

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

WRIT PETITION NO.2117 OF 2012

Raibhan s/o Kisan Ubhedal,
Age : 60 years,
Occupation : Service,
R/o Nayhali,
Taluka Shevgaon,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through Secretary,
Planning Department,
Mantralaya, Mumbai.
- 2 The Chief Executive Officer,
Zilla Parishad, Ahmednagar.
- 3 The Medical Officer,
Primary Health Centre,
Salbatpur,
Taluka Newasa,
District Ahmednagar.

...RESPONDENTS

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Shri A.D.Sugdare, Advocate for the Petitioner.
Mrs.M.A.Deshpande, AGP for Respondent No.1/ State.
Shri S.T.Shelke, Advocate for Respondent Nos.2 and 3.

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**CORAM: RAVINDRA V. GHUGE
AND
SUNIL K. KOTWAL, JJ.**

**Reserved on 23rd November, 2017.
Pronounced on 05th December, 2017.**

JUDGMENT (Per Ravindra V. Ghuge, J.):

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

2 By this petition, the Petitioner has put forth prayers at clauses B, C, D, E and F as under:-

- "B) *By issuing writ of mandamus or writ in the like nature it may be declared that the petitioner is eligible for grant of pension under Maharashtra Civil Services Pension Rules, 1982.*
- C) *Hold and declare that the Circular dated 15.04.2009 issued by the respondent No.1, Secretary, Planning Department, Mantralaya, Mumbai is bad, void and unconstitutional.*
- D) *By order or directions or any other writ in like nature, the respondent No.2 may be directed to consider proposal of the petitioner for grant of pensionary benefits.*
- E) *Pending hearing and final disposal of this Writ Petition, Respondent No.2 to be directed to consider the claim of the petitioner for grant of provisional pension.*
- F) *By issuing writ of mandamus or any other writ in like nature, Respondent No.1 and 2 may be directed to count his past service in view of judgment and order dated 20.12.1994 in Complaint (ULP) No.305/1989 passed by the learned Member, Industrial Court, Ahmednagar, for grant of pensionary benefits till the date of his superannuation."*

3 The learned Advocate for the Petitioner, during the course of his submissions, has made a statement on 16.11.2017 that prayer clause "C" is not pressed by the Petitioner and the Petitioner seeks relief only in

terms of prayer clauses "B", "D" and "F". We have recorded the said statement.

4 We have heard the learned Advocate for the Petitioner, the learned AGP on behalf of the State and the learned Advocate on behalf of Respondent Nos.2 and 3.

5 Upon considering their submissions and upon going through the petition paper book and the judgments cited, the following factors need consideration:-

Submissions of the Petitioner

- (a) The Petitioner was appointed as a Mustering Assistant in the office of the Sub Divisional Engineer, Employment Guarantee Scheme (EGS), Ahmednagar on 01.10.1988.
- (b) On 19.07.2004, the Petitioner was appointed as a Parichar in the office of the Zilla Parishad at it's Primary Health Centre, Salbatpur, Taluka Newasa, District Ahmednagar.
- (c) He joined his duties on 04.10.2004 as a Parichar.
- (d) The Petitioner had filed Complaint (ULP) No.305/1989 before the Industrial Court at Ahmednagar which was allowed by the judgment dated 29.12.1994 granting him the status and privileges of a permanent employee from the date of the filing of his complaint in 1989.
- (e) He retired on 31.05.2010 from the service of Respondent

No.2/ Zilla Parishad after rendering service for five years and eight months.

- (f) His service as a Mustering Assistant from 1988 till 03.10.2004 is not being taken into account for the purposes of considering his claim for pension.
- (g) The Planning Department of the State of Maharashtra issued the Government Resolution on 15.04.2009 concluding that the service rendered by the Petitioner as a Mustering Assistant, cannot be considered for grant of pension unless the Petitioner has put in 10 years of qualifying service.
- (h) The Petitioner has relied upon Rules 30 and 57 of the Maharashtra Civil Services (Pension) Rules, 1982 to support his contention that even his past temporary service as a Mustering Assistant, can be considered for grant of pension.
- (i) In Writ Petition No.2946/1997, in the matter of Shri Ramchandra Kondiba Mahajan vs. The State of Maharashtra and others, this Court has delivered the judgment on 19.07.2012 thereby, concluding that as the judgment of the Industrial Court granting status of a permanent employee with effect from 01.10.1988 has attained finality, the case of Ramchandra Mahajan should be considered for pensionary benefits on its own merits.

