

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 497 OF 2017**

**DISTRICT : SANGLI**

Gajanan Dhondiram Pawar )  
Occ – Nil, )  
R/o: Near Vitthal Mandir, )  
Pawar Galli, Nadi Ves, Miraj, )  
Dist-Sangli. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Secretary, )  
Irrigation Department, )  
Mantralaya, )  
Mumbai 400032. )
2. The Chief Engineer, )  
Irrigation Department, )  
Pune. )
3. The Assistant Chief Engineer, )  
Irrigation Department, )  
Pune, Dist-Pune. )
4. Superintending Engineer, )  
Sangli Irrigation Department, )  
[Canal], Sangli, Dist-Sangli. )...**Respondents**

Shri N.Y Chavan, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)**  
**Mrs Medha Gadgil (Member) (A)**

**DATE : 28.06.2024**

**J U D G M E N T**

1. The applicant prays that the impugned order dated 5.8.2014 passed by the Appellate Authority, Respondent No. 3 on appeal preferred against the impugned order dated 4.2.2008, of removal from service passed by the Disciplinary Authority, Respondent No. 4, be quashed and set aside. Further the applicant prays that the Respondents be directed to pay the applicant all pensionary benefits and other consequential service benefits.

2. Learned counsel has submitted that the applicant was appointed on daily wages as a Labourer in the office of Respondent No. 4 on 1.6.1976. He was appointed on permanent basis on 1.11.1981. Learned counsel has submitted that the applicant fell ill on account of kidney failure and he remained absent. Learned counsel argued that the applicant submitted medical certificate as well as reports, but without considering the same, Respondent No. 4 initiated departmental inquiry against the applicant. Learned counsel has submitted that the applicant was absent from 4.12.2000 to 19.11.2001 for 341 days, from 11.4.2002 to 8.3.2004 for 698 days, from 1.4.2006 to 16.8.2007 for 503 days and from 17.8.2007 to 3.2.2008 for 170 days. In all the applicant was absent for 1722 days. Learned counsel has further submitted that from 1.11.1981 to 3.1.2000 for 19 years, 1 month and 3 days, from 20.11.2001 to 10.4.2002 for 4 months and 10 days and from 9.3.2004 to 31.3.2006 for 2 years and 21 days, the applicant was in service. Thus, the applicant has completed in all 23 years 1

month and 20 days including the period of 2 years and 6 months on daily wages.

3. Learned counsel stated that the applicant submitted his medical certificate as well as reports, but without considering the same, departmental enquiry was initiated against the applicant by Respondent No.4. Thereafter, the applicant submitted a detailed reply to the Enquiry Officer. But without considering the reply and without hearing the applicant, the Enquiry Officer submitted report to the Respondent No. 4 and came to the conclusion that the applicant has committed misconduct and therefore decision is required to be taken. Thereafter, the Respondent No. 4 passed the impugned order dated 4.2.2008 removing the applicant from service. Learned counsel has submitted that the appeal preferred by the applicant on 24.3.2008 before the Appellate Authority, Respondent No. 3, was dismissed by order dated 5.8.2014, confirming the order passed by the Disciplinary Authority, Respondent No. 4. Learned counsel has submitted that the Respondents failed to consider that the applicant was absent due to his ill-health and suffering from kidney problem for which he has submitted the medical certificate.

4. Learned P.O relied on the affidavit in reply dated 17.9.2018 filed by Namdev S. Kare, Executive Engineer in the office of Sangli Irrigation Division, Sangli. Learned P.O has submitted that the Respondent No. 4 has rightly rejected the appeal filed against the order passed by Respondent No. 3, the Disciplinary Authority. Learned P.O submitted that the applicant was absent from duty for 1722 days. Learned P.O has submitted that the applicant was given sufficient opportunity for submitting his case and after considering all documentary and oral evidence the enquiry officer submitted his report to the Disciplinary Authority. Learned

counsel further submitted that the applicant was called upon to submit his reply to the enquiry report and after taking into consideration the findings of the Enquiry Officer, reply of the applicant, past record and conduct of the applicant, Respondent No. 4 issued the order dated 4.2.2008, removing the applicant from service. Learned P.O submitted that the applicant preferred appeal against the said order before Respondent No. 2. The Appellate Authority after giving proper and reasonable opportunity to the applicant and after considering the entire record regarding misconduct of the applicant, passed the order dated 5.8.2014, confirming the order passed by the Disciplinary Authority. Learned P.O relied on Rule 18 of the Maharashtra Public Works Department, Rule Book.

