

UNREPORTED
IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO.165 OF 2015.

Angad Vithalrao More,
Age 61 years, Occ.Retired,
R/o Somnathpur, Udgir,
Dist.Latur. ... Petitioner.

Versus

1. The State of Maharashtra,
Through its Secretary,
Animal Husbandry, Dairy
Development And Fisheries
Department, Mantralaya, Mumbai-32
2. The Maharashtra Animal and
Fishery Science University, Nagpur,
Through its Registrar
3. The Vasantrao Naik Marathawada
Krushi Vidyapith, Parbhani,
Through its Registrar
4. Veterinary College, Udgir,
Tq. : Udgir, Dist. : Latur,
Through its Associate Dean .. Respondents

Shri Anand V. Patil Indrale, Advocate for the Petitioner
Shri K. J. Ghute Patil, A. G. P. for the Respondent No. 1
Shri P. G. Rodge, Advocate for Respondent No. 2 and 4

Shri H. B. Nandagawale h/f Shri V. G. Sakolkar, Advocate for
Respondent No. 3

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 11TH JUNE, 2015.

ORAL JUDGMENT (Per S.V.Gangapurwala,J.)

1. Rule. Rule returnable forthwith. With the consent of the parties taken up for final hearing.

2. The grievance of the petitioner is that the petitioner was initially appointed by the Respondent No. 3 on daily wages in the year 1975-78 and was working since then. The petitioner was brought on regular establishment in the year 1996 and thereafter continuously worked till the date of his retirement on attaining the age of superannuation on 31.01.2014.

3. The learned counsel submits that pension is not being released nor the respondents are forwarding the pension proposal of the petitioner for the grant of retiral benefits, such as gratuity, leave encashment, salary, pension etc. The learned counsel submits that when the petitioner was appointed on daily wages it was not against any reserved category, however, when the petitioner was brought on regular establishment order shows that the petitioner is considered from special Backward Class. The petitioner has a certificate of Scheduled Tribe i.e. Koli Mahadeo.

4. According to the learned counsel the petitioner was brought on regular establishment considering the length of service on daily wages. According to the learned counsel it is inappropriate on the part of the respondent to seek validity after the retirement that too when the petitioner was not appointed from any reserved category.

5. The learned counsel further submits that, the period the petitioner has worked with the Respondent No. 3 on daily wages has to be considered as half for computing the pension in view of Rule 57 of Maharashtra Civil Services, Pension Rules.

6. Mr. Rodge, the learned counsel for Respondent No. 2 and 4 submits that, the appointment order of the petitioner at the time of bringing the petitioner on regular establishment itself specifically states that, the petitioner is considered from Special Backward Class. As such unless the validation proceedings are decided the petitioner is not entitled for pension. It is for the Respondent No. 3 with whom the petitioner was initially appointed to state as to from which category the petitioner was considered. The petitioner's services were transferred to Respondent Nos. 2 and 4 in the year 2001. According to the learned counsel it was also not shown that the payment to the petitioner during the period the petitioner was working on temporary basis was from contingency fund.

7. The Respondent No. 3 has filed an affidavit in

reply, wherein it has been accepted that from 1976-96 the petitioner was working as temporary employee on daily wages and in the year, 1996 the petitioner was appointed on the permanent post at Agricultural College, Latur and thereafter the petitioner's services were transferred to the Respondent No. 4.

8. We have considered the submissions canvassed by the learned counsel for the respective parties. It is not disputed that the petitioner was appointed as daily wager from 1976 and worked till the petitioner was brought on regular establishment in the year 1996 by the Respondent No. 3. The services of the petitioner were transferred to Respondent No. 4 in the year 2003 and the petitioner on attaining the age of superannuation has retired on 31.01.2014. All these are undisputed facts. The initial appointment order is not there, naturally, the petitioner was on daily wages. The petitioner was not given fresh appointment but considering that petitioner was working on daily wages since the year 1976, the petitioner was brought on regular establishment in the year 1996. There is nothing to show that initial appointment of petitioner was from reserved category. Moreover, petitioner has a certificate of Scheduled Tribe i.e. Koli Mahadeo. The petitioner never claimed to belong to Special Backward Class. Even till the date of his retirement, the respondents never asked the petitioner to submit any validity certificate nor the employer at any material point of time sent the proposal to the Scrutiny Committee. It is only when the pension papers are sought to be forwarded for retiral benefits, such an objection is raised.

9. In light of the fact that, there is nothing on record to show that the petitioner was appointed from any reserved category initially and that in the year 1996, the petitioner was brought on regular establishment considering his length of service on daily wages that is since the year 1976, it would not be appropriate for the respondent to ask petitioner to seek validity Certificate from the petitioner.

10. Even from 1996 till the date of retirement the petitioner has completed the qualifying years of service for pension. The Respondent No. 3 has nowhere stated that the payment to the petitioner at the time of his service on daily wages was not from the contingency fund. In light of that Rule 57 of the Maharashtra Civil Services Pension Rules, would apply and the services rendered by the petitioner on daily wages shall be computed as half for the purpose of pension.

11. In the result we pass the following order -

A. The respondents shall forward the proposal for retiral benefits including pension, without insisting for any validity certificate, so also, considering the services during the period of daily wages as half. The said proposal be sent expeditiously, preferably within four (4) months.

B. Writ Petition is accordingly disposed
of. No costs.

(V.K.JADHAV, J.)

(S.V.GANGAPURWALA, J.)

asp/office/wp165.15