- (j) The Honourable Apex Court, while considering the challenge to the judgment in Ramchandra Mahajan (supra), has dismissed the Special Leave Petition filed by the State of Maharashtra on 03.03.2014.
- (k) This Court (Coram : S.V.Gangapurwala and V.K.Jadhav, JJ) in the matter of Asaram Vitthal Shitre and others vs. The State of Maharashtra and others, Writ Petition No.8359/2013 and connected cases, has delivered an order on 13.08.2015 and has adopted the same view as in the case of Ramchandra Mahajan (supra) and has passed a similar order considering the date of permanency as was granted by the Industrial Court.
- (l) This Court (Coram : S.V.Gangapurwala and V.K.Jadhav, JJ) in the matter of Sheshrao Patloba Waybase and others vs. The State of Maharashtra and others, Writ Petition No.2589/2012 and connected matters, has taken a view that in matters wherein the judgments of the Industrial Court have been challenged or in matters wherein none of the parties have approached the Industrial Court, the relief available to the Petitioner would be based upon the Government Resolution dated 01.12.1995 which was presented by the State of

Maharashtra before the Honourable Apex Court with regard to the Mustering Assistants and they would, therefore, get the benefits of regular service as is granted under the Government Resolution dated 01.12.1995.

Submissions of the learned AGP

- (a) It is true that the judgment of the Industrial Court dated 29.12.1994 in between the Petitioner and the State Authorities, has not been challenged and the said judgment has attained finality.
- (b) Clause 5.2 of the Government Resolution dated 01.12.1995, does not entitle the Petitioner to any benefits with regard to his services prior to the date of his absorption.
- (c) The Petitioner accepted regularization with effect from 04.08.2004 in the light of the Government Resolution dated 01.12.1995.
- (d) Once the terms and conditions at the time of his absorption have been accepted by the Petitioner, he cannot seek any relaxation from the said terms.
- (e) The Petitioner has never sought the execution of the judgment of the Industrial Court by which, he was granted the status and benefits of permanency and all consequential

benefits from the date of filing his ULP Complaint.

- (f) The EGS workers do not have a right to regularization and other benefits until their cases are considered as per the Government Resolution dated 01.12.1995.
- (g) The Government Circular dated 02.09.1987 declaring that the employees working on EGS cannot claim the service benefits as are available to the Government employees, is applicable.
- (h) The Government circular dated 02.09.1987 was not pointed out before this Court in Ramchandra Mahajan (supra), Asaram Shitre (supra) and Sheshrao Waybase (supra).
- (i) The Government circular dated 15.04.2009 reiterates the contents of the Government Resolution dated 01.12.1995 with regard to Mustering Assistants.
- (j) The judgment delivered by this Court (Coram : N.H.Patil and R.M.Borde, JJ) in the matter of Shivhar Namdeo Kshirsagar vs. The State of Maharashtra and others, in Writ Petition No.619/2006 on 16.07.2007, was not brought to the notice of this Court in the matter of Ramchandra Mahajan (supra), Asaram Shitre (supra) and Sheshrao Waybase (supra).
- (k) This Court has taken a view in Shivhar Kshirsagar (supra) that the stand adopted by the State Government of not granting

pension to the employees unless they completed qualifying service as permanent employees, was in tune with the scheme framed by the State Government under the Government Resolution dated 01.12.1995, which has been accepted by the Honourable Apex Court.

- (l) Clause 4.7 of the Government Resolution dated 01.12.1995 provides for absorption of Mustering Assistants as per the said scheme and all those absorbed Mustering Assistants, who have put in qualifying service for grant of pension, shall be entitled for pensionary benefits.
- (m) The Maharashtra Civil Services (Pension) Rules, 1982 are not applicable to Mustering Assistants considering clause 5 of the Government Resolution dated 21.04.1999.
- (n) Clause 3.4 of the Government Resolution dated 01.12.1995 declares the Mustering Assistants Scheme as a dying cadre.

