

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

WRIT PETITION NO. 2592 OF 2001

1. Aminabee Ishaque
age : 87 years, Occ.:Household,
R/o.: C/o. Mohd. Noor Abdul Hamid,
Iqbal Nagar, Parbhani.
2. Imtiyazbee Vazir,
since deceased through is L.R's.
Shaikh Vazir Shaikh Maboob,
age : 56 years, Occu.: Business,
r/o. Pakiza Mohalla,
Parbhani. .. PETITIONERS

VERSUS

1. The Associate Dean,
College of Agriculture,
Parbhani.
2. The Registrar,
Marathwada Agricultural University,
Parbhani.
3. The Registrar,
Punjabrao Krishi Vidyapeeth,
Akola.
4. The Accountant General (A & E) II,
Maharashtra State,
Nagpur.
5. The State of Maharashtra, .. RESPONDENTS

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Mrs. Kalpalata Patil-Bharswadkar, Advocate for petitioners

Mr. A.B. Deshmukh, AGP for respondent nos.4 and 5

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : JUNE 06, 2016
PRONOUNCED ON : JUNE 21, 2016**

JUDGMENT (Per Sangitrao S. Patil, J.) :

Heard.

2] Petitioner no.1 and the legal heir of deceased petitioner no.2 have sought directions to the respondents for grant of pensionary benefits by filing this Writ Petition under Article 226 read with Articles 14 and 21 of the Constitution of India.

3] Undisputedly, the petitioners were initially working as Grade-II Mazdoors with Punjabrao Agricultural University, Akola. Their services were assigned to the Government College of Agriculture at Parbhani since 01.07.1962 and

16.08.1962, respectively, in regular temporary establishment in Class-IV cadre. They retired on attaining the age of superannuation i.e. 60 years in the year 1973. They claimed pensionary benefits, but the same were rejected by respondent no.2 - Marathwada Agricultural University on the ground that they were temporary employees who had not exercised the option for permanent absorption with Marathwada Agricultural University, Parbhani, they were not confirmed and thus, remained to be the temporary employees of Punjabrao Agricultural College, Akola.

4] The learned Counsel for the petitioners submits that the petitioners had completed qualifying service of more than 10 years and, therefore, they were entitled to get pensionary benefits vide Rule 11.13(ii) of the Punjabrao Agricultural University Service Rules, 1971 (for short, "Rules"). She, therefore, prays that the impugned communication rejecting the claim of the

petitioners for grant of pensionary benefits, may be quashed and set aside and the respondents may be directed to give pensionary benefits to the petitioners, as permissible under the Rules.

5] On the other hand, the learned AGP appearing for respondent nos.4 and 5 submits that the petitioners had not exercised the option for being absorbed on the establishment of Marathwada Agricultural University, Parbhani. Therefore, they continued to be the temporary employees of Punjabrao Agriculture University, Akola. They were never confirmed/regularised. Therefore, in view of Rule 11.24 of the Rules, they were not entitled to get pensionary benefits. He, therefore, submits that the petition may be dismissed.

6] Respondent nos.1 and 2 as well as respondent no.3 filed affidavit-in-reply and opposed the claim of the petitioners. According to them, the services of the petitioners were temporary in

nature. After establishment of the Marathwada Agricultural University, Parbhani, the petitioners never exercised their option for being absorbed on the establishment of the said University till the respective dates of their retirement. Therefore, they remained in service of respondent no.3 - Punjabrao Agricultural University, Akola. Since their services were not confirmed/regularised at any point of time, they were not entitled to get pension as per Rule 11.24 of the Rules. Therefore, their claim for pensionary benefits were rightly rejected. On these grounds, they prayed for dismissal of the petition.

7] As seen from the order passed by the Principal, Government College of Agriculture, Parbhani, in the month of March, 1965 (Exhibit A) produced by the petitioners, the petitioners were appointed as Grade II Mazdoors in regular temporary establishment in Class-IV cadre with effect from 01.07.1962 and 16.08.1962,

respectively. The said order specifically contains that the appointments of the petitioners were purely temporary and they were likely to be terminated at any time without any notice or assigning any reasons. Undisputedly, the petitioners who were originally appointed on the establishment of Punjabrao Agricultural University, Akola, did not exercise option for being absorbed on the establishment of Marathwada Agricultural University, Parbhani. Their services were never regularised. Therefore, they remained to be the temporary employees of Punjabrao Agricultural University, Akola. From the contents of paragraph 8 of the petition wherein, the petitioners have claimed pensionary benefits under Rule 11.13(ii) Appendix "B" of the Rules, it is clear that, the petitioners were governed by Rule of 1971 when they got retired. As per Rule 11.23, an employee holding a temporary post was not entitled to get the pensionary benefits. If that

be so, the provisions of Rule 11.13(ii), which pertain to fixation of the amount of pension, would not be helpful to the petitioners to claim pensionary benefits. Since the services of the petitioners were temporary and were not regularised, they were not entitled to claim pensionary benefits. Accordingly, their claims for pensionary benefits were rightly rejected by respondent nos.1 to 4.

8] The petition is devoid of any substance. It is liable to be dismissed.

9] In the light of the above, we pass following order :-

(i) The Writ Petition is dismissed.

(ii) No costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]