

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE  
HON'BLE SHRI JUSTICE ASHISH SHROTI**

**WRIT PETITION No. 28972 of 2021**

***MUNESH KUMAR GAUTAM***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

Shri M.P.S. Raghuvanshi- Senior Advocate assisted by Shri Dharmendra Dwivedi, learned counsel for the petitioner .

Shri Kaushlendra Singh Tomar - GA for the respondents/State.

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**RESERVED ON:** 11/03/2026  
**ORDER PASSED ON:** 20/03/2026

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**ORDER**

Petitioner has filed this writ petition praying for a direction to the respondents to include his past service rendered with MPEB for the purpose of calculation of his retiral dues. He also challenged the communication dated 14/9/2018 (Annexure P/16), whereby, Assistant Inspector General of Police, Police Headquarters, Bhopal has asked the Superintendent of Police, Shivpuri to act as per the objection raised by the District Pension Officer.

2. The facts which are not in dispute are that the petitioner was initially appointed as Assistant Grade III in erstwhile Madhya Pradesh Electricity Board (in short 'Board') on 21/6/1981. An advertisement was issued by the Police (Home) Department on 7/5/1987 inviting applications for appointment on the posts of Sub-Inspector/Platoon Commander/Subedar. The petitioner applied for appointment on the post vide application dated

21/5/1987. Thereafter, he made an application for no objection from the Board which was granted on 13/11/1987.

3. The petitioner was selected for appointment on the post of Sub-Inspector and was sent on pre-appointment training on 8/1/1988 and after successfully completing the training, he was appointed as Sub-Inspector vide order dated 9/12/1988. In between he submitted his resignation from her earlier post with Board which was accepted by Board with effect from 19/01/1988 vide communication, dated 02/04/1988, (Annexure R/1). In course of time, the petitioner was promoted to the post of Inspector and stood retired from service w.e.f. 30/4/2017.

4. When his previous service rendered with Board was not counted for pension, the petitioner made an application on 10/10/2017 requesting the respondent/department to count his past service rendered with MPEB towards pensionable service. The copy of the application dated 10/10/2017 has been placed on record as Annexure P/8. The Inspector General of Police, Gwalior Range, Gwalior sought certain clarifications on the petitioner's application from the Superintendent of Police, Shivpuri vide memo dated 7/2/2018. The petitioner submitted clarification vide his application dated 16/2/2018. Thereafter, vide memo dated 5/4/2018, the Assistant Inspector General of Police accorded his no objection for counting petitioner's service from 21/6/1981 to 15/1/1988 towards his qualifying service. Consequential order was then passed by Superintendent of Police, Shivpuri on 15/5/2018 thereby, directing counting of petitioner's service for the aforesaid period.

5. The Superintendent of Police then wrote to District Pension Officer, Shivpuri on 13/6/2018 asking him to issue revised PPO after taking into account the petitioner's service w.e.f. 21/6/1981. From document filed as Annexure P/14, it is gathered that the District Education Officer did not agree with the department's decision to count the petitioner's service. An objection was thus raised in this regard that under the M.P. Civil Services

(Pension) Rules, 1976 (for short "Pension Rules"), there is no provision for counting service rendered with MPEB for purpose of pension. The Superintendent of Police, Shivpuri, informed about the objection raised by District Pension Officer to Additional Inspector General of Police vide memo dated 24/8/2018. Thereafter, the impugned communication was issued on 14/9/2018, whereby, the Assistant Inspector General of Police asked the Superintendent of Police, Shivpuri to act as per the objection raised by the District Pension Officer. The petition is therefore, filed praying for aforementioned relief.

6. Learned senior counsel for the petitioner argued that under Rule 26 of the Pension Rules, the services rendered with the Board are liable to be counted for purposes of pension if the subsequent appointment is taken up with due permission of the earlier employer. He referred to the NOC granted by Board vide Annexure P/4 in this regard. Learned senior counsel further submitted that the application submitted by the petitioner pursuant to advertisement dated 7/5/1987 is available on record as Annexure P/3 which shows that the application was duly forwarded by the Officer of the MPEB. He thus submitted that these two documents sufficiently demonstrate that the petitioner participated in the selection process with due permission of the earlier employer. Learned counsel thus submitted that the petitioner is entitled to count his service right from 21/6/1981 for purpose of pension. In support of his submissions, learned senior counsel relied upon the decision of Apex Court in the case of *State of Rajasthan & Ors. Vs. O.P. Gupta*, reported in (2022)18 SCC 382, Division Bench decision of this Court in the case of *State of M.P. & Ors. Vs. Roop Singh Vishwakarma & Anr. (W.A. No.98/2019)* and another Division Bench decision of this Court in the case of *State of M.P. & Ors. Vs. Harikesh Jayant, (W.A. No.2033/2025)*.

