



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 337 OF 2024

Shri Shivdas Vithu Pednekar
Son of Shri Vithu Pednekar
Aged 55 years,
R/o H.No.89/12, Amuli Wada,
Khorlim, Mapusa Bardez Goa.

... Petitioner

V e r s u s

1 State of Goa,
Through Chief Secretary,
Porvorim Goa.

2 The Secretary (GA)
Government of Goa
Secretariate Porvorim Goa

3 The Under Secretary (GA-I)
General Administration Department
Secretariate Porvorim Goa.

4 The Under Secretary (GA-II)
General Administration Department –II
Secretariate Porvorim Goa.

... Respondents

Ms Apeksha Kalokhe, Advocate for the petitioner.

Mr Shubham Priolkar, Additional Government Advocate for the Respondents.

**CORAM: M. S. KARNIK &
 VALMIKI MENEZES, JJ.**

DATED: 12th September 2024

JUDGMENT (*Per M. S. Karnik, J.*)

1. This petition under Article 226 of the Constitution of India seeks to quash and set aside the Memorandum dated 24.03.2021 issued by respondent No.4 denying the petitioner pensionary benefits consequent to imposing penalty of compulsory retirement and forfeiting past service. It is prayed that respondents be directed to grant pensionary benefits in accordance with Rule 40 of the CCS (Pension) Rules, 1972 to the petitioner.

2. The facts of the case in brief are as follows:

The petitioner was appointed as a Peon in the secretariat on a temporary basis w.e.f. 09.04.1996. After completing the probation period, the petitioner was confirmed in the post of Peon on 31.03.1999 and thereafter was promoted to the post of Junior Assistant on 02.08.2002. The petitioner was promoted on regular basis to the post of Assistant from 10.05.2010. The petitioner absented himself from attending duties w.e.f. 02.05.2012. A Memorandum dated 05.12.2012 was issued by respondent No.3-Under Secretary (GA-I), General Administration Department, Secretariat, Porvorim Goa, by virtue of which the period of absence was treated as a break in service having the effect of interruption in service thereby forfeiting the past service of the petitioner in terms of Rule 27 of CCS (Pension) Rules, 1972. By Memorandum dated 28.12.2012 the petitioner was informed that the competent authorities have decided to initiate disciplinary proceedings against him under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called CCS (CCA) Rules for short). The order imposing a major penalty of compulsory retirement on the petitioner was passed by respondent No.2 on 17.10.2019.

3. Respondent No.4 –Under Secretary (GA-II), General Administration Department –II, Secretariat, Porvorim Goa, forwarded necessary documents to the Director of Accounts, Pension Section for the grant of gratuity/pension to the petitioner. The petitioner was informed that he is not entitled to any pensionary benefits due to the imposition of the penalty of compulsory retirement and forfeiture of past service. An appeal was filed before respondent No.1 –Chief Secretary, State of Goa, against the decision taken by the competent authorities denying pensionary benefits to the petitioner. The appeal preferred by the petitioner came to be rejected by order dated 14.12.2021.

4. The petitioner was issued a Memorandum of Charges dated 28.12.2012 in which two charges were proposed against the petitioner. The said charges read as follows: -

ARTICLE –I

That the said Shri Shivdas V. Pednekar, Assistant in the Secretariat posted in the Central Registry/GAD-III absented himself from attending his duties with effect from 02/05/2012 till date (28.12.2012). His absence from 02/05/2012 till 05/12/2012 has been treated as break in service which shall have effect of interruption in service thereby forfeiting his past service in terms of Rule 27 of CCS (Pension) Rules, 1972 vide Memorandum No.PER/20/23/91-GA&C dated 05/12/2012. Shri Shivdas V. Pednekar, Assistant, has not reported for his duties till date. By the aforesaid act, the said Shri Shivdas V. Pednekar, Assistant failed to maintain absolute integrity, devotion to duty and acted in a

manner unbecoming of a Government Servant thereby violating Rule 3(1) Sub-Rules (i),(ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE –II

During the aforesaid period and while functioning in the aforesaid post, the said Shri Shivdas V. Pednekar, Assistant, remained unauthorisedly absent from 02/05/2012 to till date.

