

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

WRIT PETITION NO. 1823 OF 2011

Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Commissioner.

..Petitioner

Versus

- 1 Malan Kisan Asmar
 Age : 60 years, Occu: Household,
 R/o. Datrange Mala, Adarsha Colony,
 Ahmednagar.
- 2 Smt. Jijabai Kisan Arade,
 Age : 59 years, Occu: Household,
 R/o. Sanjaynagar, Katwan Khandoba
 Zopadpatti, Ahmednagar.
- 3 Smt. Shantabai Baban Kshirsagar
 Age : 61 years, Occu: Household,
 R/o. Maliwada, Patgalli,
 Chandrakant Gadilkar Wada,
 Ahmednagar.
- 4 Smt. Hawabi Munshi Khan
 Age : 60 years, Occu: Household,
 R/o. Mangalgate, Haveli, Kothala,
 Ahmednagar.
- 5 Smt. Shaikh Khantunbi Gulab
 Age : 59 years, Occu: Household,
 R/o. Hatampura, Near Masjid,
 Ahmednagar.
- 6 The Secretary,
 Urban Development Department,
 Govt. of Maharashtra,
 Mumbai - 400 032.
- 7 The Regional Director,
 Directorate of Municipal Administrative,
 Nashik Region, Nashik Road,
 Nashik, Maharashtra.

..Respondents

**WITH
WRIT PETITION NO. 1678 OF 2012**

Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner. ..Petitioner

Versus

Ahmednagar Mahanagar Palika,
Kamgar Union, "Shramik"
Tilak Road, Ahmednagar.
(Notice to be served on
Vice-President of Union). ..Respondent

**WITH
WRIT PETITION NO. 6921 OF 2012**

Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner. ..Petitioner

Versus

Sayyed Ahmad Hazimiya
Age : 62 years, Occu: Nil,
R/o. Bara-Imam, Kothala,
Ahmednagar. ..Respondent

**WITH
WRIT PETITION NO. 7892 OF 2015**

Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner. ..Petitioner

Versus

Shakuntala Vitthal Chabukswar,
Age : 62 years, Occu: Nil,
R/o. 1544, Milind Colony,
Alamgir, Bhingar, Ahmednagar. ..Respondent

**WITH
WRIT PETITION NO. 7897 OF 2015**

Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,

Commissioner.

..Petitioner

Versus

Shakuntala Dadau Padale
Age : 60 years, Occu: Nil,
R/o. Behind Koti Power House,
Station Road, Ahmednagar.

..Respondent

**WITH
WRIT PETITION NO. 8729 OF 2015**

Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.

..Petitioner

Versus

Smt. Basanti w/o. Kishor Chavan
Age : 60 years, Occu: Labourer,
R/o. Near School No.15, Maliwada,
Ambedkar Road, Ahmednagar.

..Respondent

**WITH
WRIT PETITION NO. 10569 OF 2015**

Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.

..Petitioner

Versus

Shivaji Sonyabapu Kadam
Age : 63 years, Occu: Nil,
R/o. Manjar-Sumba, Post. Jeur-Baijabai,
Tq. & Dist. Ahmednagar.

..Respondent

...
Advocate for Petitioner : Shri Bedre V.S.
Advocate for Respondents : Shri Barde Parag Vijay
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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 06, 2016
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ORAL JUDGMENT:-

1. Heard learned Advocates for the respective parties.
2. Since the issue involved in all these matters is identical, the petitioner is the same Municipal Corporation and since all the respondents are identically placed former employees of the petitioner / Corporation, I have taken up all these matters together by the consent of the parties.
3. The first and the third petition have been admitted. As such, the second and fourth to seventh petitions are admitted.
4. By consent, Rule is made returnable forthwith and all the petitions are taken up for final disposal.
5. For the sake of clarity, the petitioner in all these matters will be referred to as the “petitioner” or the “Corporation” and all the respondents in these matters would be referred to as the “employees”.
6. Shri Bedre, learned Advocate on behalf of the Corporation has strenuously criticized the impugned judgments of the Industrial Courts delivered in Complaint (ULP) Nos. 254/1993, 472/1994, 197/1995, 193/1995, 38/1994, 119/1993, 261/1995, 41/1995, 45/1995, 51/1995 and 42/1995, which have been filed by the employees.

7. Shri Bedre submits that the issue raised in these petitions is limited to as to whether the employees could be granted their retiral and pensionary benefits after having waived all such benefits in a proceeding before the Industrial Court.

