

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.104 OF 2014

Mahatma Phule Krishi Vidyapeeth,
Rahuri, Tal.Rahuri, Dist.Ahmednagar,
Through its Registrar

PETITIONER

VERSUS

1. Ahmednagar Jilha Shetmajur Union,
Trade Union Center,
Tahsil Kacheri Road, Ward No.1,
At Post Taluka : Shrirampur,
Dist. Ahmednagar,
2. Drupadabai Vinayak Tribhuvan,
Age-Major, Occu-Retired,
R/o at Puntamba, Tal.Rahata,
Dist.Ahmednagar,
3. Ramnath Yadav Bhojne,
Age-Major, Occu-Retired,
R/o at Post : Wambori, Tal.Rahuri,
Dist. Ahmednagar,
4. Babu Genu Pathare,
Age-Major, Occu-Service,
R/o at Post - Umbare, Tal.Rahuri,
Dist. Ahmednagar,
5. Vitthal Gangarama Datir,
Age-Major, Occu-Retired,
R/o at Post - Digras, Tal.Rahuri,
Dist. Ahmednagar,
6. The State of Maharashtra,
Agriculture and Animal Husbandary
Department, Mantralaya,
Mumbai.

RESPONDENTS

Mr.M.N.Navandar, Advocate for the petitioner.
Mr.U.H.Bhogale, AGP for respondent No.6.

Mr.P.V.Barde, Advocate for respondent Nos. 1 to 5.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/07/2016

ORAL JUDGMENT :

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

2. On 22/09/2014, after the learned Advocates for the respective sides were heard for some time, this Court had noted in the order as under :-

“1. Heard the learned Advocates for quite some time.

2. The petitioner needs to clarify on the contention that the salaries of the Class IV Daily Wage Employees of the petitioner Agricultural University are paid from the Contingency Fund. According to the petitioner, they are paid from other funds. The petition is silent as regards this contention. Besides stating that their wages are not paid from the Contingency Fund, the petitioner has failed to clarify as to from which fund, are the wages paid to respondent Nos. 3 to 5. The Registrar of the University is expected to file an affidavit after consulting such Officers, as he may find necessary. He may also discuss this issue with the Vice Chancellor of the University before filing the affidavit.

3. It is the contention of the petitioner that such Daily Wage Employees in several Universities are not paid retiral benefits as the Maharashtra Civil Services (Pension) Rules, 1982 are not applicable to them. The State Government is the ultimate Authority, which sanctions the pension. Learned A.G.P., while assisting the Court states that the Department of Agriculture and Fisheries deals with the Agricultural Universities in the State of Maharashtra.

4. I, therefore, direct the petitioner to add the State of Maharashtra, through the Department of Agriculture and Fisheries, as respondent No.6, in order to assist this Court in the interest of all such similarly situated Daily Wage Employees, who have subsequently been appointed and regularized on substantive posts prior to their retirement.

5. The petitioner to carry out the addition forthwith. Issue notice to the newly added respondent No.6. Learned A.G.P. waives notice on behalf of respondent No.6.

6. For the sake of illustration, the details of respondent Nos. 3 to 5 are being mentioned in this order so that the newly added respondent No.6 would be in a position to take proper instructions and file an appropriate affidavit. Details of respondent Nos.3 to 5 are as follows :

Sr. No.	Respondent No.	Date of Retirement	Duration of Temporary Service	Duration of Permanent Service
1	R 3	31/05/2003	27 years	4 years

2	R 4	31/05/1988	9 years	5 years
3	R 5	31/07/2002	21 years	3 years

7. *As directed above, the Registrar of the petitioner University and respondent No.6 shall file their affidavits-in-rely on or before 10/10/2014. Since this matter concerns a large number of Class IV employees, the petitioner and respondent No.6 may note that they shall not seek extension of time to file their replies.*

8. *Stand over to 13/10/2014."*

3. An affidavit in reply pursuant to the above order has been filed by the Registrar of the petitioner/University. In the said affidavit-in-reply, it is contended that Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "the Rules") would not be applicable to the case of the respondents/workmen as they were not working and/or appointed on any post sanctioned by the State Government. They were discharging their duties purely as daily wagers. It is also stated in the said affidavit that the petitioner/University has never paid wages to the respondents/employees from the contingency funds and they were paid from the grants received from the State Government. These grants were termed as non-salary grants.

4. This Court, while dealing with an identical matter involving the same petitioner/Agricultural University in WP No.8000/2015, decided on 03/03/2016 (Mahatma Krishi Vidyapeeth, Rahuri Vs. Ganpat Kisan Karle), dealt with the submissions of this University extensively. After considering the nature of the work performed by the employees as daily wagers in the light of Rule 30, Rule 57 r/w Note 1 and Rule 100 of the said Rules, it was concluded that the daily wagers, who were working for years together with the petitioner / University, would be entitled for the pensionary benefits.

