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**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.18330/2017**  
**(Asha Singh & Ors. vs. State of M.P. & Ors.)**

**Gwalior, Dated : 02.04.2019**

Shri Prashant Sharma, Counsel for the petitioners.

Shri R.K. Soni, Government Advocate for the respondents/State.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:

"(i) Orders impugned Annexure P/1 may kindly be quashed.

(ii) Respondents may kindly be directed to release pension of father of petitioner w.e.f. 7.7.1984, arrears be given with interest at the rate of 12% per annum till date of realization.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner."

2. The case of the petitioner is that their father late Samant Singh Tomar was serving as Assistant Teacher in the respondent Department. He was appointed on 31.3.1964 and served the department till 6.7.1984, when he went on unauthorized leave and did not join the services. On 12.9.2008 i.e. after 24 years of his unauthorized absence, the father of the petitioners made an application to the District Coordinator AJK Shivpur for preparation of his pension case and for payment of GPF amount. The said

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application was made on a plain paper whereas the father of the petitioners was required to make an application in the prescribed proforma. No other communication was ever made by the father of the petitioners. The father of the petitioners expired on 30.9.2010 and after his death the petitioners as well as their mother filed a writ petition before this Court which was registered as W.P.No.467/2012. The said writ petition was disposed of by order dated 24.1.2012 with a direction to decide the claim of the petitioner and their mother within a period of four weeks. The copy of the order of this Court was sent by the petitioners by registered post dated 17.2.2012. When the order of this Court was not complied with by the respondents, then the petitioners filed Conc. No.520/2012. As the service book and the personal record of the father of the petitioners was not available with the Department, therefore, the Department was finding it difficult to decide his case. Thereafter, after obtaining permission from the Collector and Pension Officer on 30.9.2016, the duplicate service book of the father of the petitioners was reconstructed and the amount deposited in different accounts of the father of the petitioners was paid to the petitioners. On the basis of the duplicate service book, the case of the father of the petitioners was forwarded to District Pension Office on 3.11.2016. An objection was raised by the

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Pension Officer that while calculating the qualifying service for pension, the unauthorized absence from duty has not been taken into consideration and, therefore, the matter was remitted back. Accordingly, it was found by the Department that the father of the petitioners had remained in Government service w.e.f. 31.3.1964 to 6.7.1984 and thus he had served the department for 20 years, 3 months and 5 days. It was also found that during this service period, the father of the petitioners had remained on an authorized absence for a period of 85 days from 31.3.72 to 23.6.72 and for 65 days from 30.4.1984 to 5.7.1984 and thus it was found that the father of the petitioners had remained on an unauthorized absence for a period of 150 days and since this period cannot be included in the qualifying service, therefore after reducing the period of an unauthorized absence of 150 days, it was found that the father of the petitioners had qualifying service of 19 years 10 months and 5 days which is less than 20 years as required under the Pension Rules. It is further submitted that after completing 20 years, if an official wants to take VRS, then he was required to give one month notice or the salary in lieu of notice but even that was not done and, therefore, it has been held that the father of the petitioners had the qualifying service of 19 years, 10 months and 5 days only, therefore, he is not entitled for

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pension.

3. Challenging the order passed by the respondents, it is submitted by the counsel for the petitioners that it appears that the father of the petitioners had applied for sanction of pension and release of GPF amount by his application dated 12.9.2008. The respondents by orders dated 7.10.2016 (Annexures R/3 and R/4) have decided the nature of an unauthorized absence of the father of the petitioners and according to them the unauthorized absence of 85 days from 31.3.1972 to 23.6.1972 and unauthorized absence of 65 days from 30.4.1984 to 5.7.1984 was treated as "leave without pay" on the principle of "no work no pay". It is submitted that since the respondents themselves have not treated the period of 150 days of unauthorized absence as dies non, therefore, it cannot be excluded from the qualifying service and thus it is clear that the father of the petitioners had already completed more than 20 years of qualifying service, therefore, he was entitled for pension.

4. *Per contra*, it is submitted by the counsel for the State that as the father of the petitioners had remained on an unauthorized absence for 150 days during his entire service tenure and the said period is liable to be excluded from the qualifying service of the father of the petitioners and, accordingly, it is clear that the father of the

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petitioners had not completed 20 years of qualifying service.

5. Heard the learned counsel for the parties.

6. The respondents have not taken any objection with regard to delay and latches. However, it is clear from the case of the petitioners that the father of the petitioners went on unauthorized absence from 7.7.1984 and he remained silent till 12.9.2008, when the father of the petitioner moved an application on plain paper for sanction of his pension and payment of GPF amount. Thus it is clear that the father of the petitioners had prayed for sanction of pension after 24 years of his unauthorized absence. It is submitted by the counsel for the petitioners that so far as the question of pension is concerned, it is a recurring cause of action and every month would give rise to a fresh cause of action, therefore, the claim of sanction of pension after 24 years cannot be said to be hit by delay and latches.

