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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10471 of 2014.

1) Shri Vikar Ansar Shaikh aged 55 years, occupation service (under suspension) R/o Nishigandha Apartment, Flat No.2, Bhabha Nagar, Kauth Ghat, Nashik.

2) Shri Chandrkant Hiraman Lodhe, age 60 years, Occupation retired, r/o Mayuresh Apartment, Row House No.2, Opp. Mahila Bank, Indira Nagar, Nashik.

3) Shri Suryabhan Chindhu Abhang, age 58 years, Occupation retired, r/o Room No.139, Bhor Township, Jadhav Sankul, Ambad Link Road, Nasik.

4) Shri Tatya Rama Wagh, Aged 56 years, Occupation Service, R/o N-32, N-5, 17/1 Swami Vivekanand Nagar,

New CIDCO, Nashik-9.

5) Shri Raghunath Motiram Choudhari, age 46 years, Occupation Service, M-53, VG-24/7, Patil Nagar, NEW CIDCO, Nasik.

6) Shri Ashok Gangaram Lokhande,
age 53 years, Occupation Service, R/o N-41, AF2, 15/5 Sai Baba Nagar, New CIDCO, Nasik.

7) Shri Ramesh Sitaram Bhalerao,
age 52 years, Occupation service, r/o N-42, CB-3, 11/1, Datta Mandir, New CIDCO, Nasik.

8) Shri Chintaman Parbhat Patil
aged 56 years, Occupation service, N-32, R-4, 7/3 Baji Prabhu Chowk, New CIDCO, Nasik.

9) Shri Ramrao Baburao Bhadane,
age 55 years, Occupation Service, R/o Rohan, P.O. Jabapur, Taluka Sakri,

District Dhule.

10) Shri Raju Jagannath Somwanshi, aged 53 years, Occupation Service, R/o A/P. Dusane, Taluka Sakri, District Dhule.

11) Shri Pandharinath Sonu Malpure, aged 58 years, Occupation Service, R/o N-42, JC-2, 12/3 Raigad Chowk, Pawan Nagar, Nasik.

12) Shri Suresh Nimba Deshmukh, aged 50 years, Occupation Service, C/o Zilla Parishad, Kolhapur.

13) Shri Narayan Shivram Deore, aged 56 years, Occupation Service, C/o Zilla Parishad, Kolhapur. **PETITIONERS**

VERSUS

1) The State of Maharashtra Through: the Secretary, Planning Department, Mantralaya, Mumbai 400 032. **RESPONDENTS**

2) The Secretary,
Public Works Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.

Mr. Narendra V. Bandiwadekar for the Petitioners.
Mr. Prashant P. More, Asstt.Govt. Pleader Writ Cell R.No.1 and 2 for the Respondents.

CORAM : S.C. DHARMADHIKARI & SMT. BHARATI H. DANGRE, JJ.

RESERVED ON:- 30th October, 2017.

PRONOUNCED ON:- 13th November, 2017.

JUDGMENT (PER: SMT. BHARATI, H. DANGRE,J)

1 The petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking directions to the respondents to take into consideration the services rendered by them as Muster Assistants and by taking into account said service confer retirement benefits upon them by counting total length of service. The petitioners are

aggrieved by a Circular issued by the Planning Department of State of Maharashtra, thereby clarifying that the service rendered by the Mustering Assistants is not entitled to be counted as pensionable service for conferring the pensionery benefits.

2 The service graph of Muster Assistants in the State of Maharashtra has a chequered history. The Muster Assistants were recruited in the Irrigation Department / Public Works Department of the State and these appointments were made on Employment Guarantee Scheme (EGS) and continued for a considerable long period of time. On recruitment, the Muster Assistants were paid consolidated salary of Rs.500/- per month in terms of Government Resolution dated 25th April, 1989 issued by the Department of Planning, State of Maharashtra. Some of the Muster Assistants approached Nagpur Bench of this Court by filing proceedings demanding salary in the regular Pay Scales instead of the consolidated pay. The said petition was transferred to the Maharashtra Administrative Tribunal (MAT)