5. Mr.Navandar, learned Advocate for the petitioner/University has made a valiant attempt to convince the Court that a different view needs to be taken.

6. It is not in dispute that these 3 respondents were working as daily wagers as like the workman in the judgment dated 03/03/2016. Each of these 3 respondents were taken on the permanent establishment on the date mentioned in the foregoing paragraphs. These respondents are identically placed with the respondent in the Ganpat Kisan Karle case (supra).

7. In the above backdrop, Mr.Navandar has relied upon the

definition clause with relation to the date of first appointment and temporary post. It would be apposite to reproduce Rule 9 (12), 9 (18) and 9 (53) of the Rules hereinbelow :-

“9(12) : Date of first appointment means the date the Government servant assumes the duties of his first post in Government service, or, if this be earlier, the date of his assumption of any duty which is treated, as service counting for pension.

9(18) : First appointment means the appointment of a person who is not holding any appointment under Government, even though he may have previously held such an appointment.

9(53) : Temporary Post means a post carrying a definite rate of pay sanctioned for a limited time.

Note - Substantive appointment to temporary posts should be made in a limited number of cases only, as for example, when posts are, to all intents and purposes, quasi-permanent or when they have been sanctioned for a period of not less than, or there is reason to believe that they will not terminate within a period of three years. In all other cases, appointments in temporary posts should be made in an officiating capacity only.”

8. It is contended by Mr.Navandar that the date of “first appointment” means the date on which the government servant assumes his duties on his first post in government service. “First appointment” would mean the appointment of a person who is not

holding any appointment under a Government and temporary post means a post carrying a definite rate of pay sanctioned for a limited period.

9. There is no debate that the respondents/workmen herein have been appointed on daily wages. There is no period of limited engagement and they have been working with the petitioner for the periods of 27 years, 9 years and 21 years respectively prior to the date on which they were confirmed in service on permanent establishment. This aspect has been dealt with extensively by this Court in the Ganpat Karle case (supra).

10. In paragraph No.20 onwards in the Ganpat Karle case (supra), this Court has considered the effect of Rule 30 and has also considered the view taken by the Hon'ble Supreme Court and the learned Division Bench in the following matters :-

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 Bambale 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)

11. Considering the above, this Court, therefore, concluded that Rule 30, which defines qualifying service of a government servant which would commence from the date he takes charge of the post to which he is first appointed, would be applicable to the case of such daily wagers. The second proviso to Rule 30 deals with the services of temporary employees including those employees who have retired or have been permanently incapacitated and who have completed not less than 10 years of service as temporary employees and they would also be entitled for retiring pension, retirement gratuity and family pension at the same scale as is admissible to the permanent government servant.

12. In this backdrop, the case of the daily wagers appointed by the petitioner herein was considered by keeping in view that they were practically rendered remediless and were deprived of retiral benefits despite having served for more than 2 or 3 decades. The judgment of the Industrial Court was therefore sustained in the Ganpat Karle

case (supra) so as to ensure that such daily wagers who have spent their lifetime with this University are not rendered to starvation after their retirement.

13. Mr.Navandar has also canvassed that the complaint before the Industrial Court was filed belatedly by the respondents/ employees. No application for condonation of delay was filed and hence, this petition be allowed and the complaint be remitted back to the Industrial Court for considering as to whether delay deserves to be condoned or not.

14. The above submission of Mr.Navandar deserves to be rejected for the reason that these 3 respondents have retired more than about 15 years ago. Merely because the issue of delay is not properly considered and the complaint was entertained, would not warrant a remand of the matter and thereby cause rigours of litigation to such employees who have already retired and are without a single penny towards their pensionary benefits. Nevertheless, the concept of 'recurring cause of action' is squarely applicable to this case. Non payment of pensionary benefits would be a continuous cause of action.

15. So also, Mr.Barde submits on instructions from the respondents/employees that they are willing to give up their claim from the date of retirement till the filing of the complaint. The said statement is recorded.

16. As such, considering the principle of recurring cause of action and the statement made by Mr.Barde, this petition can be partly allowed to the extent of modifying the impugned judgment of the Industrial Court.

17. Needless to state, considering that the facts of this case are identical to the facts of the Ganpat Kisan Karle case (supra) and upon considering that the definition clause relied upon by Mr.Navandar would not impact the view taken by this Court, I find no circumstances to adopt a different view than the one taken in the Gapat Kisan Karle case (supra).

18. This petition is, therefore, partly allowed. The grant of pensionary benefits, as directed by the Industrial Court and keeping in view the conclusions arrived at by this Court in the Ganpat Karle case (supra), respondent Nos. 3, 4 and 5 would not be entitled for the pensionary benefits only from the date of their retirement till the date

of filing of the complaint. From the date of filing of the complaint, they shall be entitled for pensionary benefits.

19. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)