5. The said Rule 18 of the Maharashtra Public Works Department, Rule Book is reproduced below:-

“(१८) निवृत्तिवेतनासाठी रोजंदारी आस्थापनेवरील सेवेची गणना करणे. नियमित आस्थापनेवर घतलेल्या व्यक्तींनी अस्थायी/स्थायी आस्थापनांमध्ये रूपांतरित करण्यात आलेल्या कार्यव्ययी व रोजंदारी आस्थापनांमध्ये कार्यव्ययी व रोजंदारी आस्थापनामधील पदावर केलेल्या अखंड सेवेच्या अर्धी सेवा निवृत्तिवेतनासाठी हिशेबात घेण्यात यावी.”

From the record produced by the learned P.O we find that the applicant has put in regular service of 20 years, 7 months and 20 days. He has also put in 2 ½ years of service on daily wages. Thus, the applicant has completed regular service of 23 years, 1 month and 20 days. Therefore, the applicant's case can be considered for voluntary retirement on completion of 20 years of regular service.

6. The Applicant was not dismissed from service but he was removed by the Disciplinary Authority for his misconduct. The misconduct is of the nature of long absence without approved

leave. We have verified the spells of his absenteeism which were very long from 2000-2001 i.e., nearly one year. Then he joined the work for 5 months. However, from 11.04.2002 to 2004 nearly for two years he remained absent. Then again, he worked from May, 2004 to April 2006, i.e. two years and then again, he did not come for more than 1 ½ years and thereafter immediately he remained absent for nearly 6 months. Thus, the Applicant admittedly remained absent for a period of 1722 days. When we checked his service record, we found that the applicant had joined as daily wage labourer from 01.06.1976 and two years thereafter he was absorbed in service. So the Applicant himself worked on regular service for more than 20 years plus 2 ½ years for the period when he worked as daily wager. The applicant though had completed 20 years in regular service we also rely on Clause 18 of the Maharashtra Public Works Department Rule Book wherein the period of daily wages is counted as a period of regular service. Be that as it may. The fact that the applicant has completed 20 years of continuous service i.e., after his regularisation from 01.11.1981 to 04.12.2000. Thereafter, he remained absent and then again he worked as mentioned above. Thus, his record shows that the Applicant had put in nearly more than 20 years, till absenteeism became his habit and routine.

7. Learned Counsel and also learned Presenting Officer has pointed out the reason for long absenteeism of the applicant was his addiction for liquor which he developed and it became uncontrollable in 2000. Earlier there was no complaint against the Applicant on any issue. We do not justify the addiction. However, we are of the view that the administration should have made him aware and given him option of voluntary retirement for which he was eligible and entitled too. By remaining absent for such a long period of 1722 days before he was removed from the service,

undoubtedly the Applicant was a defaulter and therefore his services were not required. We are of the view that the administration has to be strict while implementing the law. Learned Counsel for the Applicant on instructions from the Applicant agreed that he is willing to go for voluntary retirement, which in fact he has mentioned once in his letter and he agreed that the order of his voluntary retirement can be passed accordingly. Learned Counsel has further prayed that the Applicant be given pecuniary benefits, other than pensionary benefits. However, we reject the claim of other pecuniary benefits other than pensionary benefits as it will lead to unnecessary financial burden on the State. Similarly, the administration also needs to consider the earlier service of the Government servant, reasons of his default and some humanitarian approach is always required in the administration.

8. In this case we are of the view that the administration should have offered him to go for voluntary retirement as his services were not required. We are of the view that instead of initiating Departmental Enquiry against the Applicant and removing him from service, as the Applicant had already put in 20 years of service, on this ground alone, the Applicant should have been reinstated in service only for the purpose of pensionary benefits without giving him pecuniary benefits.

9. In view of the above, we feel the following order will meet the ends of justice:-

- (a) The order dated 05.08.2014 passed by the Appellate Authority and the order dated 04.04.2008 passed by the Disciplinary Authority removing the applicant from the service is hereby quashed and set aside.

- (b) The service of the applicant is to be treated as having come to an end w.e.f 31.03.2006. By way of Voluntary Retirement, the applicant is entitled for pensionary benefits from the date of filing the Original Application. He is not entitled to any interest.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 28.6.2024**  
**Dictation taken by : A.K. Nair.**