

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3130 OF 2013

Mr. Vikram Dhondiram Prabhale ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

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Mr. Nitin A. Kulkarni for the Petitioner.
Ms. Sushma Bhende, AGP for Respondent No.1.
Mr. Sanjeev J. Rairkar a/w Mr. Nikhil R. Vidwans for Respondent No.2.

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**CORAM : S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE : FEBRUARY 20, 2017.

P.C. :

1. By this Writ Petition under Article 226 of the Constitution of India, the petitioner is claiming a declaration that the Pune Zilla Parishad should withdraw or this Court should quash and set aside the direction contained in the order dated 19th November 2012.
2. By the order dated 19th November 2012, a copy of which is Annexure "E" to the Petition, the petitioner has been informed that he would be paid the pension in terms of the Pune Zilla Parishad Pension Scheme. However, that would be subject to the terms and conditions as incorporated in the said order.
3. The case of the petitioner is that he was appointed initially as a daily wager (Hand Pump Operator/Mechanic) by the Pune Zilla Parishad. That was by appointment order dated 20th

February 1986. The petitioner was treated as a *badli*/temporary/casual worker for more than 7 years. That was in order to deprive him of the status and privileges of a permanent employee. This was an unfair labour practice. The petitioner therefore, approached the competent Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by filing a Complaint (ULP) No. 430 of 1993. The Industrial Court, Pune allowed this Complaint on 12th February 1997 and directed the Chief Officer of the Pune Zilla Parishad (respondent no.2 herein) to treat the petitioner as a permanent employee, that his services should be regularized with effect from 12th February 1997. However, an order was passed by respondent no.2 on 12th October 2009 and the petitioner was regularized in service with effect from 20th February 1991. After attaining the age of superannuation, the petitioner was retired from the Zilla Parishad services by an order dated 30th June 2012.

4. The petitioner sought payment of pension. Accordingly, his pension papers were forwarded. The petitioner however, claims that the calculation of the pension ought to be in terms of the Maharashtra Civil Services (Pension) Rules, 1982. The impugned order makes no such Rules applicable insofar as pension. Rather, the pensionary benefits are stated to be admissible in terms of the Zilla Parishad's Pension Scheme. That is how not only the inapplicability of the Maharashtra Civil Services (Pension) Rules, 1982 is questioned, but also an undertaking which is insisted on a stamp paper of Rs.100/-, by which the petitioner should be held to

be bound by the Pune Zilla Parishad Pension Scheme. Both these stipulations are challenged in the Writ Petition.

5. An additional affidavit has also been filed by the petitioner. That affidavit dated 27th December 2016 is stating that the pensionary benefits calculated ought to be in accordance with the Maharashtra Civil Services Rules, rather the Maharashtra Civil Services (Revised Pay) Rules, 1988 and the Maharashtra Civil Services (Revised Pay) Rules 2009. What the petitioner therefore puts in issue is that by virtue of Section 248 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, the petitioner's entitlement is in terms of the said Rules. However, the amount that has been offered by the Pune Zilla Parishad is accepted as without prejudice to the rights and contentions.

6. In the affidavit-in-reply by the Pune Zilla Parishad, it is stated that the Writ Petition deserves to be dismissed in limine. The petitioner did not submit any undertaking and therefore, though the amount of Rs.7,36,580/- was offered to the petitioner, he did not collect it. That was on some unreasonable and untenable stand. The petitioner cannot question the competency of the Pune Zilla Parishad in framing the Pension Scheme. His argument, that the Maharashtra Civil Services (Pension) Rules 1982 apply to him has no merit. Equally, the Pune Zilla Parishad cannot frame any Pension Scheme is an argument which runs counter to the Zilla Parishads Act. The petitioner has not been pointed out a single employee's case, and who was similarly

situated like the petitioner, to whom pension has been paid in terms of the said Rules. The State of Maharashtra has not issued any notification, circular or Government resolution in exercise of powers conferred by Section 248 of the Zilla Parishads Act or other enabling provisions. Once the Maharashtra Civil Services (Pension) Rules are inapplicable, then, no reliance can be placed thereon to contend that the Zilla Parishad employee should be paid pension at par with the same. It is in these circumstances that the Zilla Parishad defends its order impugned in the Writ Petition.