By the above acts, the said Shri Shivdas V. Pednekar, Assistant, exhibited lack of devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby violating Rule 3(1) Sub-Rules (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964.

5. The inquiry authority submitted a report dated 11.03.2016 holding that the charges of remaining absent without justification for such a long spell or by not applying for leave as required under the Leave Rules are proved. During the course of inquiry, it was the defence of the petitioner that the reason for not attending duty was because on 26.03.2012, the Hon'ble Minister in collusion with one person and in his presence forcefully detained him in the secretariat conference hall and took a handwritten note from him that he will pay back the amount of Rs.4,00,000/- to the said person. It was the case of the petitioner that, in turn, a blank cheque was forcibly taken from him so that the concerned person can illegally recover the amount by initiating false legal proceedings against him. It is alleged that the Minister had

threatened the petitioner. It was on account of this fear the petitioner requested police protection as he was working in the secretariat.

6. The inquiry officer did not consider the aforesaid defence to be justification for remaining absent on duty. The inquiry officer held that the petitioner was not entitled to police protection as the petitioner does not perform any duties which attracted public reaction and his duties were not of executive nature. Furthermore, the inquiry officer observed that he is not empowered to decide about the matter of the loan of Rs.4,00,000/- as it does not form part of the charges, which relates only to absenteeism. The inquiry officer thus held that the justification of the petitioner to remain absent by contravening the provisions of leave rules and conduct rules for such a long period inspite of various opportunities given to him to rejoin duties is not at all acceptable. In such circumstances, it was held that the charges of remaining absent without justification for such a long spell or by not applying for leave as required under the Leave Rules are proved.

7. Mr Priolkar, learned Additional Government Advocate submitted that the impugned order does not call for any interference. It is submitted that by a memorandum dated 05.12.2012, the competent authority treated the period of unauthorized absence from 02.05.2012 to 05.12.2012 as break in service which shall have the effect of interruption in service thereby resulting in forfeiture of his past service in terms of Rule 27 of CCS (Pension) Rules, 1972. It is submitted that the memorandum dated 05.12.2012 was never challenged by the petitioner and the same has attained finality. According to the learned Additional Government Advocate, once past service has been forfeited, then no question entitling the petitioner to any pensionary benefits will arise, as any forfeiture has the effect of rendering the period spent on duty inconsequential for the purpose of pension and gratuity. It is

further submitted that the penalty of compulsory retirement dated 17.10.2019 was not challenged by the petitioner which has attained finality. Learned Additional Government Advocate relied upon the decision in ***Chennai Metropolitan Water Supply and Sewerage Board and others Vs T. T. Murali Babu***¹ to contend that it is not an absolute proposition in law that whenever there is long unauthorized absence, it is obligatory on the part of disciplinary authority to record finding of willful absence even when employee failed to show compelling circumstances for remaining absent. In any case, it is submitted that as the order of compulsory retirement is not under challenge, the petitioner cannot assail the findings of the inquiry officer. Reliance is placed on the ***State of Punjab and others Vs Gurbaran Singh***² in support of the proposition that in case of resignation from service or a post, unless the matter was covered under sub-rule (2) of Rule 26 of the CCS Rules, it would entail forfeiture of past service. He submits that since the past service stand forfeited, the same would be excluded from the qualifying period of service, and as such for deciding the question of entitlement to pension, the employee would not have 'the qualifying period of service'. The thrust of Mr Priolkar's submission is that for deciding the question of entitlement to pension, the employee must have 'the qualifying period of service' which in the present case he does not have on account of forfeiture of his past service. Mr Priolkar then relied upon the decision in ***Chatrapal Vs State of Uttar Pradesh and another***³ to contend that ordinarily the findings recorded by the inquiry officer should not be interfered with by the appellate authority or by the writ court. It is only when the finding of guilt recorded by the inquiry officer is based

¹ (2014) 4 SCC 108

² (2019) 4 SCC 805

³ 2024 SCC OnLine SC 146

on perverse finding the same can always be interfered with. Therefore, he prayed that the petition be dismissed. Learned Additional Government Advocate has also invited our attention to the affidavit in reply filed on behalf of the respondents.

