

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1081 OF 2016

(Smt. Indubai w/o Sahdeo Khandare & Ors. vs. Maharashtra Animal & Fishery Sciences
University thr. its Registrar & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.
AUGUST 30, 2016.**

Shri M.M. Sudame, learned counsel for the petitioners, Shri Jibhkate, learned counsel for respondent No. 1, Shri V.J. Deshpande, learned counsel for respondent No. 2 and Shri N.R. Rode, learned AGP for respondent No.3.

The petitioners before this Court claim that they have been regularized as per orders dated 18.04.2007 and thereafter superannuated from the employment of Respondent No. 1. As their qualifying service is less, benefit of pension is declined to them.

Shri Sudame, learned counsel submits that at Aurangabad, in identical situation while deciding Writ Petition No. 3061 of 2014 on 29.09.2014, the provisions of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982, have been looked into and half of the service rendered on daily wages has been directed to be added for finding out the completion of qualifying service. He seeks similar relief in present matter.

Shri Jibhkate, learned counsel is relying upon the reply affidavit. He states that as after regularization,

qualifying service is not completed, the petitioners are not entitled to pension and, therefore, the petition itself is misconceived.

The learned AGP states that Respondent No. 3 has been added on 22.04.2016 in the Court and he is still awaiting instructions.

A perusal of order dated 18.04.2007 (Annexure 11 with the writ petition) reveals that as per clause 10, date of first joining as stipulated in the orders referred to in its reference part is to be treated as relevant date. As this clause appears in the order dated 18.04.2007 itself, it is apparent that joining in pursuance of orders dated 18.04.2007 is not envisaged as the date of joining.

In reference (read) clause, Respondent No. 1 has mentioned five orders. Those orders are dated 12.11.2003, 02.08.2005, 18.04.2006, 18.04.2006 and 06.07.2006. The copies of these orders are not placed on record for perusal of this Court. Which one of these orders deal with the date of joining is also not apparent.

The petitioners have prima facie demonstrated that they have been working on daily wages since 1973 and the Division Bench at Aurangabad has in similar circumstances directed weightage of 50% to be given for service rendered on daily wages.

However, without deciding the date of joining, the weightage cannot be given. If the date of joining as worked out qualifies the petitioners for pension, there cannot be any question of giving any weightage.

Though Respondent No. 1 has filed reply, it has

not stated anything in this connection.

Therefore, without observing anything on merits of the controversy, we direct Respondent No. 1 to peruse all relevant papers mentioned in Annexure 11 and thereafter to decide the date of joining of respective petitioners. If necessary, an opportunity of hearing shall also be given to the petitioners or their representatives. This exercise shall be completed within a period of eight weeks from the date of communication of this order to Respondent No. 1. Dependant upon it, the entitlement of the petitioners to pension shall be worked out.

With these directions, we partly allow and dispose of the present writ petition. However, there shall be no order as to costs.

JUDGE

JUDGE

*GS.

CERTIFICATE

“I certify that this Order uploaded is a true and correct copy of original signed Order.”

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