7. After having heard both sides and perusing the petition and all the annexures thereto, so also the affidavit-in-reply, we are of the firm opinion that the Writ Petition has no merit. Mr. Rairkar has rightly relied upon Section 248 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. That Section reads as under:

“S.248. Subject to the provisions of this Chapter, the State Government may make rules regulating -

(a) The Recruitment (including reservation for Scheduled Castes and Scheduled Tribes and Backward Classes), functions, and terms and conditions of service (including payment of dearness allowance and all conduct and disciplinary matters) of persons appointed to the District Technical Service (Class III), District Service (Class III) and District Service (Class IV), and

(b) the payment to be made by the Zilla Parishad towards pension, gratuity and other benefits as respects officers and servants who have been serving

any existing board and who become servants of the State Government, or the payment to be made to the State Government towards such matters in respect of State Government servants who have become members of the services under Zilla Parishad:

[Provided that, if the State Government considers it expedient so to do, it may also regulate the conditions of service as respects pay-scales, dearness and other allowances, leave, pension, provident fund or any other matter in relation to conditions of service, by a general or special order.]”

8. A perusal thereof would enable us to conclude that it is the State Government which has a discretion, and subject to the provisions of the Chapter in which Section 248 falls, of framing Rules regulating the matters of pension, gratuity and other benefits as respects the officers and servants who have been serving in any existing board and who have become servants of the State Government, or the payment to be made to the State Government towards such matters in respect of State Government servants who have become members of the services under Zilla Parishad. Neither the substantive provision nor the proviso is relied upon by Shri Kulkarni appearing for the petitioner to enable the petitioner to claim the relief and the declaration that the Maharashtra Civil Services (Pension) Rules, 1982 govern the pensionary benefits admissible to the petitioner.

9. We are in agreement with Mr. Rairkar that the Scheme of pension and framed by the Pune Zilla Parishad is the applicable Scheme under which the petitioner should claim the pensionary

benefits. The pensionary benefits under this Scheme have never been denied to the petitioner. On instructions, Mr. Rairkar states that the benefits would be continued to be extended and the petitioner can rely upon this Scheme and claim the pensionary benefits. In fact, the amounts, if any, due and payable to the petitioner, would be released, if not already released, within a period of two weeks from today, is the statement made by Shri Rairkar on instructions.

10. We have, therefore, no hesitation in concluding that first part of the relief, namely, the applicability of the Maharashtra Civil Services (Pension) Rules, 1982 cannot be granted because the Rules are not applicable to the petitioner. So far as the Pension Scheme framed by the Pune Zilla Parishad is concerned, that would be admissible and we are not in a position to agree with Mr. Rairkar that the petitioner shall have to furnish any undertaking to the Pune Zilla Parishad to obtain any benefits under the Zilla Parishad's Scheme (Pune Zilla Parishad Pension Scheme). If in future that Scheme itself is stopped or withdrawn, then, all the consequences that are likely to follow, may follow. We are not here to consider any such contingency or event. Equally, the undertaking by the petitioner as insisted by the Pune Zilla Parishad does not mean that without adherence to the statutory provisions and Rules it can withdraw the Scheme straightway. If there are any powers conferred in the Zilla Parishad to withdraw the Scheme or to frame some other Scheme, then, that issue would be dealt with independently. Neither of the above event have occurred and

during the subsistence of this Writ Petition. Therefore, the Pune Zilla Parishad cannot insist on the petitioner to furnish any undertaking. To that extent, we agree with Mr. Kulkarni that pension which is admissible to the petitioner and is earned by him for his blemishless and meritorious service cannot be denied by insisting on such undertaking. Therefore, the petitioner will not be required to furnish any undertaking to obtain pensionary benefits including any arrears and which are admissible under the same.

11. By accepting Mr. Rairkar's statement as an undertaking to the Court, we direct that the arrears shall be released within a period of two weeks from today. All benefits in the form of pension etc. and admissible under the Pune Zilla Parishad Pension Scheme shall be made admissible and the amounts in that regard be released in favour of the petitioner. The said Pension Scheme would continue to govern the petitioner. The Writ Petition is disposed of in these terms but without any order as to costs.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)