8. Heard learned counsel for the parties.

9. In *Chatrapal Vs State of Uttar Pradesh and another* (supra) Their Lordships observed that it is trite law that ordinarily the findings recorded by the inquiry officer should not be interfered with by the appellate authority or by the writ court except when the finding is perverse. The scope of interference by the Court in the findings recorded by the inquiry officer is elaborated. However, as the order of compulsory retirement is not under challenge, it is not open for us to go into the question of the perversity of the finding recorded by the inquiry officer. This aspect we had to briefly touch as the learned counsel for the petitioner made an attempt to justify the compelling reason for the petitioner's absenteeism. We therefore proceed on the footing that the order of compulsory retirement dated 17.10.2019 has attained finality.

10. It is pertinent to note that by memorandum dated 05.12.2012 the period of unauthorized absence from 02.05.2012 to 05.12.2012 was treated as a break in service having the effect of interruption in service thereby forfeiting the past service in terms of Rules 27 of CCS (Pension) Rules, 1972. Even this order was never challenged and has attained finality.

11. The decision relied upon by learned Additional Government Advocate in the *State of Punjab and others Vs Gurbaran Singh* (supra) lays down that if the past service stands forfeited, the same would be

excluded from the period of qualifying service and as such for deciding the question of entitlement to pension, the employee would not have the qualifying period of service. The decision was rendered in the context of forfeiting of past service under Rule 26.

12. As indicated earlier, for the period of absenteeism from 02.05.2012 till 05.12.2012, the same is treated as break in service having effect of interruption thereby forfeiting the petitioner's past service. By memorandum dated 28.12.2012, the statement of Article of charges was framed against the petitioner for unauthorized absence. Article I specifically makes a reference to the forfeiture of service. The service has been forfeited in terms of Rule 27 of the CCS (Pension) Rules which reads thus: -

“27. 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) authorised leave of absence ;

(b) unauthorised absence in continuation of authorised leave of absence so long as the post of 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 compulsory retirement 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.”

13. Rule 3(q) of the CCS (Pension) Rules defines “qualifying service” to be service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules. Much emphasis is placed by learned Additional Government Advocate on Rule 26 which reads thus:-

“26. Forfeiture of service on resignation. - (1)
Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by

formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection in his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from on which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(iv) that the post, which was vacated by the Government servant on the acceptance of his

resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

[(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.]”

14. The submission of the learned Additional Government Advocate is that the consequence of forfeiture of past service in the context of resignation under Rule 26 of the Pension Rules will similarly apply in respect of cases falling under Rule 27. Therefore, we have to be mindful of the decision in the *State of Punjab and others Vs Gurbaran Singh* (supra) holding that if past service would stand forfeited, the same would be excluded from the period of qualifying service.

15. Perusal of Rule 26 indicates that resignation from a service or a post entail forfeiture of past service unless it is allowed to be withdrawn in public interest. Such resignation may be permitted to be withdrawn by the appointing authority in public interest on satisfaction of the conditions contained in clause (4) of Rule 26. Thus a resignation entails the consequence of forfeiture of past service unless it is allowed to be withdrawn. So far as Rule 27 is concerned, it ordains that interruption in the service of a Government servant entails forfeiture of past service except in the cases provided by clause (1) of Rule 27. Moreover, clause (2) empowers the appointing authority to commute retrospectively by ordering the periods of absence without leave as extraordinary leave. To some extent, having regard to the purport of Rule 27, the consequence of forfeiture of service provided by Rules 26 and 27 will have to be looked differently in the contextual facts of each case. Rule 27 empowers condoning the periods of absence.

16. Learned Additional Government Advocate relied upon F.R. 17(1) to contend that the officer who is absent from duty without any authority shall not be entitled to any pay and allowance during the period of absence. F. R. 17(1) reads thus: -

*“F.R. 17. (1)- Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:
Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.”*

17. In our opinion, nothing turns on F.R. 17(1) as the petitioner is not claiming any pay and allowances during the period of such absence.

