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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.8000 OF 2015

Mahatma Phule Krishi Vidyapeeth,
Rahuri, Through its Registrar,
Shri Sunil Raghunath Wankhede,
Age 42 years, Occu. Service,
R/o University Campus, Rahuri,
At Post Rahuri, Tq. Rahuri,
Dist.Ahmednagar.

...Petitioner...

Versus

Ganpat S/o Kisan Karle,
Age Major, Occu.Retired,
R/o Khadamba (Khurd), Tq. Rahuri,
Dist.Ahmednagar.

...Respondent...

.....

Shri P.L. Shahane, Advocate for petitioner.

Shri P.V. Barde, Advocate Advocate for respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.03.2016

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner has challenged the judgment of the Industrial Court dated 31.1.2015 by which Complaint (ULP) No.81/2005 filed by the respondent herein has been partly allowed and he has been granted pension as per Rule 110 of the Maharashtra Civil Services (Pension) Rules, 1982.

3] The contention of Shri Shahane, learned Advocate for the petitioner – Agricultural University, can be summarized as follows:-

a] The respondent has joined the petitioner as a daily wage employee on temporary basis in 1973.

b] He was engaged on daily wages depending upon the availability of the work and was paid wages from the daily wages funds received by the Government.

c] He was never paid wages from the contingency fund.

d] He was appointed on permanent establishment on 17.7.1993.

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e] On 30.11.2000, he attained the age of superannuation and retired from service.

f] He has rendered only 7 years 4 months and 14 days on the permanent establishment of the petitioner.

g] He was paid gratuity and death-cum-retirement gratuity of Rs.21,300/- and Rs.10,650/- respectively on 14.10.2001.

h] He filed Complaint (ULP) No.81/2005 after 4 years of retirement praying for directions to be given the pensionary benefits.

i] The Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as the 1982 Rules) do not prescribe payment of pension to any daily rated employee, who has not rendered qualifying service of 10 years as a permanent employee.

j] The Government has issued a circular under the signature of the Desk Officer dated 27.12.1993 that the 1982 Pension Rules as well as Rule 57 r/w Note 1 are not applicable to daily rated employees and they are not entitled for pensionary benefits.

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k] The Industrial Court has erroneously considered Rule 110 while coming to a conclusion that the daily wage employees are entitled for pension.

l] Rule 110 is not applicable to the respondent since he has not worked for 10 years on permanent establishment.

m] The Industrial Court has mis-directed itself in concluding that the past service of the respondent as a daily wager needs to be added to his service period on permanent establishment for grant of pensionary benefits.

n] Neither Rule 57 r/w Note 1 nor Rule 30 grant any benefits to the respondent.

o] Unless there is a conversion of a temporary post into a permanent post, the past service of a temporary employee cannot be computed while calculating qualifying service.

p] The judgment of the Industrial Court dated 31.1.2015 deserves to be quashed and set aside.

4] Shri Shahane has relied upon the following

judgments :-

1] *Narayan Balkrishna Deshpande v. Pune Zilla Parishad & another* (2002 I CLR 736)

2] *Motilal Gupta v. Central Administrative Tribunal, Allahabad & others* (2002 (93) FLR 284)

3] *Sudarsan Moharana v. State of Orissa & others* (2007 LAB.I.C. 913)

4] *Audit Officer, Local Funds, Mahabubnagar & another v. Ahmed Hussain & another* (2001 II CLR 586)

5] *State of Punjab & others v. Dev Dutt Kaushal & others* (1995 (71) FLR 650)

6] *State of U.P. & another v. Narendra Bahadur Singh & others* (2012 AIR SCW 1393)

7] *Shivappa Bhujangappa Bembale v. State of Maharashtra & another* (2005(6) Bom.C.R. 437)

5] Shri Barde, learned Advocate appearing on behalf of the respondent – employee has supported the impugned judgment. His contentions in brief are as under :-

a] The respondent has joined duties on daily wages with the petitioner on 19.7.1973. Since then he has been working on daily wages.

b] He was paid his daily wages on half monthly basis i.e. for period of 15 days.

c] The respondent is a disabled person.

