

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.195 /2016

(Smt. Sunanda wd/o Rameshwar Rode vs. Punjabrao Deshmukh Krishi Vidyapeeth, Akola)

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

Court's or Judge's order

Mr. A.M. Sudame, Advocate for the petitioner
 Mr.A.R.Deshpande, Advocate for respondent

**CORAM : SMT. VASANTI A.NAIK &
 MRS.SWAPNA JOSHI, JJ.**

DATED : 24th June, 2016

Heard.

By this Writ Petition, the petitioner challenges the communication of the respondent- Punjabrao Krishi Vidyapeeth, dated 6.4.2015, rejecting the claim of the petitioner for grant of pensionary benefits that were payable, in pursuance of the services rendered by her husband- Rameshwar.

The petitioner's husband-Rameshwar was working as a Clerk in the Office of the respondent - University, on daily wages of Rs.5/-, with effect from 28.4.1977. The appointment of Rameshwar was as a daily wager and he was entitled to the salary on a monthly basis @ Rs.5/- per day. Rameshwar continued to work on daily wages with the respondent University, when by an advertisement, dated 19th August, 2004, the posts

of Livestock Supervisor, Section Assistant-Cum-Typist, Laboratory Attendant, Guest House-cum-Hostel Attendant and Choukidar, were advertised. In the advertisement, it was mentioned that the persons working with the respondent-University on daily wages, could only apply for the said posts. The petitioner applied for the post of Section Assistant-cum-Typist and was appointed on the said post that was earmarked for the open category. The petitioner was appointed on one of the 21 posts of Section Assistant-cum-Typist that were advertised. An appointment order was issued in favour of the petitioner on 14.09.2005. Rameshwar stood retired on 31.10.2012 on attaining the age of superannuation. After his retirement, Rameshwar applied for pension on 22.4.2013. Unfortunately, Rameshwar died on 28.12.2013 and the petitioner, his widow, has filed this petition for a direction to the University to pay the pensionary benefits that were liable to be paid to Rameshwar, by reckoning his services from 28.4.1977.

On hearing the learned counsel for the parties and on a perusal of the documents annexed to the Writ Petition and the affidavit-in-reply filed on behalf of the respondents, we are of the view that in the circumstances of the case, the direction cannot be issued to the respondent-University, to pay the pensionary benefits to the petitioner, the

widow of Rameshwar. Admittedly Rameshwar was working on daily wages of Rs. 5/- per day from 28.4.1977. He continued to work as such till 13.9.2005. With an object to give some benefits to the daily wagers, the respondent-University published an advertisement calling upon the daily wagers to apply for various posts like Livestock Supervisor, Section Assistant-Cum-Typist, Laboratory Attendant, Guest House-cum-Hostel Attendant and Choukidar. 21 posts of Section Assistant-cum-Typist were also advertised. Rameshwar applied for one of them. Rameshwar was selected and appointed on 14.9.2005. The appointment order clearly states that Rameshwar was appointed, on probation, for a period of two years. Rameshwar continued to work as Section Assistant-cum-Typist till he attained the age of superannuation, on 31.10.2012. Rameshwar accepted the fresh appointment by nomination without any demur.

The services rendered by Rameshwar as a daily wager cannot be considered for computing the qualifying service for grant of pensionary benefits. The appointment order of the year 1977 clearly shows that Rameshwar was appointed on daily wages of Rs. 5/- that were payable at the end of the month. Rameshwar, for the first time, was appointed on probation on 14.9.2005 as a Section Assistant-cum-Typist. Rameshwar had

worked on the post of Clerk on daily wages till he was appointed by nomination on 14.9.2005, on probation, in pursuance of the advertisement inviting applications from the daily wagers for appointment on various posts. The petitioner cannot effectively claim that the services rendered by Rameshwar on daily wages should be counted for computing the period of qualifying service. The post on which Rameshwar worked on daily wages is the post of the Clerk and by the order dated 14.9.2005, Rameshwar was appointed by nomination on the post of Section Assistant-Cum-Typist. Both the posts are different. Hence the unreported judgment, dated 21.9.2010, rendered at Aurangabad Bench in Writ Petition No. 2016/2010 cannot come to the rescue of the petitioner for seeking the pensionary benefits on the basis of the services rendered by Rameshwar on daily wages.

In the circumstances of the case, the relief sought by the petitioner cannot be granted. Hence we dismiss the Writ Petition, with no order as to costs.

JUDGE

JUDGE