8. He submits that all the employees were working as Daily Wagers from and about 1981. They were granted benefits of permanency and regularization by the Industrial Court, vide its judgment dated 17.8.1998 delivered in a group of Complaints filed by the employees. There is no dispute that the said judgment of the Industrial Court has not been upset or set aside by this Court or by the Honourable Supreme Court.

9. He submits that since the employees felt that the Corporation was delaying their regularization, they filed Complaint (ULP) No.127 of 2002 seeking those benefits from the Industrial Court.

10. Shri Bedre has drawn my attention to the pleadings in the Complaint (ULP) No.127 of 2002, whereby the employees have harped upon an order issued by the Directorate of Municipal Administration dated 31.10.2002, by which the concerned 305 employees have been granted regularization w.e.f. 31.10.2002 subject to the conditions set out therein. He then points out the relevant Clauses set out in the said communication, thereby indicating that the primary condition while granting regularization to these

employees was that they would waive their entire benefits for the tenure of service, prior to their dates of regularization. He further submits that by an earlier communication, dated 20.4.2001, the Directorate of Municipal Administration put forth the condition at Clause 7 that the employees would waive their monetary benefits and service benefits for the earlier period prior to their regularization.

11. He, therefore, submits that paragraph Nos. 2 and 3 of the Complaint assumes importance since these employees had moved the Complaint (ULP) No.127 of 2002 seeking directions to the petitioner to implement the order dated 31.10.2002 issued by the Directorate of Municipal Administration.

12. In the above backdrop, he submits that the Industrial Court then proceeded to pass an order in Complaint (ULP) No.127 of 2002 on 30.1.2002. A specific statement by the respondents that they are ready to forgo their rights arising out of the judicial orders was accepted and considering the said concession given by the employees, the Industrial Court allowed the Complaint in terms of the Government Resolution dated 31.10.2002, circulated through the Regional Director, Municipal Administration. He, therefore, submits that none of the respondent / employees were, therefore, entitled to any retiral or pensionary benefits if, otherwise, they were not eligible on account of having not put in qualifying service.

13. He further submits that the order dated 30.1.2002, by which,

Complaint (ULP) No.127 of 2002 was allowed, has not been challenged by the employees before this Court and has attained finality.

14. He further submits that eventually all these employees have retired from service and post retirement, they have put forth their claims for retiral and pensionary benefits under the Maharashtra Civil Services (Pension) Rules, 1982. Since the employer did not grant such benefits, these employees preferred Complaints under the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the 1971 Act") which are mentioned herein above. By the impugned judgments, all these complaints were allowed and the petitioner has been directed to pay the retirement benefits like pension and gratuity to the concerned employees considering their total length of service from the date of joining as a daily rated employee. He submits that the Industrial Court failed to appreciate that the respondents had waived their monetary and service benefits for the past period prior to the dates of regularization and hence none of the employees could be said to be entitled for pensionary benefits as they have not put in the requisite years as permanent employees by way of qualifying service.

15. He places reliance upon the judgment of the Honourable Supreme Court in the matter of Thiru John Vs. Returning Officer and others [(1997) 3 SCC 540], in support of his contention that once a specific statement / admission is made by a party, it amounts to an admission under Section 17

and 21 of the Evidence Act and that would be a substantive evidence *proprio vigore* and would continue to bind the litigant making the admissions.

16. He then relies upon an unreported order of this Court dated 29.9.2015 in Civil Revision Application No.168 of 2007, wherein, this Court had concluded in paragraph No.11 that the admission given in an earlier proceeding is a substantive evidence *proprio vigore* and hence the concerned litigant cannot resile from the statement made. He, therefore, submits that these petitions deserve to be allowed and the impugned judgments of the Industrial Court deserve to be quashed and set aside.

17. Shri Barde, learned Advocate appearing on behalf of the employees submits that the employees were working from about 1981. After the Industrial Court granted permanency on 17.8.1998, the management forwarded the proposal of the employees for regularization. By order dated 20.4.2001, the Directorate of Municipal Administration imposed the condition of waiver of monetary benefits and service benefits for the period prior to their regularization.

18. He submits that the employees, who had no bargaining power, were helpless and had no option but to accept whichever condition that would be imposed, only for the sake of acquiring job security. It was never made known to them, nor does the communication dated 20.4.2001 or 31.10.2002

ever indicate that the employees would be deprived of their retiral and pensionary benefits. It was made known to the employees that they would not get monetary benefits for the past period as daily wagers. On this belief, the employees had filed Complaint (ULP) No.127 of 2002 and which has been decided by order dated 30.1.2002.