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d] From the category of disabled persons, he was granted regularization in service on 16.7.1993. He retired on attaining the age of superannuation on 30.11.2000.

e] His service from 19.7.1973 till 30.11.2000 needs to be reckoned with for the consideration of pensionary benefits.

f] Since the petitioner failed to grant pensionary benefits, he was compelled to prefer the complaint before the Industrial Court.

g] He was paid gratuity only for 7 years of his permanent service without taking into account his earlier service from 1973.

h] The Industrial Court has rightly considered the fact that his services as a daily wager need to be added to his service post regularization for calculation of retiral and pensionary benefits.

i] Any circular issued by a Desk Officer cannot be read against the rules and cannot have the force of law.

j] This petition is devoid of merit and

deserves to be dismissed.

6] Shri Barde has relied upon the following judgments :-

1] *Shiv Dass v. Union of India & others*
(2007 (0) BCI 189)

2] *Vanita Shankar Agawane v. Deputy Chief Accountant (E/S) & others* (2013 (2) Bom.C.R. 281)

3] *State of Jharkhand & others v. Jitendra Kumar Srivastava & another* (2013 DGLS (Soft) 632)

4] *Prabhakar Marotirao Dalal v. State of Maharashtra & another* (2008 (5) ALL MR 306)

5] *U. Raghavendra Acharya & others v. State of Karnataka & others* (AIR 2006 SC 2145)

6] *Madhukar v. State of Maharashtra & others*
(MANU/SC/0299/2014)

7] *Devidas Bhiku Borker & others v. The State of Maharashtra & another* (2011 (7) ALL MR 363)

8] *Union of India & another v. Tarsem Singh*
(2008 DGLS (Soft) 894)

9] *Parshuram Vithoba Bhandare v. State of Maharashtra & another* (2002 (2) Bom.C.R. 740)

10] *Shivaji Jyotiba Pawar v. The State of Maharashtra & others* (WP 2106/2010 decided on 21.9.2010 – Aurangabad Bench)

11] *Digambar Bhagirath Pagire v. The State of Maharashtra & others* (WP 7227/2011 decided on 24.8.2012 – Aurangabad Bench)

12] *Dhan Raj & others v. State of J. and K. & others* (**AIR 1998 SC 1747**)

13] *Ahmednagar Municipal Corporation v. Bansi Punaji Ghorpade* (**WP 942/2009** decided on 24.4.2009 – Aurangabad Bench)

14] *Ahmednagar Municipal Council v. Sukhdeo Dhondiba Pacharne* (**WP 3944/2008** decided on 3.10.2008 – Aurangabad Bench)

15] *Jayshree Narayan Mhaske v. State of Maharashtra & others* (**2005 (6) Bom.C.R. 382**)

16] *Shivappa Bhujangappa Bembale v. State of Maharashtra & another* (**2005 (6) Bom.C.R. 437**)

17] *Waliuddin Pashasaheb v. The State of Maharashtra & another* (**WP 1542/2008** decided on 25.8.2010 – Aurangabad Bench)

18] *Syed Afzaluddin Ustad Abdul Samad v. The State of Maharashtra & another* (**WP 815/2011** decided on 24.8.2011 – Aurangabad Bench)

7] I have considered the strenuous submissions of Shri Shahane for the petitioner and Shri Barde on behalf of the respondent, the judgments cited and the 1982 Rules.

8] It would be apposite to reproduce Rules 30, 57 alongwith the Notes therebelow and Rule 110 of the 1982 Rules as under :-

"30. Commencement of qualifying service.-

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 :

Provided that at the time of retirement he shall hold substantively a permanent post of Government or holds a suspended lien or certificate of permanency :

Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.

Exception.- The rules regarding grant of terminal benefits to temporary Government servants (except those mentioned in the second proviso) who retire without being confirmed in any post in Government service are embodied in

Appendix II.

Note 1.-If a Government servant is holding a temporary post when the permanent post on which he hold a lien is abolished in the circumstances described in rule 81, or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post is pensionable service.

Note 2.-In the case of employees of former Indian States who have been absorbed in Government service previous pensionable service rendered by them under the same State should it immediately followed by Government service be taken into account for purposes of pension on his final retirement from Government service, Pensionable service rendered under different States should be taken into account for purposes of pension provided that the employees were transferred or sent on deputation from one State to another under a written agreement between the Governments of the State concerned.