7. Learned Govt. Advocate for the State on the other hand refuted the submissions made by counsel for the petitioner. It is his submission that for

being entitled to count previous service, it is necessary that the subsequent employment is taken up after due permission from the erstwhile employer. It is his submission that the permission is to be obtained prior to joining subsequent appointment and the permission relied upon by the petitioner was only a permission to take part in the selection process. Learned counsel for the State further submits that the services rendered with Board are not liable to be counted under Rule 26 of Pension Rules. Learned counsel for the State thus prays for dismissal of the petition.

8. Considered the arguments and perused the record.

9. The issue with regard to counting of past service is governed by Rule 26 of the Pension Rules, which provides as under:-

*"26. Forfeiture of service on resignation. (1) Resignation from a service or post entails forfeiture of past service:*

*Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with prior permission, another appointment, whether temporary or permanent, under the State Government, where service qualifies.*

*(2) Interruption in service in a case falling under the proviso to sub-rule (1), 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 the Government servant."*

10. Thus, a resignation from service or post normally entails forfeiture of past service, unless it is submitted to take up, with prior permission, another appointment under the State Govt. It is not in dispute between the parties in this case that the petitioner's service as Assistant Grade III was pensionable service under the Board. As per the objection raised by District Pension Officer, the petitioner's service rendered with Board (not

under State Govt.) is not liable to be counted under Rule 26 of Pension Rules.

11. The entitlement for pension is governed by the Madhya Pradesh Civil Services (Pension) Rules, and the relevant provision is Rule 3(p), which defines Qualifying service as under:

*“3(p) ‘Qualifying service’ means the period between the date of joining pensionable service under the State Government and retirement therefrom which shall be taken into account for purpose of the pension and gratuity admissible under these rules and includes the period which qualifies under any other order or rule for the time being in force.”*

12. Rule 3(p) quoted above, the qualifying service would commence from the date of joining pensionable service under State Govt. Thus, reading this portion of Rule 3(p), the service rendered under State Govt. only shall be counted for purposes of pension. However, later part of this rule further qualifies the service rendered under *any other order or rule for the time being in force*. A cumulative reading of this rule makes it clear that the service rendered by an incumbent under any rule other than Pension Rules of 1976 would also qualify for pension. The mandate is that such service should be a pensionable service.

13. Further, Rule 12(2) provides that qualifying service begins from the date the employee assumes charge of the post to which they are first appointed, whether on a substantive, officiating, or temporary basis, in the services of the State Government. Rule 12 of the Madhya Pradesh Civil Services (Pension) Rules is reproduced hereunder:

*“12. Commencement of qualifying service.- (1) Except for compensation gratuity, a Government servant's service does not qualify till he has completed 18 years of age, provided that nothing contained in this clause shall apply in the case of persons who were in service on the date of commencement of these rules and in whose case a lower age limit has been prescribed.*

*(2) 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.”*

Sub-rule (2) of Rule 12 though provides that qualifying service of a *Govt. servant* shall commence from the date he takes charge of the post. However, this sub-rule is also subject to other provisions of the rules. The other provision, for purposes of this case, would be Rule 3(q) which qualifies the service rendered under any other order or rule as qualifying service.

14. Further, Rule 13(1) lays down that the service of a *Govt. servant* shall not qualify unless his duties and pay are regulated by the *Govt.* Rule 13 is reproduced hereunder:

*“13. Conditions subject to which service qualifies.- (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.*

*(2) For the purposes of sub-rule (1), the expression "service" means service against a post under the Government and paid by the Government from the Consolidated Fund of the State which has not been declared as non-pensionable.”*

15. Rule 13 thus mandates that the service of an employee shall not qualify unless his duties and pay are regulated by *Govt.* or *under conditions determined by Govt.* Petitioner's past service was admittedly not

regulated by Govt. In order to understand as to whether the service conditions of employees of Board were determined by State Govt. or not, the provisions of Electricity (Supply) Act, 1948 needs to be examined. The Board was constituted under Section 5 of Act of 1948 and its constitution was as under:

***“5. Constitution and Composition of the State Electricity Board.—*** (1) *The State Government shall, as soon as may be after the issue of notification under sub-section (4) of Section 1, constitute by notification in the Official Gazette a State Electricity Board under such name as shall be specified in the notification.*

(2) *The Board shall consist of not less than three and not more than seven members appointed by the State Government.*

[\*\*\*]

*[(4) of the members—*

*(a) one shall be a person who has experience of, and has shown capacity in, commercial matters and administration;*

*(b) one shall be an electrical engineer with wide experience; and*

*(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electricity supply undertaking.]*

*(5) One of the members possessing any of the qualifications specified in sub-section (4) shall be appointed by the State Government to be the Chairman of the Board.*

*(6) A person shall be disqualified from being appointed or being a member of the Board if he is [\*\*\*] a member of [Parliament] or of any State Legislature or any local authority.*