19. He further submits that since the words “past daily wage service” was mentioned in the two documents issued by the Municipal Administration, none of the employees were ever made aware that their pensionary and retiral benefits would be compromised. He, therefore, submits that such a concession given by the employees cannot be used against the employees so as to deprive them of their retiral and pensionary benefits which were not even whispered about in both the Government Resolutions.

20. Shri Barde then relies upon the judgment of the Industrial Court dated 7.7.1998 by which the complaints of the respondents were allowed and all of them were granted permanency and benefits incidental and consequential thereto. He, therefore, submits that the judgment of the Industrial Court, dated 17.7.1998 has attained finality and the petitioners are duty bound to implement the directions of the Industrial Court.

21. He draws my attention to the Government Circular dated 13.5.1970, by which, the Government resolved that half of the continuous service of all

work charged and daily rated employees would be considered and would be accounted for calculating pension and retiral benefits. He, therefore, submits that once the Government has resolved to bestow these pensionary and retiral benefits on the daily wagers, the petitioner cannot take away these benefits on the pretext of a compromise arrived at before the Industrial Court.

22. He further submits that as it was nowhere stated that the employees would be deprived of their pensionary and retiral benefits, they accepted the terms and conditions and waived all monetary benefits with regard to their daily wage service. However, they had not waived their right to retiral and pensionary benefits.

23. He then draws my attention to a judgment dated 3.3.2016, delivered by this Court (to which I am a party) in Writ Petition No. 8000 of 2015 (Mahatma Phule Krushi Vidyapeeth Rahuri Vs. Ganpat Kisan Karle). He submits that this Court has concluded in paragraph No. 36 of the said judgment that a notification or Government Resolution, which is introduced to over bear the Rules or the Law will have to be struck down. He, therefore, submits that the Circular / Notification issued by the Municipal Administration, dated 20.4.2001 and 31.10.2002 cannot take away the benefits of the employees as are provided under the law.

24. He has then relied upon the following judgments to support his

contention that an incorrect concession given by a litigant cannot be used to deprive him of the benefits of pension, retiral benefits and such other benefits to which he is legally entitled to:-

- (i) Union of India Vs. Mohallal Likumal Punjabi - AIR 2004 SC 1704
- (ii) Union of India Vs. Shammi Bhan - AIR 1998 SC 1681
- (iii) Waliuddin Pashasaheb Vs. State and another -
Writ Petition No.1542 of 2008, dated 25.8.2010,
- (iv) Syed Afzaluddin Ustad Vs. State and another -
Writ Petition No.815 of 2011, dated 24.8.2011,
- (v) Raghavendra Acharya Vs. State of Karnataka - AIR 2006 SC 2145,
- (vi) State of Jharkhand & Ors. Vs. Jintendra Kumar Srivastava & Ors. -
Civil Appeal No.6770 of 2013, dated 14.8.2013 - Supreme Court.
- (vii) The Hindustan Construction Co. Ltd. Vs. Shri G.K.Patankar and anr.-
(1976) 1 SCC 810 and
- (viii) Roshan Deen Vs. Preeti Lal - AIR 2002 SC 33.

25. I have considered the submissions of the learned Advocates and have gone through the judgments cited.

26. The whole issue turns upon whether Clause 7 of the Notification dated 20.4.2001 and Clause 6 of the Notification dated 31.10.2002 could be interpreted to mean that the employees have been or could be deprived of their pensionary and retiral benefits.

27. Having considered the record available, I do not find that in any of these two Resolutions / Notifications, the petitioner has made it clear to the employees that they would be deprived of their retiral and pensionary benefits by discounting their service as daily rated employees. It is now sought to be interpreted by the petitioner that the term monetary and service benefits necessarily means that the employees would not be entitled for even retiral and pensionary benefits by excluding the temporary period of service.

28. This Court in the case of Mahatma Phule Krushi Vidyapeeth (supra) has considered the effect of Rule 110, Rule 57 read with Note 1 and Rule 30 of the 1982 Pension Rules. It has, therefore, been settled that all such daily wage employees, who have been paid daily wages and which have not been drawn from the Contingency Fund, would be squarely covered under Rule 30 of the 1982 Rules and therefore, are entitled for the pensionary benefits by reckoning their temporary service and by adding the same to the permanent service period for satisfying the definition of “qualifying service”. It is, therefore, no longer res integra that the temporary employment put in by the daily rated employees has to be reckoned with for grant of pensionary benefits.

29. In the Union of India Vs. Mohanlal's judgment (supra), the Honourable Supreme Court has dealt with a 'wrong concession' made by the parties.