The term "immediately" appearing in Note 2 above includes a break in service if it does not exceed six months, between the date on which the service was terminated and the date of his re-employment in service.

The question whether the previous service in Indian States is pensionable or not should be determined in accordance with these rules as if those rules were applicable to that service.

Note 3.-See rule 57."

"57. Non-pensionable service.- As exceptions to Rule 30, the following are not in pensionable service :-

(a) Government servants who are paid for work done for Government but whose whole-time is not retained for the public service.

(b) Government servants who are not in receipt of pay but are remunerated by honoraria,

(c) Government servants who are paid from contingencies,

(d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable,

(e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.

Note 1.- In case of employees paid from contingencies who subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.

Note 2.- In the case of persons who were holding the posts of attendants prior to 1st April, 1966, one-half to their previous

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continuous service as attendants, shall be allowed to count for pension."

"110 Amount of pension.- (1) In the case of Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's pay for every completed six monthly period of qualifying service.

(2)[(a) In the case of Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of the "Pensionable Pay", subject to a maximum of Rs.4,000 per month.]

(b) In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of thirty-three years but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than (rupees three hundred and seventy-five) per mensem.

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(3) In calculating the length of qualifying service, fraction of a year equal to (three) months and above shall be treated as a completed one-half year and reckoned as qualifying service.

(4) The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2), shall be expressed in whole rupee and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee."

9] The Industrial Court has relied upon Rule 110 while considering the case of the respondent. Having considered the said Rule in its entirety, I do not find that it would support the case of the respondent at this stage. Rule 110(1) pertains to payment of service gratuity. Rule 110(2)(a) pertains to calculating the amount of pension in the case of an employee, who has completed qualifying service of not less than 33 years. Rule 110(2)(b) is with regard to pension being calculated after an employee completes qualifying service of 10 years. It is apparent that the said Rule was not applicable to the case of the respondent, before deciding his claim for pension. The impugned judgment, therefore, deserves to be modified to that extent.

10] The petitioner has vehemently contended that the daily wages of the respondent were never paid from the contingency fund. It is, therefore, the contention of the petitioner that since no payment was made under the contingency fund, the respondent cannot seek benefit of Rule 57 r/w Note 1 for the purpose of considering half of his previous service as a daily wager for calculating qualifying service. It is evident from Rule 57 that it is an exception to Rule 30. The categories not entitled for pensionary services by way of exceptions to Rule 30, are set out in Rule 57. It is evident that the case of the respondent from 1973 to 1993 as a daily wager is not covered by any of the exceptions set out in Rule 57.

11] The learned Division Bench of this Court in the matter of *Jayshree Narayan Mhaske* (supra) has considered the effect of Rule 57 r/w Note 1. It has been concluded that an employee whose salary payments are made from the contingency funds, the past service period, prior to the permanent employment, will have to be considered on the basis of one half of the said period being added to the

years of service completed.

12] In *Jayshree Narayan Mhaske's* case (supra), the employee had worked for 7 years 4 months and 22 days. Since she was paid from the contingency fund for the period prior to her permanent service, the learned Division Bench held that one half of such service needs to be taken into consideration in view of Note 1 below Rule 57 and thus concluded that she had worked for a period of 13 years entitling her to pensionary benefits under Rule 57 and Rule 100.

13] The petitioner has laid great stress on Rule 57 and the fact of the respondent having not been paid his daily wages from the contingency fund. The said issue, in view of the law laid down in the *Jayshree* case (supra), therefore, would not be an obstacle for deciding the claim of the respondent under Rule 30.

14] Prior to advert to the judgments cited by the litigating sides, one contention of Shri Shahane, which has been strenuously put forth needs to be dealt with.

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It is contended that the period of service of the respondent as a daily wager needs to be detached from his service as a permanent employee. A post was created for the petitioner – University and the respondent was newly appointed on the said post. As such, his earlier service as a daily wager can neither be clubbed with his service as a permanent employee, nor the break in between his service as a daily wager and his appointment on the permanent post, could be bridged.

15] I find the submissions of Shri Shahane to be fallacious for reasons more than one. Firstly, that the post occupied by the respondent was not advertised, applications for fresh appointment were not called for and there was no specific procedure of recruitment that was followed by the petitioner – University while filling in these posts. Secondly, the respondent, who was on daily wages with the petitioner, was straight-way accommodated on the post purportedly newly created and was made permanent from day one on his appointment to the said post.