on its constitution and the Tribunal on 24th September, 1991 issued interim directions directing the State Government to pay salary to the Muster Assistants in the pay scale of Rs.750-12-870-EB-14-940 with effect from 1/10/1991 subject to final outcome of the proceedings. To implement the interim order the State Government issued a resolution on 6th May, 1992 and placed the Muster Assistants in the pay scale of Rs.750-940 with effect from 1/10/1991. The Tribunal finally allowed the Original Application and directed conferment of the said pay scales with effect from 1/10/1988 and in compliance, the State Government issued a resolution on 22nd February, 1993, thereby conferring pay scale of Rs.750-940 to the Muster Assistants with retrospective effect from 1st October, 1988. The State Government also directed payment of Dearness Allowances to them and all the Muster Assistants in the State of Maharashtra were paid the differential amount.

3 Several writ petitions came to be filed in this Court and before its Benches by which the Muster Assistants sought

regularization and claimed that they are entitled for absorption in Government service. In view of the fact that the services of the Muster Assistants were no longer required, the State Government took a policy decision to put an end to their services by offering them Rs. 1000/- salary and on payment of exgratia amount and by issuing resolution on 26th May, 1993. However, the same was subject matter of challenge in a petition before the Principal Seat at Mumbai, Aurangabad Bench and before the Maharashtra Administrative Tribunal, the Tribunal by its order dated 15th September, 1993 by way of interim directions directed that in cases where the work under Employment Guarantee Scheme had come to an end and the Muster Assistants had become excess till that time when the work is made available to them, the State Government is at liberty to end their services. However, being aggrieved the Muster Assistants approached the Hon'ble Apex Court by filing Special Leave Petition. The Apex Court approved the decision, however, directed that while putting an end to the services of Muster Assistants the rule of seniority should be followed. However, the

State Government sympathetically considered the issue of absorption of Muster Assistants taking into consideration the drastic effect of putting an end to the services of Muster Assistants who had rendered long services as such and therefore the State Government came up with a Government Resolution on 1st December,1995 resolving that those Muster Assistants who were working on 31st May, 1993 should be absorbed in various equivalent posts in various Departments of the State Government and till the time of their absorption their services would be utilized for various projects including water conservation, horticulture programme under the EGS Scheme. By the said Government Resolution, it was directed that those Muster Assistants who were working as on 31st May, 1993 based on their seniority would be absorbed in Government/Zilla Parishad Services on the posts equivalent and bearing the pay scale of Rs.750-940 subject to satisfying of the eligibility criteria for the said posts. For the purposes of effective absorption into Government services, the criteria for age limit was relaxed. The said Scheme contained in the Government Resolution was approved by the Hon'ble Apex Court by its order dated 2nd December, 1996 and directed that those employees who fall within the parameters of the scheme should be similarly treated so that the possibilities of the individuals coming for redressal under the scheme may not arise as they would only create litigation. After the orders of the Hon'ble Apex Court, the State Government implemented the Scheme to absorb such Muster Assistants, throughout the State and even issued a resolution on 21st April, 1999 providing that such absorption can also be made in Group "C" post if the Muster Assistants possess the requisite educational qualification prescribed for said post. The Government Resolution further directed that the Muster Assistants would be entitled for house rent allowance and annual increments as per the prevailing orders.

4 In the light of the decision rendered by the Tribunal, the Hon'ble High Court as well as the Government Resolutions issued from time to time implementing the said decision, the Muster Assistants in the State came to be absorbed in

Government/Zilla Parishad and the petitioners before us who were also appointed Muster Assistants were absorbed on various dates in various posts in Zilla Parishad or State Government. From the date of their absorption they were treated as Government servants.

5 The grievance of the petitioners is that though the decision was taken by the Government to absorb the Muster Assistants, no decision was taken on the issue whether the period of service rendered by them as Muster Assistants should be counted for retirement benefits or not. According to the petitioners, there was no uniformity in the decision of the State Government in reference to counting of service rendered as Muster Assistants prior to absorption in Government service and for the purposes of grant of pension and other retirement benefits.

6 Perusal of the petition reveals that on 15th April, 2009 the State Government through the Planning Department issued

a Circular taking note of the fact that in spite of the Government Resolution dated 1st December, 1995 some Muster Assistants have been conferred the benefit of counting the said service rendered as Muster Assistants as qualifying service for granting the pensionery benefits. The circular clarifies that the service rendered by the Muster Assistants as such is not pensionable service. The said circular was issued in the name of the Governor of State of Maharashtra.

