

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.179/2022 (S.B.)**

Himmat Narayan Wankhade,
Aged about 62 years, Occ.: Retired,
R/o at Kothari, Post Pailpada,
Tahsil and District: Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Gokuldas Tejpal Hospital Building,
10th Floor, B Wing, Mumbai-440 001.
- 2) Joint Director,
Health Services, (Malaria, Hattirog and Jaljanya Diseases),
Raja Bahadur Mill Road, Sangamwadi, Pune-411001.
- 3) Deputy Director of Health Services
(Malaria, Hattirog and Jaljanya Diseases),
Divisional Health Building, District Women Hospital Campus,
Radhakisan Plots, Akola, Tah and Dist. Akola-444001.
- 4) District Malaria Officer,
Shrikrushna Peth, District Women Hospital Campus,
Amravati, Tah. And Dist. Amravati-444601.
- 5) Accountant General (MH-II),
Civil Lines, Near Zilla Parishad office, Nagpur-01.

Respondents.

Shri N.S.Warulkar, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 29th November, 2024.

JUDGMENT

Judgment is reserved on 18th November, 2024.

Judgment is pronounced on 29th November, 2024.

Heard Shri N.S.Warulkar, learned counsel for the applicant
and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Undisputed facts are as follows. On 20.06.2001 the applicant proceeded on medical leave. On 17.05.2007 he submitted application (Annexure A-4) before respondent no.4 that he be permitted to resume duty. Respondent no.4 forwarded this application to respondent no.3 with covering letter dated 20.07.2007 (Annexure A-5) seeking guidance from him. By letter dated 06.10.2010 (Annexure A-7) respondent no.3 intimated Medical Board, Yavatmal to examine the applicant, ascertain his fitness and submit Certificate based on this examination. On 19.11.2010 the Medical Board issued Certificate (Annexure A-8) that the applicant was fit for duty. The Board further recommended that the past leave taken may not be regularised on medical ground. Pursuant to approval accorded by respondent no.3,

respondent no.4 passed order dated 23.11.2011 (Annexure A-10) directing the applicant to resume duty at Sub-Center, Tebrukheda, PHC S. Ghat. This order *inter alia* stipulated –

त्यांचा दि. २७.१०.२००२ ते दि. २२.११.२०११ पर्यंतचा कालावधी वैद्यकिय प्रमाणपत्र तथा त्यांचे विरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ च्या नियम १० खालील कार्यवाहीच्या अधिन राहून ठरविण्यात येईल.

Accordingly the applicant resumed duty on 23.11.2011. He retired on superannuation on 31.05.2018 (Annexure A-11). By order dated 01.04.2021 (Annexure A-2) period of absence of the applicant from duty from 27.10.2002 to 22.11.2011 (9 years and 27 days) was directed to be treated as break in service. Another order dated 01.04.2021 (Annexure A-1) stated –

संदर्भाधीन पत्रान्वये श्री.एच.एन. वानखेडे, आरोग्य कर्मचारी यांचा अनधिकृत गैरहजेरीचा कालावधी नियमित करण्याबाबतचा प्रस्ताव प्राप्त झाला आहे. श्री. वानखेडे हे दि.२७.१०.२००२ ते दि.२२.११.२०११ (९ वर्ष २७ दिवस) अनधिकृत गैरहजर होते. त्यांचा सदर अनधिकृत गैरहजर कालावधी हा सेवाखंड करण्यात येत आहे. त्यांची असाधारण रजा ही सेवाखंड केल्यानंतर त्यांचा सेवाकालावधी नियमित होणार नाही व सेवानिवृत्ती नंतरचे सेवानिवृत्ती वेतन व इतर लाभ त्यांना देय होणार नाहीत.

Consequential order dated 29.04.2021 (Annexure A-3) was passed by respondent no.4 hence, this O.A. impugning the orders at Annexures A-1, A-2 and A-3.

3. Respondent no.2 has resisted the O.A. on the grounds that after filing application dated 17.05.2007 the applicant remained completely inert, and in view of Rule 47(2) of the Maharashtra Civil Services (Pension) Rules, 1982 the applicant was rightly held to be ineligible to get pensionary benefits. The first ground raised by respondent no.4 is fully supported by record. Simply filing an application without any real attempt to pursue the same can hardly suffice to conclude that the period after date of such application could not have been treated as break in service because for this lapse the employer was responsible. The second ground is based on Rule 47(2) of the M.C.S. (Pension) Rules, 1982. It would be appropriate to reproduce Rule 47 which reads as under-

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 filled 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 (i), the appointing authority may, by order, commute [retrospectively] the periods of absence without leave as extraordinary leave.*

4. The applicant, on the other hand, has relied on Rule 48(3).

Said provision reads as under-

48. Condonation of interruption in service

(1) X X X

(2) X X X

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(4) X X X

(5) X X X

5. Having regard to contents of the impugned orders Rule 48(3) will not be applicable.

6. The applicant seeks to rely on a Common Judgment of the Hon'ble Bombay High Court dated 22.04.2022 in Writ Petition Nos.12560 of 2018 and 12629 of 2018 (Muktabai C. Parwat Vs. the State of Maharashtra and 2 Others) wherein the point for determination was whether an employee can seek condonation of interruption in service to enhance the pension where the employee has rendered qualifying service for getting pension. This question was answered in the negative.

7. In the instant case there appears to be no dispute that the applicant was absent from 20.06.2001. As per the impugned orders period of his unauthorised absence was from 27.10.2002 to 22.11.2011. There is nothing on record to show whether for the period of his absence from 20.06.2001 to 26.10.2002 medical or any other leave was sanctioned to him. These factual aspects will have a definite bearing on merits of the case in view of binding precedent of the Hon'ble Bombay High Court **Chandrakant s/o Manikrao Patil Vs. State of Maharashtra and 3 others (Judgment dated 21.12.2017 in Writ Petition No.956/2008)** wherein it is held-

It is the contention of the learned A.G.P. that since interruption in the service of the petitioner exceeds period of one year, in view of clause (c) of Rule 48(1), the interruption in service is not liable to be condoned. The claim of the petitioner does not appear to be for condonation of interruption in service. Admittedly, the deceased employee is not entitled to claim condonation of interruption in service in view of Rule 48. However, merely because six years unauthorised absence of the deceased employee, is not liable to be condoned, it does not have any effect on his entitlement to earn the pension. In view of clause (b) of Rule 47(1), the unauthorised absence of the petitioner, which is preceded by authorised absence, does not have effect of forfeiture of his past service. The deceased employee had rendered past service for about 28 years and as such, he is entitled to claim pensionary benefits on computation of aforesaid period. The interruption in service, on account of unauthorised absence of the petitioner, is not liable to be condoned in view of rule 48 of the Pension Rules and the said period of unauthorised absence

of deceased employee cannot be added to the past service rendered by the deceased employee prior to his unauthorised absence.

If it is found that period of unauthorised absence of the applicant from 27.10.2002 to 22.11.2011 was preceded by authorised absence from 20.06.2001 to 26.10.2002, the applicant would not forfeit his past service from 03.10.1985 to 26.10.2002, and would be entitled to claim pensionary benefits on computation of aforesaid period. In these facts ends of justice would be met by passing the following order. The impugned orders are quashed and set aside. Respondent no.1 is directed to consider case of the applicant for grant of pensionary benefits afresh in the light of factual aspects as well as legal position discussed hereinabove. This exercise shall be completed within three months from today and the decision arrived at shall be communicated to the applicant forthwith. The O.A. is allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 29/11/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 29/11/2024.

and pronounced on

Uploaded on : 29/11/2024.