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16] It is, therefore, apparent that his past service as a daily wager over a period of about 20 years was considered and taken into account and he was, therefore, made permanent on the post available. The artificial break, if any, that may have been created by the petitioner, deserves to be disregarded in these circumstances, lest it may amount to giving a latitude to the petitioner to exploit the respondent and employees as like the respondent.

17] In the above backdrop, the view taken by the learned Division Bench of this Court in the matter of *Shivappa Bhujangappa Bembale* (supra) would become squarely applicable. The learned Division Bench dealt with Rules 30, 57 and 110 of the 1982 Rules for considering whether a temporary or a daily wager could be deprived of pensionary benefits under the 1982 Rules.

18] The facts in the *Shivappa Bhujangappa Bembale* case (supra) are quite similar to the facts of the case in hand. It would be apposite to reproduce paragraph nos.5,6,7 and 8 of the said judgment hereunder :-

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"5. Relying on the above three provisions of Rule 30, Rule 57 Note 1 and Rule 110 of the Maharashtra Civil Services (Pension) Rules, Mr. Vivek Dhage, Advocate for petitioner, submits that present petitioner is entitled for pension as his part time service as Peon is approximately 20 years as he was appointed in the year 1970 and continued on the same post till 1990 and, thereafter, the Chief Executive Officer has taken him in regular cadre by giving appointment in the said cadre and he worked for three years. So, considering the Note 1 of Rule 57, his previous service is to be counted to the extent of 10 years as this period worked as part time Peon is about 20 years and in regular post he worked for three years. Thus, the total period of service of present petitioner comes to near about 13 years, however, the Zilla Parishad has completely ignored this aspect.

6. The only crux in the present matter as the Zilla Parishad authorities has rejected the claim of present petitioner relying on Note 2, however, considering the factual aspect from the present case as it is seen that the initial appointment order of the present petitioner as part time Peon is 24-7-1970; he continued as part time Peon till 10-7-1990 and thereafter by order dated 6-7-1990 the petitioner was taken on regular cadre in the pay scale of Rs. 750-

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12-870-DR-14-940 by the Chief Executive Officer, Zilla Parishad. The order passed by the Chief Executive Officer, Zilla Parishad is also on record and the very wording of the said order safely makes it clear that the persons who are working as part time and salary being paid from contingency, those persons are being taken on regular cadre in class-4 and being fixed in the pay scale of Rs. 750-12-870-DR-14-940. After going through the order dated 7-7-1990 it can be said that it is the fresh order giving regular employment to the petitioner, however, as he was already worked as part time Peon and being paid from contingency the services being regularised in the pay scale in class-4 servant. We have gone through the Note 1 and Note 2 of Rule 57 and we find that the Zilla Parishad has wrongly applied Note 2 in the present matter while rejecting the claim of the petitioner to grant pension, as in fact in the present case, Note 1 of Rule 57 is applicable. Therefore, we find that the claim as set up by the present petitioner that he is entitled for pensionary benefits, is definitely justified.

7. Mr. Dhage, Advocate, has made reference in respect of order passed in Writ Petition No. 3472/1996 and in a same situation this Court in the said writ petition, has given direction to the respondents to consider the case of

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petitioner for pensionary benefits within a period of three months and also directed for payment of arrears. We have gone through the said order wherein a reliance is placed on Note 1 of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. Considering the factual aspects in the present case we also find that in the present case Note 1 of Rule 57 is applicable.

8. We, thus, accordingly direct the respondent No. 2 - Zilla Parishad to consider the case of present petitioner for giving terminal benefits in view of the above Rule and to decide the same within three months from today and the necessary arrears which the petitioner is entitled be accordingly paid.

