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

WRIT PETITION NO. 1092 OF 2016

1. The State of Maharashtra,
through the Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai

2. The Collector,
Osmanabad ..Petitioners

Versus

. Ramchandra Gopalrao Potdar,
Age 66 years, Occu. Nil.,
R/o Omerga, District Latur ..Respondent

Mr M.B. Bharaswadkar, A.G.P. for petitioners
Mr N.B.Nandagawale, Advocate for respondent

**CORAM : R.M. BORDE AND
A.M. DHAVALE, JJ**

DATE : 18th July 2017

PER COURT

Heard.

2. The instant petition is presented by the State objecting to the decision dated 6th October 2015, rendered by the Member, Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No.461 of 2014.

3. The respondent was initially appointed as Kotwal by an order dated 21st June 1981. While he was functioning as Kotwal, he appeared for the test conducted for the post of Peon on 30th March 1999 and was selected for the post of Peon and joined services as a Peon on 24th May 1999. The respondent was in continuous service as

a Peon on 24th May 1999. The respondent was in continuous service as a Peon functioning under the Revenue and Forest Department until date of superannuation i.e. 31st August 2007. The respondent was not extended pensionary benefits though the continuous service of the respondent as Kotwal and as a Peon taken together was for a period of 26 years, 3 months and 12 days.

4. The respondent approached the Maharashtra Revenue Tribunal, Mumbai, Bench at Aurangabad with a request to direct the State to grant him pensionary benefits. The respondent contends that in view of Rule 52 and 54 of the Maharashtra Civil Services Pension Rules, 1982 (hereinafter referred to as 'the Rules' for brevity), he is entitled to receive the pensionary benefits. He contends that his previous service as Kotwal needs to be considered for grant of pensionary benefits. The Tribunal, on consideration of relevant provisions under the Rules was pleased to allow the Original Application tendered by the respondent-original applicant and issued directions to the State, as requested by the respondent-employee. Rule 31 of the Rules provides for commencement of qualifying service. It is provided that subject to the provisions of the rules, qualifying service of the government servant shall commence from the date he taken charge of the post to which he is first appointed either substantially inofficiating or temporary capacity. It is the contention of the respondent that his appointment as a Kotwal was a substantive appointment and needs to be computed for the purpose of qualifying service under the rules.

5. Learned A.G.P. appearing for State has invited our attention to Rule 31 (2) of the Rules, which provides that for the purposes of sub-rule (1), the expression 'service' means service under the Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by Government. It is the contention of the State that since service of the respondent as Kotwal is a non-pensionable, in view of Rule 31 (2) of the Rules, the claim of the respondent is liable to be rejected. It must be noted that in view of sub-rule (1) of Rule 31 of the Rules, the service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions by the Government. Even otherwise, the rules are required to be interpreted in harmonious manner. Rule 57 of the Rules serialises instances of non-pensionable service. It is pointed out that sub-rule (d) of Rule 57 of the Rules provides that Government servants holding posts which have been declared by the authority which created them to be non-pensionable, shall be construed as the pensionable service. It is not a matter of dispute that the post presently held by the respondent carries regular pay, whereas the post held by the respondent prior to occupying the present post was non-pensionable. The bar created in the Rule 57 of the Rules relates to 'posts' and does not include a singular 'post'. It is contended that under Rule 58 of the Rules powers are invested in the Government to declare any service as non-pensionable and since the post of Kotwal is a non-pensionable post, according to State, respondent is not entitled

to claim benefits. The argument is recorded only for purpose of rejection. Reliance is placed on the judgment delivered by the Division Bench of this Court in the matter of **Parshuram Vithoba Bhandare Vs. State of Maharashtra and anr.,** reported in **2002 (2) Bom.C.R. 740.** In the reported matter, the petitioner before the Court was recruited as a daily wager in 1964 and he was appointed on 13th September 1980 as a Supervisor and continued to work on the said post until the date of his retirement. It was not contended that the post of Supervisor is a pensionable post, whereas the post of daily wager, which the petitioner before the Court was occupying was not pensionable. The Division Bench of this Court interpreting Rules 30 and 57 of the Rules held that the employee was entitled to claim pensionary benefits and the denial of benefits by the Tribunal was held to be wrong. In paragraph of the judgment, it is observed by the Division Bench, as quoted below :

> "7. Relying on the first note to Rule 57 above, that the petitioner was denied pensionary benefit by the State and the denial was approved by the Maharashtra Administrative Tribunal, in our opinion, both are wrong. A reading of Rule 30 clearly shows that the petitioner is entitled to the pensionary benefits. A reading of Rule 57 proves that the petitioner's case is not covered by the exceptions mentioned in that Rule 57. It is nowhere the case of Government of Maharashtra that the salary of the petitioner paid to him as daily wages from 1964 to 1980 was drawn from the contingency fund of the State and it is only when the salary or wages paid to the employees are drawn from contingency fund that the exception is made in relation to the case of grant of terminal benefits. This factual and legal aspect was not taken into consideration

> either by the State or Tribunal resulting in miscarriage of justice and denial of valuable right to the petitioner. The petitioner having completed more than 10 years of continuous service as labour supervisor and as his salary at any point of time was not drawn from the contingency fund, was always entitled to the pension. The petitioner is therefore liable to succeed. In the result the petition succeeds and is allowed. Rule is made absolute."

6. The instant case arises out of similar circumstances and as such, the decision rendered by the Division Bench of this Court in the matter of Parshuram is squarely applicable to the instant petition. Reference is also made to the decision of Division Bench in the matter of **Devidas Bhiku Borker & ors., Vs. State of Maharashtra & anr.** Reported in **2012 (Supp) Bom.C.R. 323.** An identical view has been taken by the Division Bench, as in the case of Parshuram (cited supra).

7. For the reasons recorded above, we do not find any substance in the challenge raised by the State. Writ Petition is devoid of substance. Hence, stands rejected.

(A.M. DHAVALE, J.) **(R.M. BORDE, J.)**

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