*(7) No act done by the Board shall be called in question on the ground only of the existence of any vacancy in, or any defect in the constitution of the Board."*

16. It is thus seen that the Board was constituted by State Govt. under Section 5(1) while its members were also appointed by State Govt. under

Section 5(2) of the Act of 1948. Further, under Section 15 of the said Act, the staff *viz.* officers and employees of the Board is to be appointed by the Board which was constituted by State Govt. Further, under Section 79(c) of the Act, the Board was empowered to make regulations providing for the duties of officers and other employees of the Board, and their salaries, allowances and other conditions of service. Since, the Board was constituted by and its members were appointed by State Govt., it can safely be concluded that the service conditions of employees of MPEB were determined by State Govt. Thus, the conditions laid down under Rule 13(1) of Pension Rules are also satisfied.

17. The Apex Court in the case of ***O.P. Gupta (supra)***, held in para 27 that when financial rules framed by the Government such as Pension Rules are capable of more interpretations than one, the courts should lean towards that interpretation which goes in favour of the employee.

18. The Division Bench of this Court in the case of ***Roop Singh Vishwakarma (supra)*** approved the direction given by learned Single Judge to Count service of writ petitioner rendered in M.P. Housing Board with his subsequent service on the post of Sub-Inspector in Police Department. Though this issue was not specifically raised and decided by the Bench.

19. From the aforesaid discussion of legal provisions, it comes out loud and clear that the service rendered by petitioner with Board can be counted

towards his qualifying service after his appointment in the State Govt. and the objection raised by District Pension Officer is found to be unfounded and not in consonance with the provisions of the Pension Rules. The objection is thus overruled.

20. Even though the petitioner's claim for counting his past service with Board was declined only on the aforesaid objection raised by District Pension Officer, however, in the return the respondents have also raised an objection that the petitioner did not take up his subsequent appointment on the post of Sub-Inspector with prior permission of his earlier employer.

21. So far as the issue of prior permission is concerned, the same deserves to be outrightly rejected in view of NOC given by earlier employer on 13/11/1987 vide Annexure P/4. The NOC given specifically mentions that Board does not have any objection on petitioner's selection for the post of Sub-Inspector in Police Department. Apart from the above, the application submitted by petitioner was also forwarded by the authority of Board as is evident from page no.23 of writ petition. Apart from the above, the petitioner was selected and appointed on the post of SI through advertisement issued by Police Department. He worked for about 30 years and got retired from service. Therefore, raising the issue that there was no prior permission, at this stage is not permissible.

22. The Apex Court dealt with somewhat similar situation in the case of

**O.P. Gupta (supra)** which is relied upon by petitioner's counsel.

Interpreting *pari materia* provision, the Court held as under:

*"22. There can be no doubt that resignation from service may entail forfeiture of past service. However, sub-rule (2) of Rule 25 of the Rules carves out an exception. The said sub-rule clarifies that a resignation with proper permission to take up another appointment, whether temporary or permanent, under the Government shall not entail forfeiture of past service.*

*23. At the cost of repetition, it is reiterated that the respondent was selected through the RPSC. He applied for the post of Assistant Director (Agro Industries), while he was still in service of Rajasthan State Agro Industry Corporation, which is also an entity fully controlled by the State of Rajasthan.*

*24. The respondent having retired after working for about 26 years, the petitioner State cannot raise the question of proof of prior permission before resignation, more so when the appointment had been made through the RPSC to a government post. It is to be deemed that there has been disclosure of past service and the application has been made through proper channel by obtaining the requisite approvals.*

*25. It is to be presumed that prior permission had been taken unless the contrary could be established by the State. May be there was a delay of six years in filing the writ petition, however, it is well settled that the laws of limitation do not apply to exercise of jurisdiction under Article 226 of the Constitution of India. Relief under Article 226 of the Constitution of India being discretionary, the courts might in their discretion refuse to entertain the writ petition, where there is gross delay on the part of the writ petitioner, particularly, where the relief sought would, if granted, unsettle things, which are already settled.*

*26. In this case, the respondent-writ petitioner is claiming pension, which is a lifelong benefit. Denial of pension is a continuing wrong. This Court cannot also be oblivious to the difficulties of a retired employee in approaching the Court, which could include financial constraints."*

23. Thus, the objection that the petitioner did not take up appointment

on the post of SI with prior permission of his earlier employer, also has no

legs to stand and is accordingly rejected.

24. The petition is accordingly **allowed**. The objection raised by District Pension Officer is overruled. The respondents, including District Pension Officer, Shivpuri, is directed to process the petitioner's claim for counting his service from 21/06/1981 to 15/01/1988 pursuant to order, dated 15/05/2018, (Annexure P/12).

**(ASHISH SHROTI)**  
**JUDGE**

**jps/-**