7 In the present writ petition, the petitioners have chosen not to pose a challenge to the said Circular but prayer is made for directions to the respondents to take into consideration the service rendered by them as Muster Assistants before their absorption into Government service/Zilla Parishad and to confer the pensionery benefits on them by counting the entire service rendered by them. According to the petitioners, the service rendered by them as Muster Assistants is ranging from 14 to 22 years and if the said service is not counted, some of the Muster Assistants are not even eligible for

pension at all since they did not have the minimum qualifying service and some of them are entitled for very less pension by taking into consideration the pensionable service reckoned from the date of their absorption. The petitioners claim that circular issued by the State Government on 15th April, 2009 causes grave injustice to them and they approached this Court for redressal of their grievance.

8 We have heard learned Counsel Shri Narendra Bandiwadekar appearing for the petitioners who canvassed before us that the chart annexed with the petition reflects that the petitioners have rendered long length of service as Muster Assistants before their absorption and for example petitioner no.2 has rendered 21 years of service as muster assistant. However, on the date of his absorption from 2nd October, 2003, till his retirement the service rendered by him is only nine years and since petitioner No.2 did not have ten years service to his credit he is not entitled for pension. The learned Counsel for the petitioners would argue that the State Government has taken a

conscious decision to absorb the petitioners into Government service and once if decided to absorb them into Government service, the State Government cannot deny the service rendered by them as Muster Assistants which was also with the State Government and in a regular pay scale. As against the submissions of the Counsel for the petitioner, Shri Prashant More, learned AGP appearing on behalf of the State Government denies the claim of the petitioners by referring to the affidavit filed on behalf of Respondent No.1. The learned AGP relying upon the said affidavit would argue that the State Government had constituted a Committee under Chairmanship of Divisional Commissioner in each Division to effectively absorb the Muster Assistants from seniority list prepared by the Collector taking review of the vacancies in the District or Division and the Government had seriously implemented the decision of absorption. The affidavit also states that the Government have gone to the extent of creating supernumerary posts in the parent department to absorb the Muster Assistants. However, it is the contention of the State Government that the pay scale of

Rs.750-940 given to the Muster Assistants is not as per the Maharashtra Civil Service (Pay) Rules but it is conferred on them in view of the directions issued by the MAT. Our attention is also invited to Schedule "A" of the said Government Resolution where it is clearly stated that the MCSR are not applicable to the Muster Assistants. It is also the stand of the State Government that the service rendered on the EGS work cannot in any way be treated as regular and continuous service and the Muster Assistants cannot be treated as Government servants. The respondents also placed reliance on the judgment of this Court delivered by Aurangabad Bench on 16th July, 2007 and submits that the said issue has already been decided by the Division Bench of this Court and prays for dismissal of the writ petition.

9 We have perused the entire gamut of the matter and the undisputed facts involved. It is not in dispute that the State Government resolved to absorb the Muster Assistants into Government service and formulated a scheme for absorption of such Muster Assistants who were in service on 31st May, 1993 by issuing Government resolution on 1st December, 1995. By

the said Government Resolution the State Government framed a Scheme for absorption of such Muster Assistants and also constituted a Divisional Level Committees for effectively implementing the decision of the State Government. Perusal of the said Government Resolution reveals that it contained clause 5.2 which reads as follows :-

> *"The Muster Assistants will not be entitled for any benefits or facilities applicable to a Government servant except the pay scale which they are presently drawing and they will not be recognized as Government employees."*

Further the Government Resolution dated 21st April, 1999 in clause no.5 provides as follows :-

> "The Muster Assistants working under the EGS Scheme are not Government Employees and therefore the Maharashtra Service Rules as well as the Rules applicable to the State Government employees are not applicable to them. Therefore, the benefits of 5th Pay Commission will not be made applicable to them."

10 Perusal of the Government resolutions which contain the scheme of absorption of Muster Assistants into Government service clearly stipulates the absorption of Muster Assistants on the posts equivalent in the pay scale of Rs.750-940 in the State Government or Zilla Parishad and on absorption they were held entitled for house rent allowance and other allowances with effect from 1st April, 1999. The absorption of the Muster Assistants was however subject to the rider that Muster Assistants working under the EGS are not Government servants and Maharashtra Civil Services Rules are not applicable to them.

