

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

WRIT PETITION NO. 4637 OF 2012

Thakubai Abaji Kamble,
Age : 65 years, Occupation : Nil,
R/o Maliwada, Harijan Vasti,
Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Director of Municipal Administration,
3rd Floor, GTS Building,
Sir Pochkhanwala Road, Worli,
Mumbai-25.
- 2 Regional Director,
Municipal Administration,
Nashik Region, Nashik.
- 3 Ahmednagar Municipal Corporation,
Ahmednagar.
Through its Commissioner.

...RESPONDENTS

...
Advocate for Petitioner : Shri Barde Parag Vijay.
AGP for Respondents 1 and 2 : Shri S.N.Kendre.
Advocate for Respondent 3 : Shri K N Lokhande.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th February, 2017

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 The Petitioner is aggrieved by the judgment and order dated 14.03.2012 delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) No.61/2005 has been dismissed.

3 I have considered the submissions of the learned Advocates for the respective sides at length.

4 The birth certificate of the Petitioner indicates her date of birth as being 02.08.1941. Consequentially, being an employee in Class-IV category with the Respondent/ Municipal Corporation, her date of retirement at 60 years would be 01.08.2001.

5 There is no dispute that by the Government Resolution dated 30.10.2002 issued by the Government, those daily wagers working with the Municipal Corporations prior to 1993 were granted the benefits of regularization. The name of the Petitioner appears, undisputedly, at Sr.No.262. She was, therefore, held entitled to regularization.

6 The Respondent/ Municipal Corporation submits that it was only after the Government Resolution dated 30.10.2002 was issued that

the Municipal Corporation realized that the Petitioner had attained her age of superannuation on 01.08.2001. It was in this circumstance that the Petitioner was deprived of regularization which was to be brought into effect from 30.10.2002.

7 Considering the above, it is evident that the order of regularization was issued by Respondent No.1/ Directorate of Municipal Administration and all those employees mentioned in the list, were to be granted the benefits of regularization from the deemed date 30.10.2002.

8 Shri Barde, learned Advocate for the Petitioner, submits that the Petitioner is now practically bedridden and it would be extremely difficult for her to continue in litigation. Her gratuity is still not paid, which is undisputed.

9 The Government Resolution dated 30.10.2002 leads to the presumption that the case of the Petitioner is considered for regularization because she was in employment on the date the proposal was forwarded for her regularization. The Written Statement filed by the Respondent/ Municipal Corporation before the Industrial Court in Complaint (ULP) No.61/2005 does not indicate any denial that the Petitioner was not working prior to 17.07.1998. By the impugned judgment of the Industrial

Court, it is concluded that there was no evidence before the Industrial Court to establish as to whether, the Petitioner worked after 17.07.1998.

10 Keeping in view that the Respondent/ Municipal Corporation has not denied in its Written Statement (Exhibit C/3) as regards the employment of the Petitioner prior to 17.07.1998, it presupposes that the Petitioner had worked till the said period and which was the basis for forwarding her name in the proposal for regularization.

11 Since the gratuity cannot be claimed in a ULP complaint before the Industrial Court and the same will have to be claimed by the Petitioner before the Controlling Authority under the Payment of Gratuity Act, 1972, which is the Labour Court, I deem it appropriate to grant liberty to the Petitioner to put forth the claim before the Controlling Authority on the basis of her employment till 17.07.1998. In the event, such claim is put forth within a period of SIX WEEKS from today, the period of pendency of the ULP complaint before the Industrial Court and the Writ Petition before this Court, shall be a good ground for condonation of delay before the Controlling Authority. On institution of such claim, looking at the age of the Petitioner which is about 76 years, the Controlling Authority shall decide the claim for gratuity within a period of TWELVE MONTHS from the date of institution.

12 Insofar as the impugned judgment is concerned, I do not find that the same could be termed as being perverse or erroneous as the Petitioner has not adduced any evidence to indicate that she was working from 17.07.1998 till 01.08.2001 which is her date of superannuation. So also, since the Government Resolution dated 30.10.2002 grants regularization to the daily wagers from the date of the Government Resolution, the Petitioner would not be entitled for regularization as she has superannuated on 01.08.2001.

13 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed with the above direction. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)