

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7610 OF 2011
WITH
CIVIL APPLICATION NO. 11989/2012
WITH
CIVIL APPLICATION NO. 11990/2012
AND
CIVIL APPLICATION NO. 14791/2016

Subhash S/o. Ramchandra Chavan,
Age: 63 years, Occu: Pensioner,
R/o. Paranda, Tq. Paranda,
Dist. Osmanabad. ...PETITIONER

VERSUS

1. The State of Maharashtra.
2. The Chief Officer,
Municipal Council, Paranda,
Tq. Paranda, Dist. Osmanabad. ...RESPONDENTS

Advocate for Petitioner : Miss. M.G. Kasturkar h/f
Smt. M.A. Kulkarni.
AGP for Respondent No. 1 : Mr. S. N. Kendre.
Advocate for Respondent No. 2 : Mr. A.S. More.

CORAM : RAVINDRA V. GHUGE, J.
Dated: November 22, 2016

ORAL JUDGMENT :-

1. The petitioner is aggrieved by judgment dated 07/06/2011

delivered by the Industrial Court, Latur by which Complaint (ULP) No. 38/2009 filed by the petitioner seeking pensionary benefits has been rejected. There is no dispute that the petitioner was receiving pension vide order dated 19/09/2008 w.e.f. 01/06/2008 after he had retired from service on 31/05/2008. This pension was stopped abruptly on 13/04/2009 and hence he filed the ULP Complaint.

2. This court admitted this petition on 30/04/2012. Considering the issue involved, this petition has been taken up for final hearing by the consent of the parties.

3. I have considered the strenuous submissions of the learned advocates for the respective sides. The only issue involved is that whether the petitioner would be entitled for pension on the ground that he was granted permanency on 02/02/2000 and he retired on 31/05/2008. Qualifying service for pension is ten years.

4. There is no dispute that the father of the petitioner who was

an employee of the respondent No. 2, passed away while in service on 03/01/1986. The Municipal Council passed a resolution on 16/12/1986 appointing the petitioner on compassionate ground. The petitioner was inducted in service on compassionate basis from 01/01/1987 and he is superannuated on 31/05/2008 which is a period of more than twenty one years. The only defence taken by the respondent / Municipal Council is that the petitioner was granted regularization on 02/02/2000 after thirteen years of being in employment and hence had not completed qualifying service for pensionary benefits.

5. This issue is no longer *res integra*. This court in the matter of Mahatma Phule Krishi Vidyapith V/s. Ganpat Kishan Karle 2016 (4) BCR 790 has delivered its judgment dated 03/03/2016 and has concluded that employees who have put in temporary service prior to becoming permanent and who are covered by the Maharashtra Civil Services (Pension) Rules, 1982, would be entitled for pensionary benefits by reckoning their service prior to being granted regularization.

6. Employees who have been appointed on compassionate basis have to be treated differently. The petitioner herein has been working from 01/01/1987 having been appointed on compassionate basis. The respondent had commenced his pension w.e.f. 01/06/2008 and it was abruptly stopped on 13/04/2009 purportedly for the reason that he had not put in ten years in the employment as a permanent employee. Considering the above, I am of the view that the Industrial Court has erred in refusing relief to the petitioner by dismissing his complaint. The said judgment is perverse and unsustainable.

7. In the light of the above, this petition is allowed. The impugned judgment dated 07/06/2011 is quashed and set aside and Complaint (ULP) No. 38/2009 stands allowed. The respondent shall be liable to commence the pension of the petitioner within eight weeks from today, w.e.f. 13/04/2009. Arrears of pension from 13/04/2009 till November, 2016 shall be paid within the period of twelve weeks and regular pension shall be commenced withing eight weeks. In the event, the arrears are not paid within

the time frame, as directed, the said amount shall carry interest @ 3 % from April, 2009, and the same shall be recovered from the Chief Officer of the respondent / Municipal Council from his salary.

8. Rule is made absolute in the above terms.

9. All pending Civil Applications do not survive and stand disposed of.

(RAVINDRA V. GHUGE, J.)

S.P.C.