The claim of the petitioners is to count the service rendered by them as Muster Assistants and attaching the said service to the service rendered by them as Government servant on absorption and calculate the pensionery benefits by taking into consideration the entire length of service as qualifying service. We find said argument to be misconceived for more than one reason. The Government Resolution which provides for absorption of Muster Assistants dated 1st December, 1995 and further Government Resolution dated 21st April, 1999 clearly spelt out that the Muster Assistants are not Government servants. The Maharashtra Civil Services (Conduct) Rules defines "Government servant" to mean;

> *Rule 2 (b) : "Government servant" means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra and includes a Government servant whose services are placed at the disposal of a company, corporation, organisation, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the consolidated Fund of the State;*

The service conditions of Government servant are governed by the Rules framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India and for the purposes of conferring the pensionery benefits, the Maharashtra Civil Services Pension Rules 1982 were made applicable. Rule 2 of the said Rules of 1982 provides for extent of application of the said Rules, we gainfully reproduce the said Rule 2 as below:

2. Extent of application :

Except where it is otherwise expressed or implied, these rules apply to all members of services and holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe. They shall also apply to :

> *"(a) any person for whose appointment and conditions of employment special provision is made by or under any law for the time being in force.*
>
> *(b) any person in respect of whose service, pay and allowances and pension or any of them special provision has been made by an agreement made with him, in respect of any matter not covered by the provisions of such law or agreement, and*
>
> *(c) Government servants paid from Local Funds administered by Government, except rules relating to the foreign service."*

Rule 9 of the said Rules of 1982 defines certain terms and the definition of the term "pensionable pay" and "pensionable service" requires a reference here. Rule 9 (38) defines “pensionable pay”. “Pensionable Pay” means the average pay earned by a Government servant during the last one month's service. Rule 2 (39) defines “pensionable service” “Pensionable Service” means service which qualifies the Government servant performing it to receive a pension from the Consolidated Fund.

Perusal of the provisions contained in Chapter V of the said Rules of 1982 which provides for “qualifying service” and contains detail provision for commencement of qualifying service and for counting of various parts of Government service for pensionery benefits makes it aptly clear that the said rules are applicable to a “Government servant” who substantially holds a permanent post as a Government servant. The term “Government Service” has a definite connotation and meaning and the petitioners / Muster Assistants cannot claim to be “Government servants” in view of the fact that they were not appointed to any civil service or post in connection with the affairs of the State of Maharashtra. At the time of their absorption into the Government service, it was made clear that the posts held by them as Muster Assistants was not a Government post and the service rendered by the petitioners are therefore not Government service which would not make the said service to be counted as the Government service. The Maharashtra Civil Services (Pension) Rules therefore cannot be made applicable to the petitioners and they cannot derive benefit of the said Rules when they were not Government servants and from the day the Muster Assistants became Government servant the pension rules are made applicable to them.

In arriving at the aforesaid conclusion, we are fortified by judgment delivered by this Court, Bench at Aurangabad in Writ Petition No. 619 of 2006 in case of Shivhar & Anr Vs. State of Maharashtra (Coram: Naresh H. Patil and R.M.Borde, JJ) on 16th July, 2007 wherein similar issue arose and the petitioners before the Court who were working as Muster Assistants sought a declaration that they are eligible and entitled for pensionery benefits in view of provisions of Rule 33 of MCSR (Pension) Rules, 1982 from the respective dates of their retirement. After exhaustively dealing with Rule 33 of Pension Rules, the Division Bench held that in view of the Government Resolution dated 21st April, 1999; wherein the stand was taken to the effect that service conditions applicable to Government employees would not be applicable to the Muster Assistants who are absorbed in regular service, the Court did not find any flaw in the policy adopted by the State Government and had dismissed the petition.

For the aforesaid reasons, we are disinclined to confer any benefit on the petitioners as claimed by them in the present writ petition and we are of the firm opinion that the writ petition deserves dismissal. Hence, the writ petition is dismissed. No order as to costs.

[SMT.BHARATI H. DANGRE,J.] [S.C. DHARMADHIKARI, J.]