6 While considering the submissions of the rival sides, it needs mention that the cases of Mustering Assistants before various Industrial Courts, had finally reached the Honourable Apex Court. In the course of the proceedings before the Honourable Apex Court, the State of Maharashtra was called upon to devise a scheme for the absorption of Mustering Assistants. The State of Maharashtra put forth a scheme for

regularizing the services of the Mustering Assistants vide the Government Resolution dated 01.12.1995. The Honourable Apex Court has accepted the said scheme by its order dated 02.12.1996. Clause 4.7 of the Scheme provides for pensionary benefits to those employees who have been absorbed under the said scheme on or before 31.03.1997.

7 We find from the judgment delivered in Ramchandra Mahajan (supra) that the facts of the case are practically identical to the facts of the case in hand. Ramchandra Mahajan was working as a Mustering Assistant and was later on absorbed as a Parichar by the Zilla Parishad. The Petitioner was also working as a Mustering Assistant from 01.10.1988 till 03.08.2004 with the Sub Divisional Engineer, Ahmednagar. He was absorbed as a Parichar w.e.f. 04.08.2004, by the Zilla Parishad.

8 In the above backdrop, this Court, in Ramchandra Mahajan (supra) has observed in paragraph 4 as under:-

"4. After the said order was passed, it appears that the Petitioner approached the third Respondent Zilla Parishad. The learned counsel appearing for the Petitioner has produced for perusal of the Court a true photo copy of the service book of the Petitioner. The entries in the service book shows that till 1st September, 1998, the Petitioner continued to work as a Muster Assistant and an order was passed on 1st September, 1998 by the Chief Executive Officer of the third Respondent- Zilla Parishad by which the Petitioner was released from the post of Muster Assistant and was ordered to be placed in the post of Parichar in the same pay scale of 750-12-870-15-940 which was

then admissible to the post of Muster Assistant. Perusal of the service book shows that the Petitioner continued to work as Parichar and was granted increments. It appears from the service book that the Petitioner superannuated on 31st May, 2008 from the post of Parichar. The remark made by the Deputy Chief Executive Officer of the Zilla Parishad on the service book records that benefit of gratuity was extended to the Petitioner but it is recorded that the eligible service of the Petitioner for retiral benefits is less than 10 years."

9 This Court then has observed in paragraphs 6 and 7 of the Ramchandra Mahajan case (supra) as under:-

"6. We find that in this Petition, there is no specific direction sought regarding grant of pensionary benefits. However, the service book produced before us now discloses that the Petitioner was absorbed in the post of Parichar with effect from September, 1998 and now he has superannuated on 31st May, 2008. At this stage, we may note that the order of the Industrial Court clearly records that the Petitioner is entitled to privileges of permanent employee with effect from 1st October, 1988 in the post of Muster Assistant. It appears that the order of the Industrial Court was not subjected to challenge either by the State Government or by the Zilla Parishad. Perusal of the affidavit filed on 25th July, 1997 on behalf of the Zilla Parishad shows that a stand was taken that the Industrial Court has not taken into consideration the policy of the State Government framed on 1st December, 1995 regarding absorption of the Muster Assistants. A contention has been raised that the said scheme has been approved by the Apex court in a Special Leave Petition filed before the said Court. Even the said affidavit shows that the Zilla Parishad did not challenge the order of the Industrial Court. It

appears that on the basis of the interim order passed by this Court and on the basis of the scheme, the Petitioner was absorbed as Parichar with effect from 7th September, 1998. There was an ad-interim order passed by this Court which protected the employment of the Petitioner as Muster Assistant only for a limited duration till 15th June, 1998. The service book shows that till he was absorbed as Parichar, the Petitioner continued to work as Muster Assistant in the same pay scale of 750-12-870-15-940.