7. Considered the submissions made by the counsel for the petitioners.

8. The petitioners may be right in submitting that because of non-payment of pension every month would give rise to fresh cause of action. However, for recovery of money, the period of limitation under the Limitation Act is three years. Thus if it is held that non-payment of pension is a recurring cause and every month would give

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rise to fresh cause of action, then it is clear that the father of the petitioners was not entitled for the arrears of pension prior to 3 years of his claim. Thus it is held that because of delay and latches, the case of the father of the petitioners for payment of pension from 1984 to 2005 cannot be considered.

9. Now the next question for consideration is that whether the petitioners are entitled to receive the arrears of pension for the last three years from the date of the claim made by the father of the petitioners on 12.9.2008 or not ?

10. It is submitted by the counsel for the petitioners that the provisions of M.P. Civil Services (Extraordinary Pension) Rules, 1963 would also apply.

11. So far as the provisions of M.P. Civil Services (Extraordinary Pension) Rules, 1963 are concerned, they have no application to the facts of the case. It is not a case of the petitioners that he had suffered any injury or had expired during his employment. Thus, this Court is of the considered opinion that only the provisions of M.P. Civil Services Pension Rules, 1976 would apply.

12. Rule 21 of M.P. Civil Services Pension Rules 1976 reads as under:-

**"21. Counting of period spent on leave. - All leave including extraordinary leave taken during**

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service and granted by proper authority counts as qualifying service. Where extraordinary leave exceeding 120 days is not sanctioned by proper authority, only 120 days will be treated as qualifying service and the rest of the period shall not qualify for pension."

Rule 27 of M.P. Civil Services Pension Rules 1976 reads as under:-

**"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 authorized leave of absence so long as the post of absence is not filled;

(c) suspension, where it is 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 while under suspension;

(d) dismissal or removal from service followed by reinstatement in pensionable service;

[(e) abolition of office or loss of appointment owing to reduction of establishment or due to transfer to non-qualifying service in an establishment under Government control under

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the orders of the competent authority;]

(f) joining time while on transfer from one post to another.

(2) Notwithstanding anything contained in sub-rule (1), the pension sanctioning authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave. The period of such extraordinary leave shall qualify for pension subject to the condition under rule 21."

13. It is clear from Rule 21 of M.P. Civil Services Pension Rules 1976 that all leave including extraordinary leave taken during service and granted by proper authority counts as qualifying service. It is clear from Rule 27 of M.P. Civil Services Pension Rules, 1976 that the effect of interruption in service results in forfeiture of his past service. Thus unauthorized leave cannot be counted as qualifying service for the purposes of pension.

14. It is submitted by the counsel for the petitioners that the respondents by order dated 7.10.2016 has treated the period of unauthorized absence as "leave without pay" on the principle of "no work no pay". As they have not treated the said period of 150 days of unauthorized absence as dies non, therefore, it should be presumed that by order dated 7.10.2016 the unauthorized absence of 150 days of the father of the petitioners has been approved/sanctioned by the



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respondents and, therefore, the provisions of Rule 27(1)(a) of M.P. Civil Services Rules 1976 would apply as this period of 150 days cannot be excluded from the qualifying service being the authorized leave/absence.

15. Considered the submissions made by the counsel for the petitioners.

16. The respondents by order dated 7.10.2016 have merely considered that whether the salary for the period of unauthorized absence of 150 days can be paid or not. By the said order they have held that the petitioners are not entitled for the salary for the period of unauthorized absence of 150 days on the principle of "no work no pay" and for the purposes of payment of salary of this period, it was treated as "leave without pay". It is nowhere mentioned in the orders dated 7.10.2016 that unauthorized absence of the father of the petitioners is made authorized or approved and unless and until the absence of the employee is specifically approved as leave by proper authority, the same cannot be counted for the purposes of qualifying service. There is nothing in the orders dated 7.10.2016 to show that the unauthorized absence of the father of the petitioners for 150 days was approved or authorized by the proper authority, therefore orders dated 7.10.2016 cannot be construed as an order authorizing the

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unauthorized absence of the father of the petitioners for a period of 150 days.

17. Under these circumstances, this Court is of the considered opinion that the respondents did not commit any mistake in excluding the period of 150 days of unauthorized absence from the qualifying service, as a result of which, it has been held that since the father of the petitioners had not completed 20 years of qualifying service, therefore, he was not entitled for pension.

18. Accordingly, this petition fails and is hereby **dismissed**.

**(G.S. Ahluwalia)**  
**Judge**

(alok)