

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO. 9182 OF 2016

The Transport Manager,

Solapur Municipal Corporation and Anr.

... Petitioners

Vesus

Shivappa Balappa Chincholkar

... Respondent

Mr.Vijay Killekar for the Petitioners.

Mr.Prasad Kulkarni a/w. Mr. Raghvendra Kulkarni for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 7TH DECEMBER, 2017

P.C.:

1. The above Writ Petition is filed by the Transport Manager, Solapur Municipal Corporation (Petitioner No. 1) and Solapur Municipal Corporation (Petitioner No. 2) against one Shri Shivappa Balappa Chincholkar (the Respondent) under Articles 226 and 227 of the Constitution of India by challenging the Judgment and Order dated 9th March, 2016 passed by the learned Member, Industrial Court, Solapur in Complaint (ULP) No. 30 of 2014.

2. By the impugned Judgment and Order dated 9th March, 2016, the learned Member has allowed Complaint (ULP) No. 30 of 2014 by holding / declaring that the Petitioners have committed unfair labour practices under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred to as 'MRTU and PULP Act, 1971') and

directing the Petitioners to forthwith cease and desist from doing so. The Petitioners are further directed to jointly and severally determine the amount of pension payable to the Respondent and pay the arrears of unpaid pension amount along with interest at the rate of 10 per cent per annum from 1st April, 2008 till the realization of the same in full, to determine the amount of gratuity payable to the Respondent and pay the same along with interest at the rate of 10 per cent per annum from 1st March, 2009 till the realization of the same in full and to fix and pay the monthly pension to the Respondent within a period of two months.

3. According to the Petitioners, the Respondent came to be appointed as a substitute Driver with Petitioner No. 2 in the year 1988 on a temporary basis. In 1992, the services of the Respondent were transferred from Petitioner No. 2's establishment to Petitioner No. 1 and the Respondent came to be regularized in service from 8th December, 1998 onwards. On 29th February, 2008, the Respondent, upon attaining the age of superannuation, retired from service. Though according to the Respondent he completed 20 years and 08 months service with the Petitioners, according to the Petitioners, the service rendered by the Respondent after his confirmation, after deducting his leave without pay, was 08 years, 05 months and 26 days.

4. According to the Petitioners, since the Respondent did not serve with the Petitioners for a period upto 10 years, his services could not be treated as qualifying service for the purpose of pension and as such, the benefit of pension and gratuity was denied to him.

5. According to the Respondent, since the Petitioners denied him the benefit of pension as well as gratuity, the Petitioners have committed unfair labour practices under Schedule IV, Item Nos. 9 and 10 of the MRTU and PULP Act, 1971. The Respondent therefore filed Complaint (ULP) No. 30 of 2014 before the Member, Industrial Court, Solapur against the Petitioners seeking payment of pensionary benefits along with interest at the rate of 18 percent per annum from the date of his retirement.

6. Petitioner Nos. 1 and 2 filed their Written Statement and submitted that the Complaint filed by the Respondent is not maintainable and there is no cause of action to file the Complaint. It was submitted on behalf of the Petitioners that there is no employer-employee relationship between the Respondent and Petitioner No. 2 and on that count, the Complaint of the Respondent is to be dismissed.

7. As set out hereinabove, Complaint (ULP) No. 30 of 2014 filed by the Respondent was allowed by the learned Member, Industrial Court, Solapur and the Petitioners were given directions which are set out in paragraph 2 above.

8. The Petitioners have therefore filed the present Writ Petition and have submitted that the learned Member, Industrial Court, Solapur failed to appreciate that as per the provisions of Maharashtra Civil Services (Pension) Rules, 1982, the Respondent, who has rendered service of 08 years, 05 months and 26 days, is not entitled to receive pension on account of non-completion of pensionable service. It is submitted on behalf of the Petitioners that the learned Member, Industrial Court,

Solapur failed to consider that the Respondent was working since the year 1988 as substitute Driver and he was appointed as regular Driver with effect from 8th December, 1998 and therefore, services of the Respondent prior to the said date as substitute Driver could not have been counted for computation of qualifying service. It is therefore submitted on behalf of the Petitioners that the learned Member erred in passing the impugned Judgment and Order.

9. On behalf of the Respondent, it is submitted that the Complaint of the Respondent is allowed by giving cogent reasons. The impugned Order passed is in accordance with law and this Court may not interfere with the same under Articles 226 and 227 of the Constitution of India.

10. I have gone through the Writ Petition as well as the impugned Judgment and Order passed by the learned Member, Industrial Court, Solapur dated 9th March, 2016.

11. The learned Member has first recorded the admitted facts in the matter as under :

“(a) The complainant was initially appointed as badali driver in the year 1988 and his services were transferred to the respondent No. 2 upto the year 1992.

