

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12560 OF 2018

Muktabai

...Petitioner

Versus

1. The State of Maharashtra
Through Secretary Urban Development
Department, Mantralaya,
Mumbai – 32.
2. The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad.
3. The Education Officer,
Municipal Corporation,
Aurangabad

...Respondents

**WITH
WRIT PETITION NO.12629 OF 2018**

Jijabai Bhausahab Misal

...Petitioner

Versus

1. The State of Maharashtra
Through Secretary Urban Development
Department, Mantralaya,
Mumbai – 32.
2. The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad.
3. The Education Officer,

Municipal Corporation,
Aurangabad

...Respondents

...

Mr. D.R. Irale Patil, Advocate for the Petitioners.

Ms. R.P. Gaur, AGP for respondent/State.

Mr. A.P. Bhandari, Advocate for Respondent Nos.2 & 3.

...

**CORAM : R.D. DHANUKA &
S.G. MEHARE, J.J.**

RESERVED ON : 08th MARCH, 2022

PRONOUNCED ON : 22nd APRIL, 2022

JUDGMENT (PER S.G. MEHARE, J) :-

1. Rule. Learned Government pleader waives the service of notice for the State. Learned counsel Shri A.P. Bhandari for respondents no.2 and 3/ Municipal Corporation Aurangabad, and Education Officer waives the service of notice.

2. Rule made returnable forthwith. By the consent of the parties heard finally.

3. A short question for determination is whether the employee can seek condonation of interruption in service to enhance the pension where the employee has qualifying service for pension?

4. The petitioners were permanent in service as teachers in Municipal Corporation (the then Council) as per the orders dated 08.06.1985 and 11.12.1985. However, before permanency, there were interruptions in their service from the date of their first temporary appointments dated 09.02.1981. The interruption in service of

petitioners was two years and eighty-eight days and three years eight months each respectively. After the permanency, the petitioners served as teachers until their retirements, i.e. 31.05.2015 and 30.06.2018.

5. The Maharashtra Civil Services (Pension) Rules, 1982 ('Pension Rules' for short) have been made applicable to the employees of Aurangabad Municipal Corporation as per section 465 of the said Act.

6. Qualifying service is sine qua non for pension. 'Qualifying service' means a service that may be considered in determining whether an employee is eligible by the length of service for a pension. Rule 30 of the Pension Rules defines 'Qualifying Service', 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 scale as admissible to a permanent Government Servant].

7. It is clear from the above Rule that ten years of qualifying service is a condition precedent for the entitlement of pension. Where the employee retires on superannuation or is declared permanently incapacitated for further service, or voluntarily retires after twenty years of service, the employee's service is to be counted for qualifying service for pension. The servant, at the time of retirement, shall hold substantively a permanent post.

8. The petitioners are seeking the condonation of breaks in service for the enhancement of the pension and other retiral benefits. In the light of the petitioners' prayers, it would be profitable to discuss and examine the purpose and provision of condonation of interruption in service. The condonation of interruption in service for seniority and pension are two distinct issues. In this case we are dealing with the condonation of interruption in service for the purpose of pension as prayed and that too for the enhancement of pension.

9. Rule 48 of the Pension Rules speaks about the condonation of interruption in service. It provides that the appointing authority has a discretionary power to condone the interruption in

service provided the interruptions should have been caused by reasons beyond the control of the Government servant. The total service pensionary benefit in respect of which will be lost, is not less than five years duration, excluding one or two interruptions, if any and the interruption including two or more interruptions, if any, does not exceed one year. Rule 30 makes no distinction between the first appointment either substantively or in officiating capacity or temporary capacity for the purpose of computing qualifying service. The Pension Rules is a complete scheme with various types of services rendered by the employee, and its minimum counting gives the employee a pensionary benefit. Rule 30 unambiguously states that each type of service either substantive, temporary or officiating, shall be counted for qualifying pensionable service.

10. In view of the pension scheme, where the employee in substantive service has rendered the service less than ten years, then his previous temporary or officiating service is counted for completing the minimum ten years of service subject to the other rules and his personal service record. The Pension Rules have taken care of how much service period should be counted for qualifying service for pension. How the past temporary or officiating service is counted for qualifying service can be better understood from the case of *Shivappa s/o Bhujanappa Bembale vs The State of Maharashtra 2005 (3) Mh.L.J 709*. In the said case, the petitioner had served with Zilla

Parishad as Peon for 20 years, and then in a regular post he served for three years. The Division Bench of this court held that Note 1 of Rule 57 of Pension Rule is applicable and counted half of his earlier part-time service i.e. ten years, and held him eligible for pension.

11. The appointing authority may condone interruption in service as provided under Section 48 of the Pension Rules. However, the authority is confined to the rules framed under the Pension Rules. How much service period of the previous service should be considered for qualifying service is a matter of the type of the services rendered by the employees. As discussed above, for condoning the interruption in service, the total service pensionary benefit in respect of which will lost should not be less than five years duration, excluding one or two interruptions. Note below Rule 33 further provides that the competent authority is authorized to condone breaks not exceeding three years where necessary. Be that as it may, at the time of the retirement, the petitioners were holding permanent posts substantively with respondent no. 2 and also having the requisite qualifying service as provided under clause 2(a) of Rule 110.

12. Rule 110 of Pension Rules speaks about how to calculate the pension amount. Sub-rule 2 (a) of the said Rule provides that the Government servant who is retiring on superannuation, Retiring, invalid or compensation pension in accordance with the provisions of these rules, after completing qualifying service of not less than 20

years, the pension is calculated considering the amount of 50% of the 'Pensionable Pay' subject to a maximum of Rs. 67,000 plus admissible grade pay. Sub-clause (b) also provides the rules for calculating the pension where the employee is retiring before completing twenty years of service but after completing ten years of service. The same Rule of applying 50% of the "Pensionable Pay" is applied. But in such a case, the minimum pension shall not be less than Rs. one thousand nine hundred thirteen. Conjoint Reading Rule 30, 33, 48 and 110 of Pension Rules elucidate that the pension scheme is for the benefit of the employee, and the amount of pension is determined by the length of qualifying service.

13. Reading the Rules 30, 33, 48 and 110 of the Pension Rules conjointly, we are of the opinion that it is crystal clear if the service of an employee at his superannuation is less than ten years, then the previous temporary or officiating service needed to be counted for the qualifying service for pension. The rules discussed above unequivocally indicate that the purpose of condoning the interruptions in service is to make an employee entitled to the pension by adding the days of his service and not to enhance the pension for the reason that the pension is to be calculated and paid on the basis of the last salary drawn on the substantive permanent post.

14. In view of the above discussion, we are of the opinion that having regard to the term of service of the petitioners, they had

qualifying service, making them eligible for pension as per the Pension Rules. Petitioners are thus not entitled to claim the condonation of the interruption in their services to enhance their pension.

15. For the reasons stated above, we find that the petitions are devoid of merit. Hence, we dismiss the petitions.

16. No order as to costs.

17. Rule stands discharged.

18. The record furnished by the Corporation be returned to its counsel.

(S.G. MEHARE. J.)

(R.D. DHANUKA, J.)