regularized his services and therefore his past service of more than 11 years ought to have been considered by the respondents for granting pension. Therefore, earlier order dated 22-07-2015 is not legal and proper. He has submitted that in view of the subsequent order dated 28-10-2015, the services of the applicant had been regularized, and therefore, it does not amount interruption in service of the applicant. Hence, it cannot be treated as forfeiture of past service of the applicant. Considering this fact, it is necessary to grant pensionary benefits to the applicant considering his earlier past service of more than 11 years in view of the G.R. dated 30-10-2009. He has submitted that respondents had not considered the case of the applicant in view of the G.R. dated 30-10-2009 and wrongly rejected his claim for pension by order dated 22-07-2015. Therefore, he prayed to quash the impugned order dated 22-07-2015 by allowing the O.A.

23. Learned P.O. has submitted that the applicant was initially appointed in the year 1984. He served till 09-06-1995 but when he was transferred to Jafrabad, Dist. Jalna from Zari, Dist. Parbhani, he has not joined duty at Jafrabad though he was relieved from Zari on

09-06-1995. The applicant remained absent since 10-06-1995 without permission of the higher authorities. He had not contacted the department nor applied for leave of any kind. All of a sudden, in the year 2012 when he was on the verge of retirement, he approached to the respondents and prayed to allow him to join the duty. As he was absent for more than 17 years, he was directed to appear before the Medical Board but he appeared before the Medical Board after attaining age of superannuation. He has submitted that thereafter he filed the application for getting pensionary benefits considering his past service.

24. Learned P.O. has further submitted that the applicant remained absent since 10-06-1995 till he was superannuated. It was unauthorized absentee and it amounts interruption in service. Therefore, respondent no.1 by order dated 22-07-2015 refused the request of the applicant to grant him pensionary benefits in view of the provisions of Rule 47(1) of the Maharashtra Civil Services (Pension) Rules, 1982. He has submitted that there is no illegality in the said order as in view of the said provisions an interruption in service of Government employee entails forfeiture of his past service.

25. Respondents further submitted that respondents have not regularized his service or granted leave for the absentee period. As there is no authorization of the absence of the applicant, it is an interruption in service and therefore the applicant is not entitled to claim pensionary benefits on the basis of his earlier service in view of the provisions of Rule 47(1) of the M.C.S. (Pension) Rules, 1982. He has submitted that while passing order dated 28-10-2015, it has been specifically mentioned that absentee period of the applicant since 10-06-1995 to 31-07-2012 was treated as unauthorized absentee and it has been specifically mentioned in the order that it would not be considered for any service benefit and it is treated as "dies-non". He has submitted that the applicant cannot take benefit of the G.R. dated 02-06-2003 as schedule I attached to it specifically provides that the said unauthorized absentee of the employee can be treated as "dies-non" and it cannot be considered for any service benefits including pensionary benefits. He has submitted that the respondent no.1 has rightly rejected the claim of the applicant regarding pensionary benefits and there is no illegality in it. Therefore, he supported the impugned order.

26. On perusal of record it reveals that the applicant served respondents since 01-06-1984 to 09-06-1995. In the year 1995, he has been transferred to Panchayat Samiti, Jafrabad from Veterinary Dispensary, Zari, Dist. Parbhani and has been relieved on 09-06-1995 but the applicant had not joined the new posting and he remained absent since 10-06-1995. The applicant neither applied for any kind of leave nor informed the higher authorities about his absence and also not sought permission in that regard. On 11-05-2012, for the first time, he approached his higher authorities with a request to allow him to join duties when he was going to retire w.e.f. 31-07-2012. Respondents directed him to appear before the Medical Board and accordingly he appeared before the Medical Board after his retirement. Thereupon, Medical Board certified that he was fit to join duty but it had not recommended Medical Leave for his absentee period. Considering the said facts, respondent no.1 passed the impugned order dated 22-07-2015 and rejected the request of the applicant to grant pensionary benefits considering his past service. Thereafter, the respondent no.1 passed order dated 28-10-2015 by which the absentee period of the applicant had been treated as "dies-non" and it was held that it

cannot be considered for any service benefits including pensionary benefits.

27. In this regard, provisions of Rule 47(1) of M.C.S. (Pension) Rules, 1982 are material which provide that interruption in Government service entails forfeiture of his past service except in cases mentioned in clause (a) to (e). Learned Advocate for the applicant is harping upon provisions of Rule 47(1)(a) of the M.C.S. (Pension) Rules, 1982. Considering the order dated 28-10-2015, it is crystal clear that absence of the applicant was not authorized. By the said order, respondent no.1 has not authorized or regularized absentee of the applicant. Said order dated 28-10-2015 reads as follows:

“Kki u%

MkW vCngy l yhe vCngy djhe ; kP; k fn-10-6-1995 rs 31-7-2012 gk vuf/kdr x\$gtjhp k dkyko/kh Hkury{kh i Hkkokus vdk; zhu ¼foukoru] foukHkRr½ Eg.ku eatij dj.; kr ; s vkgs I nj dkyko/kh dks kR; kgh I oki z kst ukFkz ¼fuorRh oru fo”k; d ykHkka g½ xkg; /kj.; kr ; s kkj ukgh- rI p R; kpk gk vuf/kdr jt pk dkyko/kh vuf/kdr Bjfo.; kr ; s vkgs

I njps Kki u foRr foHkxkP; k vukš plfjd I nHkz dz 235@15@l ok&3] fn-14-9-15 vto; s fnyš; k I gerhud kj fuxfer dj.; kr ; s vkgs”

28. On plain reading of the said order it reveals that absentee period of the applicant from 10-06-1995 to

31-07-2012 was treated as "dies-non". It has been mentioned that the said period will not be considered for service benefits including the pensionary benefits and it was treated as an unauthorized absence. Therefore, case of the applicant does not come under exception (a) to Rule 47(1) of the M.C.S. (Pension) Rules, 1982. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard.

29. On plain reading of Rule 47, it reveals that interruption in service of Government employee entails forfeiture of his past service. Applicant remained absent unauthorizedly since 10-06-1995 till the date of his superannuation i.e. till 31-07-2012. Therefore, it is interruption in the service, and consequently, his past service is forfeited. Since his past service had been forfeited he cannot claim pensionary benefits in view of the provisions of G.R. dated 30-10-2009. Not only this but schedule I of the G.R. dated 02-06-2003 provides that absentee period treated as "dies-non" cannot be considered for any service benefits including pensionary benefits. Therefore, the applicant is not entitled to claim pensionary benefits. Rule 48 of the M.C.S. (Pension) Rules, 1982

provides that the appointing authority may condone interruption in service of the Government servant but no such order condoning interruption in service has been passed by the respondents. Therefore, the applicant cannot claim pensionary benefits on the basis of past service rendered by him. Applicant remained absent for more than 17 years and the said absence was unauthorized and it amounts an interruption in service, and therefore, respondent no.1 has rightly rejected his claim for pensionary benefits in view of the provisions of Rule 47(1) of the M.C.S. (Pension) Rules, 1982 by its order dated 22-07-2015.

30. In view of the above facts and circumstances of the case, I find no illegality in the impugned order. Therefore, no interference is called for in the same. There is no merit in the O.A. Consequently, O.A. deserves to be dismissed.

31. In view of the abovesaid discussion O.A. stands dismissed with no order as to costs.

**(B. P. Patil)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 29-06-2018.**