18. Now let us consider Rule 40 of CCS (Pension) Rules which provides for compulsory retirement pension which reads thus:

“40. Compulsory retirement pension.-

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than [full compensation pension] or gratuity or both admissible to him on the date of his compulsory retirement.

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(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the [full compensation pension] admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Explanation. - In this sub-rule, the expression "pension" includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or, as the case may be under sub-rule (2), shall not be less than the [amount of Rupees (three hundred and seventy-five] per mensem].”

19. Rule 11 of the C.C.S. (C.C.A.) Rules provides for compulsory retirement as a major penalty which may for good and sufficient reasons be imposed on the Government servant. As indicated earlier, the order imposing penalty of compulsory retirement is not under challenge. No doubt, by the order dated 05.12.2012, the period from 02.05.2012 till 05.12.2012 was treated as a break in service having the effect of interruption in service thereby forfeiting the past service of the

petitioner from 09.04.1996 to 05.12.2012. Consequent to the order dated 05.12.2012, as the petitioner continued to remain absent, the disciplinary authority decided to hold an inquiry and proceeded to charge sheet the petitioner on 28.12.2012. The petitioner maintained the stand that he was requesting for security due to the threats from the Hon'ble Minister which was the reason for his not reporting for work. As the order of compulsory retirement is not challenged, no doubt, we cannot give much weightage to this submission of the learned counsel for the petitioner which according to him was a compelling circumstance preventing him from reporting to work.

20. It is pertinent to note that the inquiry which was initiated against the petitioner in the year 2012 has resulted in the order of compulsory retirement dated 17.10.2019. This order was passed after a period of seven years since the date of initiating the inquiry. The period from 05.12.2012 up to 17.10.2019 is treated as unauthorized absenteeism resulting penalty of compulsory retirement. In the order dated 17.10.2019, a specific reference is made to the order dated 05.12.2012 forfeiting his past service in terms of Rule 27 of CCS (Pension) Rules 1972 for not attending his duty w.e.f. 02.05.2012 up to 05.12.2012. Factually there is no order suspending the petitioner during the pendency of the inquiry. The order of compulsory retirement dated 17.10.2019 does not say anything as to whether the period from 06.12.2012 to 17.10.2019 has the effect of forfeiting past service. As indicated earlier, the appointing authority has the power to commute retrospectively the periods of absence without leave as extraordinary leave.

21. Under Rule 40, a Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than

two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement. We find that in view of the order dated 05.12.2012 forfeiting the past service for unauthorized absence from 02.05.2012 to 05.12.2012, the entire past service of the petitioner till the order of compulsory retirement is forfeited. The inquiry proceedings went on for almost seven years. There is nothing on record to indicate that it is solely the petitioner who was responsible for such delay in concluding the inquiry. The said period has been treated as without the benefit of pay and allowances. It is in these facts and circumstances, we are inclined to hold that it would be harsh and unfair to deny the petitioner pension and gratuity in terms of Rule 40 of the CCS (Pension) Rules as the period has actually worked for 16 years. It is not the case that the petitioner has no leave to his credit. He did not apply for condonation of the period of absenteeism in which case the appointing authority was empowered under clause (2) of Rule 27 to commute the periods of absence without leave as extraordinary leave. The power under clause (2) of Rule 27 can be exercised notwithstanding anything contained in clause (1) of Rule 27. Considering that the petitioner prays for pension and gratuity in terms of Rule 40, at this distance of time, it would be unjust to deprive him the benefit only for want of an order under clause (2) of Rule 27. We are of the view that for the purpose of Rule 3(q) the period from 09.04.1996 to 05.12.2012 be regarded as qualifying service entitling the petitioner to the benefit of pension and gratuity in terms of Rule 40.

22. The petitioner is held entitled to pension, gratuity and other benefits in terms of Rule 40 of the CCS (Pension) Rules. So far as the relief in terms of prayer clause (c) is concerned, the petitioner may make representation to the respondents within a period of four weeks from the date of uploading of the order which shall be considered in

accordance with law expeditiously. The arrears be paid to the petitioner within a period of three months from the date of uploading of this order. The petition is disposed of. No costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.