Even if it is presumed that the condition of waiver imposed upon the employees by the Directorate of Municipal Administration is construed to mean and include retiral, pensionary and statutory benefits, it has to be considered as to whether a wrong concession given for waiving statutory benefits can be held to be binding on the employees. Paragraph Nos.8 and 9 of the Mohanlal Judgment (supra) read as under:-

“8. We shall first deal with the effect of concession, if any, made by learned counsel appearing for the present appellants before the High Court. Closer reading of the High Court's order shows that the High Court took the view that in view of the revocation of the order on 19th December, 1994 and the order passed by the High Court in 11th January, 1995, no further order could have been passed under Section 7 of SAFEMA. After having expressed this view, the so-called concession is recorded. In our view the concession, if any, is really of no consequence, because the wrong concession made by a counsel cannot bind the parties when statutory provisions clearly provided otherwise. It was observed by Constitution Bench of this Court Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Limited and Anr. : [1983]1SCR1000 that courts are not to act on the basis of concession but with reference to the applicable provisions. The view has been reiterated in and Central Council for Research in Ayurveda & Siddha and Anr. v. Dr. K. Santhakumari [2001] 3 SCR 519. In para 12 of Central Council's case (supra) it is observed as follows:

"In the instant case, the selection was made by the Departmental Promotion Committee. The Committee must have considered all relevant facts including the inter se merit and ability of the candidates and prepared the select list on that basis. The respondent, though

senior in comparison to other candidates, secured a lower place in the select list, evidently because the principle of "merit-cum-seniority" had been applied by the Departmental Promotion Committee. The respondent has no grievance that there were any mala fides on the part of the Departmental Promotion Committee. The only contention urged by the respondent is that the Departmental Promotion Committee did not follow the principle of "seniority-cum-fitness". In the High Court, the appellants herein failed to point out that the promotion is in respect of a "selection post" and the principle to be applied is "merit-cum-seniority". Had the appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the respondent. If the learned counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot ensure to the benefit of any party." (underlined for emphasis)

9. In Uptron (India) Ltd. v. Shammi Bhan and Anr. [1998] 1 SCR 719, it was held that a case decided on the basis of wrong concession of a counsel has no precedent value. That apart, the applicability of the statute or otherwise to a given situation or the question of statutory liability of a person/institution under any provision of law would invariably depend upon the scope and meaning of the provisions concerned and has got to be adjudged not on any concession made. Any such concession would have no acceptability or relevance while determined rights and liabilities incurred or acquired in view of the axiomatic principle, without exception, that there can be no estoppel against statute."

30. In the case of Uptron (India) Ltd. v. Shammi Bhan and Anr. [1998] 1 SCR 719, the Honourable Supreme Court further dealt with the issue of wrong concession given in paragraph No.23 which reads as under:-

“23. In view of this observation, the question whether the stipulation for automatic termination of services for overstaying the leave would be legally bad or not, was not decided by this Court in the judgment relied upon by Mr. Manoj Swarup. In that judgment the grounds on which the interference was made were different. The judgment of the High Court was set aside on the ground that it could not decide the disputed question of fact in a writ petition and the matter should have been better left to be decided by the Industrial Tribunal. Further, the High Court was approached after more than six years of the date on which the cause of action had arisen without there being any cogent explanation for the delay. Mr. Manoj Swarup contended that it was conceded by the counsel appearing on behalf of the employee that the provision in the Standing Orders regarding automatic termination of services is not bad. This was endorsed by this Court by observing that "Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order." This again cannot be treated to be a finding that provision for automatic termination of services can be validly made in the Certified Standing Orders. Even otherwise, a wrong concession on a question of law, made by a counsel, is not binding on his client. Such concession cannot constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj Swarup on this judgment, therefore, is wholly out of place.”

31. In Syed Afzaluddin case (supra), decided by this Court on 24.8.2011, this Court considered the submissions of the litigating sides and has

considered in paragraph Nos. 4 and 5 as under:-

“4. The respondent no.2 submits that since at the time of regularization of the services, the petitioner agreed that his past services would not be counted for any purposes and now he is not entitled for any pensionary benefits by computing his earlier service. Mr. Barde, learned counsel for the respondent no.2 submitted that the petitioner is now estopped from claiming the benefit, as he has accepted the condition to regularization of the services that he would not claim any benefit of the past services. Reliance is placed in the cases of (i) Steel Authority of India Ltd. Vs. Union of India and ors. AIR 2006 S.C. 3229, (ii) Krishna Bahadur v. M/s. Purna Theatre and ors. AIR 2004 S.C. 4282, (iii) State of Tripura and ors. Vs. K.K. Roy AIR 2004 S.C. 1249 and (iv) Prabhakar S/o Marotirao Dalal Vs. State of Maharashtra and anr. 2008(5) ALL MR 306. In all the cases, the principle of estoppel was held to be operative against the concerned persons since they on fact had agreed contrary to their claims made in the Court.

