

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

BENCH AT AURANGABAD.

WRIT PETITION NO.11502 OF 2014

Shri Sharad S/o Shripat Patil ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.S.U.Choudhari, advocate for the petitioner.
Mr.S.G.Karlekar, A.G.P. for the State.
Mr.Rakesh Jain, advocate for Respondent No.3.
...

**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 27.11.2017.

PER COURT :

1. Mr.Choudhari, learned counsel for the petitioner submits that the petitioner was appointed as a Muster Assistant with the Respondent in the year 1986. The petitioner was illegally terminated on 4.10.1988. The petitioner challenged the said termination order by filing complaint (ULP) No.142/1988 before the Labour Court. The Labour Court initially stayed the

order of termination and subsequently on 14.1.1992, allowed the complaint directing the Respondents to reinstate the petitioner in service. The learned counsel submits that thereafter the petitioner was granted pay-scale and also increments up to the year 2003. On 30.6.2004, the petitioner was absorbed as a Parichar with Respondent No.3 Zilla Parishad. On 7.7.2004, the petitioner was relieved from the post of Muster Assistant and on 8.7.2004, the petitioner joined services with Respondent No.3 Zilla Parishad and posted as attendant to Public Health Centre, Kahatul in Shahada Taluka. There was no break in service.

2. Learned counsel further submits on 31.12.2011, the petitioner retired from service on attaining the age of superannuation. The Respondent rejected the claim of the petitioner for pension on the ground that petitioner has rendered service of only 7 years 5 months and 23 days.

3. Learned counsel submits that rejection

of the claim for pension is erroneous. In the year 1990, the petitioner was made a member of Group Insurance Policy. There is no break in service. Earlier service rendered by the petitioner from 1986 is to be counted for the purpose of pension. The learned counsel relies on the judgment of the Apex Court in a case of **"Madhukar Vs. State of Maharashtra and others"** reported in **2014 (4) Bom. C.R. 150** and another judgment in a case of **"Yashwant Hari Katakhar Vs. Union of India"** reported in **(1996) 7 SCC 113**. The learned counsel further submits that there is nothing on record to show the service rendered by the petitioner as Muster Assistant was not on permanent post. In view of that the earlier service needs to be counted.

4. Learned A.G.P. and Mr.Jain, learned counsel for Respondent No.3 submit that the petitioner was paid from EGS while in service as a Muster Assistant. The petitioner was absorbed in Government service pursuant to the policy decision of the Government and as one time measure in view of GR dated 1.12.1995. The post

on which the petitioner was working was not a sanctioned post but it was only under EGS, the petitioner was appointed. In view of that the petitioner is not entitled for any such benefit.

5. It is not disputed that the petitioner was appointed as a Muster Assistant in the year 1986. Large number of Muster Assistants were appointed during the said period under the EGS. The Government as a one time measure came out with the policy decision under GR dated 1.12.1995. The said Government Resolution was filed before the Apex Court. It was laid down in the said Government Resolution that those who were working as Muster Assistants under EGS were not Government servants and Maharashtra Civil Services Rules were not applicable. It was further observed that on and from the date of absorption their services would be counted as regular and in Government service. The petitioner pursuant to the said Government Resolution has been absorbed as attendant (Parichar) in Government service on 8.7.2004.

6. In light of the above, Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 relied by the learned counsel for petitioner would not be of any avail to the petitioner, inter alia, the judgment of the Apex Court in a case of **"Madhukar Vs. State of Maharashtra and others** and **"Yashwant Hari Katakhar Vs. Union of India"** referred to supra would not be applicable to the facts of the present case. In the present matter the petitioner was brought under Government employment for the first time on 8.7.2004 and from that day the qualifying service of the petitioner would be counted. The scheme of 1.12.2005 is abundantly clear.

7. We have dismissed similar petitions bearing Writ Petition Nos.2589/2012 with connected Writ Petitions under order dated 13.8.2015.

8. In light of the above, no relief can be granted to the petitioner.

9. The Writ Petition is dismissed. No costs.

(S.M.GAVHANE, J.)

(S.V.GANGAPURWALA, J.)

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