(b) The services of the complainant were transferred to the respondent no. 1 i.e. the transport department of the respondent no. 2 in the year 1992 where he served as driver upto 29/02/2008.

(c) The complainant was made permanent on the post of driver

with the respondent no. 1 on 08/12/1998”.

12. The learned Member has thereafter correctly recorded that the crux of the matter is whether the clubbing of the temporary services rendered by the Respondent with that of his service on permanent basis can be said to be a qualifying service for getting pension or not. The learned Member has proceeded to record that it is the case of the Respondent that in all he has completed 20 years and 08 months service with the Petitioners, whereas according to the Petitioners, after confirmation of the Respondent, the service rendered by him, after deducting his leave without pay, is 08 years, 05 months and 26 days i.e. less than 10 years and therefore his services cannot be treated as qualifying service for the purpose of pension and that the benefit of pension was rightly denied to the Respondent. Thereafter, the learned Member, after considering the evidence of the Respondent and his cross-examination, has referred to Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982, which reads as under :

“30. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that at the time of retirement, he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency”.

The learned Member has therefore held that, having regard to the Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982, it becomes evident that even if a temporary servant has put in 10 years service, he is entitled to the pensionary benefit like retirement pension as well as gratuity, so also, family pension at the same scales as available to the permanent government servants.

13. The learned Member has drawn support from the decision of the Division Bench of this Court in the case of **Manakandey s/. Ghurkappa Ayalawar V/s. Zilla Parishad Chandrapur & Ors (1996 II CLR 372)**. That was the case in which the Zilla Parishad Chandrapur denied the pensionary benefits like retiring pension, retirement gratuity and family pension to the writ petitioner on the ground that the petitioner did not render qualifying service of 10 years. It was the stand taken by the Zilla Parishad that the Petitioner was in service for 9 years and 27 days and as he has not completed 10 years service, he is not entitled to receive the pensionary benefits. This Court in the said matter, after referring to Rule 30 of the Maharashtra Civil Service (Pension) Rules, 1982, recorded that both the parties agree that even a temporary servant, who has put in 10 years service, is entitled to the pensionary benefits like retiring pension, retirement gratuity and family pension at the same scales as available to the permanent government servants.

13. The learned Member has, in his Judgment and Order, also relied on Rule 33 of Maharashtra Civil Service (Pension) Rules, 1982, according to which, even if the

government servant was in temporary service or officiating service without interruption by confirmation in the same or another post, he is entitled to the pension benefits as the said period shall count in full as service qualifying for pension. The said Rule No. 33 reads as under :

“33. Service tendered under Government followed without interruption by confirmation counts in full as service qualifying for pension.

A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in Rule 57”.

14. After taking into consideration Rule Nos. 30 and 33 of the Maharashtra Civil Service (Pension) Rules, 1982, the learned Member has held that the Respondent rendered services for more than 20 years and 08 months, including therein the period of his temporary services without interruption and that the same can be counted as full tenure by which, it can be said that he had rendered services of more than 10 years which is qualifying service for claiming the pensionary benefits as well as the retiring gratuity. The learned Member has relied on the Judgment of the Division Bench of this Court in the case of **Road vs. The Marathwada Agricultural decided on 3rd August, 2011 in Writ Petition NO. 2074 of 2010** wherein this Court observed as

follows :

“16. Similarly, in the case of “Waliuddin S/o. Pashasaheb V/s. The State of Maharashtra and another in Writ Petition No. 1542 of 2008 decided on 25th August, 2010, the Division Bench has after considering the judgments in the case of Parasuram (Supra), Shivappa (Supra) and in another case Shankarlal Nandkishore Dhama V/s. State of Maharashtra and another reported at 2003 (2) Bom. C.R. 294) has held that the service rendered by an employee of the Municipal Council on a temporary basis must be clubbed with his service as a permanent employee for the purpose of the payment of pension.”

16. According to the learned Member, the Petitioners have misinterpreted the provisions of the Maharashtra Civil Service (Pension) Rules, 1982 and therefore, the Respondent is entitled to be compensated by awarding some interest. The said denial is against the provisions of Rule 30 and Rule 33 of Maharashtra Civil Service (Pension) Rules, 1982 and hence by denying the pension and gratuity to the Respondent, the Petitioners have committed unfair labour practices under Item Nos. 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. The learned Member therefore passed the order as set out in paragraph 2 above.

17. In view of the above, it is clear that the Judgment of the learned Member is supported by cogent reasons and is based on correct interpretation of law. The question therefore of this Court interfering with the said decision under Articles 226

and 227 of the Constitution of India does not arise and the above Writ Petition is dismissed with costs.

(S.J.KATHAWALLA, J.)