By order dated 12-9-1995 this Court in the present petition has given direction to respondent No. 2 to deposit amount of Rs. 50,000/-. The Zilla Parishad, accordingly, has deposited amount of Rs. 50,000/- in this Court, which seems to be deposited in a Scheduled Bank in pursuance of further directions dated 19-6-1996. The said amount along with accrued interest be paid to the petitioner. It is further made clear that above amount which to be paid to the petitioner is to be adjusted against the arrears which the respondents are liable to pay to the petitioner on account of pensionary benefit. Writ Petition is

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accordingly disposed of in the above terms.
Parties shall bear their own costs."
(emphasis supplied)

19] This Court, therefore, came to a conclusion that such temporary employees whose daily wages were paid from the contingency funds would be covered by Rule 57 Note 1 for the purposes of calculating their benefits. This, therefore, leads to the inescapable conclusion that daily wagers whose wages are not paid from the contingency fund will not be covered by Rule 57.

20] The issue, therefore, is whether daily wages would be covered by Rule 30 of the 1982 Rules. The first paragraph below Rule 30 deserves to be given a broader meaning in order to ensure that the services of daily wagers are not exploited despite having put in decades of service in the said category prior to being granted permanency.

21] It is evident that Rule 30 prescribes that the qualifying service of a Government servant shall commence from the date he takes the charge of the post to which he

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is first appointed either substantively or in an officiating or temporary capacity. The strenuous contention of the petitioner is that the phraseology 'takes charge of the post to which he is first appointed', means that the post must be available. The said submission is unsustainable for the reason that if there is a permanent post available, a person cannot be appointed in a temporary capacity as he has to be appointed as a probationer to the said permanent vacant post.

22] I find that if a daily wager is given work on daily basis without there being a post available and upon creation of the said post is granted regularization and permanency from the first day, his past service tenure will have to be reckoned with for the purposes of calculating his qualifying service.

23] A similar situation fell for the consideration of the learned Division Bench of this Court in the case of *Parshuram Vithoba Bhandare* (supra). The facts of the case are narrated in paragraph nos.2,3,4 and 5, which

read as under:

"2. The facts which are not disputed are in a very narrow compass, that the petitioner was recruited as a daily wager in 1964. In 1980 a post of labour supervisor on the establishment of respondent No. 2 was sanctioned. On 13-9-1983 the petitioner was appointed permanently on that post. It is not in dispute, as will be seen from the averments made in para 2 of the affidavit in reply, that the petitioner was made permanent in the cadre of supervisor on 13-9-1980. Thus the petitioner was undisputedly working as a labour supervisor from 13-9-1980 though he was working as a daily wager since 1964.

3.The petitioner was denied the pensionary benefits. Relying on the provisions of Rule 57 of the Maharashtra Civil Service (Pension) Rules, 1982, according to which the petitioner has not completed 10 years of qualifying service as labour supervisor and therefore according to the Government as required by Rule 57 he is not entitled to any terminal benefits.

4.The petitioner's original application for this relief before the Maharashtra Administrative Tribunal was also rejected by the Tribunal agreeing with the contention of the State that Rule 57 did not permit the grant of any such benefit of pension to the petitioner. Unfortunately the factual position that the

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petitioner served for more than 10 years continuously as a labour supervisor which was a permanent sanctioned post with the Government, was not taken into consideration. The provision of Rule 30 of the Pension Rules and those of Rule 57 were also considered in the proper perspective by the Tribunal and which resulted the Tribunal rejecting the application of the petitioner requiring the petitioner to move before this Court for exercising its jurisdiction under Articles 226 and 227 of the Constitution of India.

5. The denial of pensionary benefits by the State to its employees on flimsy ground is not a phenomena any more for various reasons, most of which are flimsy, and the pensionary benefits are denied by the State to its employees. It would therefore be necessary in the circumstances, to examine the provisions of the Pension Rules in proper perspective. Rule 30 of the Pension Rules is a basic Rule on entitlement, which spells out who are entitled to the pensionary benefits like family pension in the service of Government of Maharashtra, which reads as under:"

24] The petitioner – Parshuram was recruited as a daily wager in 1964 and upon creation of a permanent post in 1980, was appointed permanently to the said post. The

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learned Division Bench considered the fact that Parshuram was not paid his wages from the contingency fund and there was no evidence to suggest that his salary was being paid out of the contingency fund of India. Considering this background, the learned Division Bench concluded that his case would fall under Rule 30 and not under Rule 57.

