

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

WRIT PETITION NO. 18 OF 2017

Radhakishan Bhaurao Shinde
Age: 67 years, Occu.: Retired,
R/o Magbara Road, Begampura,
Aurangabad.

..PETITIONER

VERSUS

1. State of Maharashtra
2. The Vasant Rao Naik Marathwada Agri.
University, Parbhani Through its Registrar.
3. Fruit Research Center,
Himayatbag, Aurangabad
Through its Officer in-charge.

..RESPONDENTS

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Mr. D.R. Irale Patil, Advocate for petitioner.
Mr. M.A. Deshpande, A.G.P. for Respondent No.1.

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**CORAM : S.V. GANGAPURWALA AND
K.L. WADANE, JJ.
DATED : 01st MARCH, 2017**

ORAL JUDGMENT (Per : S.V. GANGAPURWALA, J.) :

1. Rule. Rule made returnable forthwith. With consent of parties, taken up for final disposal.
2. The petitioner seeks following directions :-

“B) The Hon'ble Court may be pleased to pass appropriate order and issue a writ of mandamus or a writ in like nature and direct the respondent no.2 to act upon the provision of Note-1, of Rule No. 57, and Sub Rule (3) of Rule 110 of M.C.S. (Pension) Rules 1982, and consider the total length of service of more than 21 years rendered by petitioner and grant pension and pensionary revised benefits to the petitioner within stipulated period.

B-1) The Hon'ble Court may be pleased to grant interest on delayed payment as provided under Rule 129(A) and 129(B) of M.C.S. (Pension) Rules, 1982.”

3. Mr. Irale Patil, learned Counsel for petitioner submits that the petitioner was working with Respondent No.3 from the year 1975. The petitioner is absorbed as regular employee on 06th November, 1999. Learned Counsel submits that the petitioner's service from 1975 is to be considered for the purpose of pension. Learned Counsel relies on Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. Learned Counsel submits that the claim for pension, gratuity and earned leave is not considered by the respondents.

4. Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under :-

“57. Non Pensionable Service : As exceptions to Rule 30, the following are not in pensionable service:

(a) Government servants who are paid for work done for Government but whose whole time is not retained for the public service,

(b) Government servants who are not in receipt of pay but are remunerated by honoraria,

(c) Government servants who are paid from contingencies,

(d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable.

(e) Holder of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.”

5. None appears for Respondent Nos. 2 and 3, though served. Learned A.G.P. appears for Respondent No.1.

6. From the documents placed on record, it appears that the petitioner was appointed in the year 1975 on daily wages and was working as 'Mazoor'. It appears that under order dated 06th November, 1999, the petitioner was brought on regular pay scale i.e. absorbed as

regular employee on 06th November, 1999. The petitioner retired on attaining the age of superannuation on 31st December, 2009.

7. It would be clear that in case of employee who is paid from contingencies and who is subsequently brought on regular establishment, half of previous service rendered is required to be counted for the purpose of pensionary benefits. The petitioner was absorbed on regular establishment in the year 1999. It appears that prior to absorption, the petitioner was paid wages from contingencies.

8. In that view the petition deserves to be allowed. Respondents are directed to forward the proposal of petitioner for grant of pension and pensionary benefits by calculating half of the earlier service from 1975 till the date of absorption on regular establishment i.e. 06th November, 1999 and further service as regular from 06th November, 1999 till retirement. Same shall be done expeditiously.

9. Rule made absolute in those terms.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)

SSD