5. In the present case, the petitioner is relying over the provisions of Rule 57 and more particularly note 1 of the said Rules for computation of past services. Therefore, there cannot be estoppel against the statutory instrument.”
(Emphasis supplied).

32. It is apparent that the Directorate of Municipal Administration did not specifically use the term “retiral and pensionary benefits” to be connected with the deprivation of the backwages or difference in wages to the employees for their temporary periods of employment, prior to their regularization. It is, therefore, evident that this aspect had been

camouflaged and the employees, who had no bargaining power, were made to believe that they would be deprived of the monetary benefits for the temporary period. It was only when they retired and started demanding retiral benefits inclusive of pensionary benefits, that they were informed that the waiver of the benefits for the temporary period of employment would dis-entitle them to retiral benefits unless they render themselves eligible purely on the strength of their permanent service for acquiring benefits under the 1982 Rules.

33. In the above referred judgments, the Honourable Supreme Court as well as this Court has laid down the law that any such concession wrongly made or made under a wrong belief, would not dis-entitle the employees from the statutory benefits available to them. It is concluded that any such concession given, against a statutory right, would have no acceptability or relevance while determining the rights and liabilities incurred or acquired in view of the axiomatic principle that there cannot be any estoppel against the Statute.

34. In so far as the notifications dated 20.4.2001 and 31.10.2002 are concerned, it is trite law that any Government Notification or Circular, which amounts to taking away the benefits available to a litigant under the law or the Statute, would not affect such rights and cannot be enforced. This Court has also taken the said view in the Mahatma Phule Krushi Vidyapeeth's judgment (supra). Therefore, owing to the Government

Resolution dated 13.5.1970 and the provisions of the 1982 Rules, the daily rated employees would be entitled to pension by reckoning their temporary periods of service along with their tenure of permanent service.

35. In the U. Raghavendra Acharya's judgment (supra), the Honourable Supreme Court has held that by an executive fiat, pensionary benefits available to employees under the law cannot be reduced or prejudicially affected. Such executive directions will not have the force of law and will have to be discarded.

36. In the State of State of Jharkhand Vs, Jitendra Kumar's case (supra), the Honourable Supreme Court has equated the right to receive pension with the provisions under Article 300-A of the Constitution of India and has held that the right to pension was recognised as a right to property, pension being hard earned benefit, which accrues to an employee and the said right cannot be taken away without following the due procedure of law.

37. The Industrial Court has allowed all the Complaints by holding that statutory benefits available to the employee cannot be taken away by an admission or by the act of the employees agreeing to waive the benefits considering that they had no bargaining power. The Industrial Court has assigned reasons for allowing the Complaints. When substantial justice has been done, this Court should not interfere in the matter, merely because, there may be some error in the impugned judgment or if a different view is

possible.

38. The Honourable Supreme Court in the Hindustan Construction Company's case (supra), has concluded that the refusal by the High Court to interfere with the impugned judgment was justified when substantial justice has been done even though the order complained off may be suffering from a legal infirmity. Same cannot be termed as being failure of justice.

39. The Honourable Supreme Court in the case of Roshan Deen (supra) has also held that the power conferred on the High Court under Articles 226 and 227 of the Constitution of India, is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Court is that no man should be subjected to injustice by violating the law. The endeavour of the High Court is not merely to pick out any error or law through an academic angle, but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by- product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law.

40. In the light of the above, I do not find that the impugned judgments could be termed as being perverse or erroneous or likely to cause gross injustice to the petitioners. These petitions being devoid of merits are, therefore, dismissed.

41. Rule, in all these petitions, is discharged.

42. Pending Civil Applications stand disposed off.

43. At this juncture, it is informed that in Writ Petition No.6921 of 2012, the Corporation has deposited Rs.96,900/- towards pensionary benefits of the employee by name Sayyed Ahmad Hazimiya. Shri Barde prays for withdrawal of the said amount with accrued interest.

44. Shri Bedre opposes the request on the ground that the Corporation may consider approaching the Honourable Supreme Court.

45. In the light of the same, the said employee, namely, Sayyed Ahmad Hazimiya shall not be permitted to withdraw the said amount for a period of four weeks from today.

(RAVINDRA V. GHUGE, J.)

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