25] Therefore, the conclusions of the learned Division Bench in paragraph no.7 of the *Parshuram* judgment (supra) are vital for deciding this case and which read as under:-

"7. Relying on the first note to Rule 57 above, that the petitioner was denied pensionary benefit by the State and the denial was approved by the Maharashtra Administrative Tribunal, in our opinion, both are wrong. A reading of Rule 30 clearly shows that the petitioner is entitled to the pensionary benefits. A reading of Rule 57 proves that the petitioner's case is not covered by the exceptions mentioned in that Rule 57. It is nowhere the case of Government of Maharashtra that the salary of the petitioner paid to him as daily wages from 1964 to 1980 was drawn from the

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contingency fund of the State and it is only when the salary or wages paid to the employees are drawn from contingency fund that the exception is made in relation to the case of grant of terminal benefits. This factual and legal aspect was not taken into consideration either by the State or Tribunal resulting in miscarriage of justice and denial of valuable right to the petitioner. The petitioner having completed more than 10 years of continuous service as labour supervisor and as his salary at any point of time was not drawn from the contingency fund, was always entitled to the pension. The petitioner is therefore liable to succeed. In the result the petition succeeds and is allowed. Rule is made absolute." (emphasis supplied)

26] The learned Division Bench, therefore, concluded that his case would fall under Rule 30 by concluding that "A reading of Rule 30 clearly shows that the petitioner is entitled to the pensionary benefits." No doubt, *Parshuram* had completed 10 years of continuous service, but the issue before the learned Division Bench was as to what would be the fate of his service as a daily wager prior to becoming permanent. An identical case is before

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this Court with regard to what would be the fate of the respondent's past tenure as a daily wager prior to his becoming permanent. The learned Division Bench in *Parshuram's* case concluded that the earlier portion of daily wage service will have to be computed under Rule 30 as it held that since he was not paid daily wages from the contingency fund, his case would fall under Rule 30.

27] The learned Division Bench of this Court in the case of *Shivaji Jyotiba Pawar* (supra) (unreported judgment dated 21.9.2010), considered the submission of the State with regard to a Government circular dated 6.8.2009, issued for intimating this very petitioner – University that the pensionary benefits would not be applicable to the employees, who were working on work charge basis and who were subsequently appointed on newly sanctioned posts. The facts of the case, which were undisputed, are reproduced in paragraph no.4 of the judgment, which read as under:-

“4. Petitioners were working on Work Charge basis w.e.f. 30 April 1971 to 29th Oct., 1983. Vide order dt. 29th Oct., 1983, respondent no.4 appointed the petitioners on regular

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establishment in the newly sanctioned post. The petitioners retired on superannuation on 31.5.1992 and 31st Dec., 1996, respectively. Since the petitioners were not given pensionary benefits, they made various representations. When the petitioners representations were not considered, petitioners filed writ petition nos.5321/2006 and 5322/2006 before this Court. The said petitions were disposed of by this Court vide order dt.3rd Feb., 2009. The respondent University had made a statement before this Court that the University had sought a clarification from the Government as to whether the petitioners could be given advantage of the pensions or not. In the light of this statement, the petitions were disposed of with a direction to the State Government to decide the issue within four months from the date of the order. The State Government, vide order dt. 6th August, 2009, informed the University that the pensionary benefits could not be made applicable to the petitioners. Hence, the present petition."

28] In the above backdrop, the contention of this very Agricultural University that the concerned employees were given fresh appointments after creation of posts and were not the posts that were converted, was dealt with by

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this Court. It was concluded by this Court that the petitioners therein were working as Mistries and when posts were created, purportedly by conversion for the benefits of the Mistries, the said petitioners were held to be in continued service on the newly created posts.

29] The learned Single Judge of this Court in the matter of *Ahmednagar Municipal Council v. Sukhdeo Dhondiba Pacharne* (supra), an unreported judgment dated 3.10.2008, specifically dealt with a communication dated 15.1.2005 issued by the State of Maharashtra concluding that those employees, who have worked for less than 10 years, would not be entitled for pensionary benefits. This Court concluded that as long as the letter dated 15.1.2015 is not in conflict with law or the Rules, the same could be sustained. However, if the same is in conflict as against the Rules, the findings of the Industrial Tribunal will have an overriding effect on the administrative letter.

