

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10276 OF 2014

The Municipal Council, Beed
Through its Chief Officer.

..Petitioner

Versus

1. Laxmanrao Shankarrao Salunke
Age 60 years, Occ Retired,
R/o Rajuri Ves, Beed.

2. The Deputy Director,
Nagar Palika Prashasan,
Mantralaya, Mumbai 32.

..Respondents

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Advocate for Petitioner : Shri Thombre S.S.

AGP for Respondent 1 : Shri Kutti P.N.

Advocate for Respondent 2 : Shri Tapse A.P.

h/f Shri Suryawanshi P.D.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 22, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment and order dated 20.12.2013 delivered by the Industrial Court, Aurangabad by which, Complaint (ULP) No.46 of 2009 has been allowed and the respondent No.1 / employee is granted the pensionary benefits considering his service rendered as a Daily Wager from 24.4.1984 till his regularization on 1.5.2001 and thereafter, till his superannuation dated 28.2.2001.

5. Shri Thombre, learned Advocate for the petitioner contends that the respondent / employee has been regularized on 1.5.2001. His earlier engagement as a Daily Wager from 24.4.1984 till his regularization cannot be reckoned for calculating his pensionary benefits. Reliance is placed on the Maharashtra Civil Services (Pension) Rules, 1982 to contend that ten years of service has to be completed by the employee for getting pensionary benefits. Said period is termed as 'qualifying service'. The respondent has completed only eight years as a permanent employee and hence he cannot be granted pension by taking into account his earlier service from 1984.

6. Shri Thombre strenuously indicates from the grounds raised in the memo of petition that the Industrial Court has not given appropriate opportunity for enabling the petitioner to lead oral evidence. Opportunity to cross-examine the respondent / employee

was also not given. Complaint (ULP) No.46 of 2009 has been mechanically allowed and the reliefs have been granted without proper application of mind.

7. He further submits that notwithstanding whether the petitioner has led evidence or not, the Industrial Court should have considered the material available before it and based on the same, the Industrial Court should have assessed as to whether the service put in by the employee as a permanent employee, alone needs to be considered for grant of pensionary benefits. Merely because the petitioner did not lead evidence, would not justify allowing of the complaint.

8. He further submits that the respondent / original complainant was initially terminated in 1985 and he preferred Complaint (ULP) No.93 of 1985. Same was allowed with continuity and full backwages, which led to the reinstatement of the respondent. It is, therefore, submitted that the Complaint should have been dismissed. As such, the impugned judgment deserves to be quashed and set aside.

9. Shri Suryawanshi, learned Advocate for the respondent / employee has supported the impugned judgment. He further submits that this Court had an occasion to consider an identical issue as to

whether the period of service as a Daily Wager can be added to the tenure of service as a regularized employee for the grant of pensionary benefits in the matter of Mahatma Phule Krushi Vidyapeeth Rahuri Vs. Ganpat Kisan Karle - Writ Petition No. 8000 of 2015. He submits that this Court, by its judgment dated 3.3.2016, has dealt with the said issue and has finally concluded in paragraph Nos.37 and 38 that the temporary service as a Daily Wager will have to be taken into account in the light of Rule 30 and Rule 57, while awarding pensionary benefits. He, therefore, prays that this petition be dismissed.

10. I have considered the submissions of the learned Advocates and the judgment delivered by this Court dated 3.3.2016.

11. The date of joining of the respondent / employee from 24.4.1984 is not disputed. The termination of the respondent / employee was set aside by the judgment of the Labour Court and he has been reinstated in service with continuity and backwages, is also not disputed. So also, the superannuation of the respondent / employee on 28.2.2001 is undisputed.

12. The facts of the instant case are identical to the facts of the Mahatma Phule Krushi Vidyapeeth's judgment (supra). This Court has considered the entire scheme of the Maharashtra Civil Services

(Pension) Rules, 1982. Catena of judgments of the Honourable Supreme Court and of this Court cited by the litigating sides were also considered and this Court has concluded in paragraph Nos. 37 and 38 as under:-

"37. In addition to the above, in my view, the second proviso to Rule 30 has been lost sight of by the litigating sides. I also do not find from any of the judgments cited by both the sides that the second proviso to Rule 30 has been brought to the notice of this Court or the Hon'ble Apex Court in any of the said matters. It is, in this backdrop that I am considering the said proviso.

38. A careful perusal of the second proviso to Rule 30 will indicate that it is with regard to the case of a temporary Government servant who retires on superannuation. So also, an employee being declared permanently incapacitated by the appropriate medical authority or an employee who has voluntarily retired from service is also held eligible for grant of superannuation, invalid or as the case may be, retiring pension, retirement gratuity and family pension at the same scale, as is admissible to a permanent Government servant. It is, therefore, provided by the said proviso that a temporary Government servant, who retired on superannuation and who has completed not less than ten years of service, obviously as a temporary employee, is also held entitled for retiring pension, retirement gratuity and family pension at the same scale as is admissible to a permanent Government servant. As such, in my view, Rule 30 is aimed at covering the cases of all such employees, who have been working temporarily for a

period of at least ten years, are held to have satisfied the definition of "Qualifying Service" under Rule 30 and who are not covered by Rule 57."

13. As such, the conclusions arrived at by the Industrial Court cannot be termed as perverse or erroneous considering the applicability of Rule 30 of the Pension Rules, that was taken into account by the Industrial Court.

14. This petition being devoid of merits is, therefore, dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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