7. *The Petitioner has accepted his absorption in the post of Parichar. To the said post, the same pay scale was admissible as the one which was admissible in case of Muster Assistants. As there is no specific prayer for grant of pensionary benefits in this petition, we cannot issue a writ. However, we are directing that the case of the Petitioner for grant of pensionary benefits shall be considered in accordance with the Rules. While considering the case for grant of pensionary benefits, the concerned authorities are bound to note that as far as the Petitioner is concerned, the order of the Industrial Court has attained finality and, therefore, he has been conferred the status of permanent employee with effect from 1st October, 1998. Therefore, for calculating the pensionable service, the Petitioner shall be treated as permanent employee with effect from 1st October, 1998."*

10 We have perused the Government Resolution dated 21.04.1999 wherein, the State of Maharashtra has concluded that the Mustering Assistants cannot be said to be the employees of the State and hence, the Maharashtra Civil Services Rules would not be applicable to them. By the Government Circular dated 15.04.2009, the State of

Maharashtra has concluded that those Mustering Assistants, whose services are absorbed as per the Government Resolution dated 01.12.1995, would be considered for pensionary benefits only from the date of their absorption.

11 Insofar as the contention of the learned AGP that the earlier judgment of this Court in Shivhar Kshirsagar case (supra) was not cited before the Court in Ramchandra Mahajan, Asaram Shitre and Sheshrao Waybase (supra), is concerned, we find that in Shivhar Kshirsagar (supra), the factor of the Industrial Court having granted regularization in ULP complaint was not an issue emerging from the record. In Ramchandra Mahajan (supra) and Asaram Shitre (supra), the said Petitioners had approached the Industrial Court and certain reliefs were granted by the Industrial Court which attained finality as the said judgments were not challenged before the learned Single Judge Bench of this Court. In these matters, where the Petitioners were supported by the judgments of the Industrial Court which had attained finality, this Court directed the appropriate Authorities in Ramchandra Mahajan (supra) and Asaram Shitre (supra) to consider the cases of those Petitioners with regard to their eligibility for pensionary benefits.

12 In Shivhar Kshirsagar (supra) and Sheshrao Waybase (supra), none of them had approached the Industrial Court. They had directly

approached this Court based on the scheme of the State Government floated through the Government Resolution dated 01.12.1995 and which was then accepted by the Honourable Apex Court by order dated 02.12.1996. If the Petitioner in the case in hand, was one of those who had never approached the Industrial Court, then, the view taken by this Court in Shivhar Kshirsagar (supra) and Sheshrao Waybase (supra) would have been applicable, wherein, this Court has dismissed their petitions and had permitted them to move the State Government with a representation to consider some of the Petitioners' cases sympathetically as some of them had worked for more than 09 years of qualifying service and the required qualifying service for pension was 10 years.

13 The Single Judge Bench of this Court to which one of us is a party (Ravindra V. Ghuge, J.) has taken a view in Writ Petition No.8000/2015 (Mahatma Phule Krishi Vidyapeeth, Rahuri vs. Ganpat Kisan Karle, judgment dated 03.03.2016 : 2016 (4) Bom. C.R. 790) that the past temporary service of an employee can be considered for grant of pensionary benefits. The view taken in this matter was considered by the Division Bench of this Court (Coram : Anoop V. Mohta and Ravindra V. Ghuge, JJ) at Mumbai in the matter of Mone Rashmi Shriram vs. State of Maharashtra and others, 2017 (4) Bom. C.R. 623 : 2017 (1) ALL MR 703.

14 Considering the above, we deem it proper to issue the same

directions as have been issued by this Court in the matter of Ramchandra Mahajan (supra).

15 This Writ Petition is, therefore, partly allowed in terms of prayer clause "D" with our directions as under:-

- (a) The Petitioner shall submit a representation to Respondent No.2/ Chief Executive Officer, Zilla Parishad, Ahmednagar within FOUR WEEKS from today, for grant of pensionary benefits, if not already filed.
- (b) Respondent No.2 shall then forward the proposal of the Petitioner by setting out all/ complete details of his employment to the competent authority of the State of Maharashtra within SIX WEEKS from the date of receiving the representation.
- (c) Respondent No.1 shall consider the said proposal keeping in view the judgment of the Industrial Court dated 29.12.1994 delivered in Complaint (ULP) No.305/1989, by treating the Petitioner to be a permanent employee as per the judgment of the Industrial Court.
- (d) The eligibility of the Petitioner for pensionary benefits shall be considered strictly in accordance with the Rules and provisions applicable and the view of this Court in Mahatma.

Phule Krishi Vidyapeeth (supra) and Mone Rashmi Shriram
(supra).

16 Rule is made partly absolute in the above terms.

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(SUNIL K. KOTWAL, J.)

(RAVINDRA V. GHUGE, J.)