30] The learned Division Bench of this Court in the matter of *Waliuddin Pashasaheb* (supra) had once again

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dealt with the effect of Rule 30 and Rule 57 read with Note 1. In the said case, the payment of the daily wages of the concerned employee was made through the contingency funds and hence it was concluded that for the purposes of counting his pensionable service, half of his earlier service period will have to be added to his period of permanent service. He was, therefore, entitled for pension under Rule 57.

31] The petitioner has placed heavy reliance on the letter dated 27.12.1993, which is restricted to Rule 57 Note 1, contending that daily wagers who are workers on work charge basis, shall not be entitled for pensionary benefits under the 1982 Rules. Considering the law laid down by this Court in the matters of *Jayshree Narayan Mhaske* (supra), *Shivappa Bhujangappa Bembale* (supra) and *Ahmednagar Municipal Council* (supra), the said communication by the Desk Officer being in conflict with the 1982 Rules, deserves to be disregarded and the same will, therefore, have no effect on the rights of employees under the 1982 Rules.

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32] Shri Shahane has placed reliance upon the judgment of Supreme Court in the case of *State of U.P. v. Narendra Bahadur Singh* (supra) to support his contention that the benefits of past service cannot be made available to an employee for the purpose of pension and gratuity. It is undisputed that the case before the Hon'ble Supreme Court in the above case was with regard to the Rules applicable to the Krishi Utpadan Mandi Parishad. The said judgment does not indicate as to which Rule was considered by the High Court while delivering the judgment of grant of pension, validity of which was considered by the Hon'ble Supreme Court. No documentary evidence was placed on record to indicate that the past services of the Munsiff was protected. I do not find that the said judgment is applicable to the case in hand.

33] The petitioner has then relied upon the judgment of the learned Division Bench of this Court in the case of *Narayan Balkrishna Deshpande* (supra). The said case was under Rule 254(1) of the Bombay Civil Service Rules, 1959. The petitioner had sought voluntary retirement and

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was allowed to retire. He was not granted pension as he had not completed pensionable service. The learned Division Bench concluded that a plea for relaxation of minimum pensionable period was put forth and Rule 254(1) did not prescribe any relaxation of the minimum pensionable period. The said issue is totally different from the facts of this case, which renders the said ratio inapplicable.

34] The petitioner has relied upon the Division Bench judgment of the Allahabad High Court in the case of *Motilal Gupta* (supra) to support its contention that a break in service cannot be added to the permanent service put in by the employee. In the instant case, no documentary evidence has been placed on record before the Industrial Court that the respondent was out of employment prior to permanency being granted to him on the very first day of his appointment to a permanent vacant post. The ratio laid down in the *Motilal Gupta* case (supra), therefore, will not be applicable in this case.

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35] The other judgments cited by Shri Shahane have been gone into by this Court. Since the issue of Rules 30, 57 and 110 of the 1982 Pension Rules of this State are not the subject matter under the said cases, the ratio laid down therein would not be applicable to the instant case.

36] The learned Division Bench of this Court in the case of *Prabhakar Marotirao Dalal* (supra) while considering the effect of a Government resolution dated 23.6.1986 in relation to the 1982 Rules concluded that such Government resolutions and instructions would be applicable if the Rules are silent and such instructions are not in conflict with the Rules. It was concluded that the Courts normally would not strike down a Rule or notification if it is possible to save the Rule or the notification whether it be by legislation or a notification in the exercise of executive power.

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

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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

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

39] In the light of the above, though I have come to a conclusion that the Industrial Court has erroneously relied upon Rule 110 while allowing the complaint of the respondent, I am not inclined to remit the matter back to the Industrial Court since I have dealt with the said issue of pension in this judgment. So also, it would cause grave hardships and manifest inconvenience to the respondent – employee, who has retired from service on 30.11.2000, which is practically more than 15 years ago, to undergo the rigors of litigation again.

40] In the light of the above, the direction in Clause (3) of the operative part of the impugned judgment by which the petitioner was directed to pay pension as per Rule 110 of the 1982 Rules, stands modified with the

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direction to the petitioner to pay pension to the respondent – employee as he has fulfilled the requirement of Rule 30 of the 1982 Rules, as expeditiously as possible and preferably within a period of three months from today.

41] This petition is, therefore, partly allowed only to the extent of the modification, as above. Rule is made partly absolute accordingly. No order as to costs.

(RAVINDRA V. GHUGE, J.)