

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.933 OF 2012

Jagjeevan Jaikumar Sanghai,
Age-63 years, Occu:Nil-Retired,
R/o-Subhash Road,
Near Marwadi Jain Mandir,
Parbhani-431 401,

(Petitioner since deceased
through Legal Heirs:)

- 1) Smt. Asha w/o Jagjeevanrao Sanghai,
Age-58 years, Occu:Nil,
R/o-Subhash Road,
Near Marwadi Jain Mandir,
Parbhani-431 401,
- 2) Govind s/o Jagjeevanrao Sanghai,
Age-39 years, Occu:Service,
R/o-Subhash Road,
Near Marwadi Jain Mandir,
Parbhani-431 401,

...PETITIONERS

VERSUS

- 1) Parbhani Municipal Corporation,
Parbhani, Through its Commissioner,
- 2) The Divisional Commissioner,
Aurangabad Revenue Division, Aurangabad
AND the Regional Director of
Municipal Administration,
Aurangabad,

- 3) The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032.

...RESPONDENTS

...

Mr.Ajay S. Deshpande Advocate for Petitioners.
Mr.S.S. Bora Advocate for Respondent No.1.
Mrs.V.S. Chaudhari, A.G.P. for Respondent
Nos.2 and 3.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 21ST FEBRUARY, 2018

DATE OF PRONOUNCING JUDGMENT: 14TH MARCH, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Petition under Article 226 of the
Constitution of India is filed with following
substantive prayer:

"By appropriate writ, order or
direction, the impugned communication
dated 28.3.2011 at Exh.'I' issued by
the erstwhile Chief Officer, Municipal
Council, Parbhani - now R-1 herein, may

kindly be quashed and set aside by directing R-1 to calculate the pension and pensionary benefits to the Petitioner by taking into account past service of the petitioner rendered on adhoc basis from January, 1989 till August, 2001, which was eventually followed by his permanent absorption in a substantive capacity by an order dated 31.8.2001, by extending him the benefits of upgradation of pay and pension as per the revised pay scales of VI Pay Commission."

2. It is the case of the Petitioner - Jagjeevan Jaikumar Sanghai that his father was working under Respondent No.1 which was then Municipal Council. In order to provide a source of livelihood to the family after the death of his father, the Petitioner came to be appointed, in January, 1989. The initial appointment of the Petitioner was as Junior Clerk on temporary basis, and on daily wages. The Petitioner's appointment was continued on ad-hoc basis only in view of the

Resolution passed by the Standing Committee on 2nd September, 1991 to that effect, and also by the general body of the erstwhile Municipal Council dated 5th August, 1992. It is submitted that since 1991 the services of the Petitioner although continued to be ad-hoc, were without any interruption and without any break. It is further submitted that under the orders dated 31st August, 2001, issued by the Divisional Commissioner, Aurangabad Revenue Division, Aurangabad and the Regional Director of Municipal Administration, Aurangabad, the services of the Petitioner were regularized/ absorbed on the establishment of then Parbhani Municipal Corporation, in pursuance of the provisions of Section 76(1) and (2) of the Maharashtra Nagar Parishads, Panchayat Samitees and Industrial Township Act, 1965 (for short "Act of 1965"). In furtherance of the said order of absorption, the Municipal Council, Parbhani has issued an office order dated 27th September, 2001, thereby appointing the Petitioner on permanent

basis as clerk in Class-III in the pay-scale of Rs.3050-75-3950-80-4590. It has been stated in the order of permanent absorption of the Petitioner that, no benefits either financial or services rendered on daily wages, would be considered.

3. It is further submitted on behalf of the Petitioner that after the Petitioner was brought on regular establishment vide order dated 27th September, 2001, thereafter he retired on attaining the age of superannuation on 31st July, 2006. As some of the employees of the erstwhile Municipal Council were extended the benefit of pension, which was not extended to the Petitioner, he submitted representation to the Chief Officer, Parbhani Municipal Council, Parbhani, requesting to extend the benefit of pension by taking into account the services rendered on daily wages from January, 1989. However, the Petitioner has not been paid any terminal benefits or pensionary benefits, upon his retirement on attaining the age

of superannuation in July, 2006.

4. It is further submitted on behalf of the Petitioner that, in order to entitle an incumbent to receive pension under the Maharashtra Civil Services (Pension) Rule, 1982 (for short "MCS Rules"), especially Rule 33 thereof provides that services rendered continuously without interruption by confirmation counts in full as qualifying for pension. The only exceptions for counting such services have been carved out under Rule 57 of the MCS Rules which has been incorporated as an Exception to Rule 30. In the Rules, the only requirement is that, at the time of retirement the incumbent should hold a permanent post substantively. It is further submitted that the claim of the Petitioner for pensionary benefits has been rejected by Respondent No.1 vide communication dated 28th March, 2011. Hence this Petition is filed by the Petitioner.

5. Learned counsel appearing for the Petitioner submits that in the year 1989 the Petitioner came to be appointed as a clerk on daily wages, on ad-hoc basis. By a Resolution of the Standing Committee of Respondent No.1-Municipal Corporation, the services of the Petitioner came to be continued on ad-hoc basis and since then the Petitioner has rendered uninterrupted services without any break till he was absorbed by order dated 31st August, 2001. It is further submitted that on 31st July, 2006, the Petitioner retired on attaining the age of superannuation, but the Petitioner was not given the pensionary benefits. It is submitted that by order dated 28th March, 2011, Respondent No.1 conveyed the Petitioner that his services having been regularized as a special case with a specific condition that he shall not be entitled to benefit of past service, the Petitioner cannot be granted pension. Learned counsel submits that as per the

provisions of MCS Rules and especially Rules 30 and 57, the Petitioner is entitled to pension and pensionary benefits, by counting his earlier service rendered from January, 1989 till August, 2001. Learned counsel therefore submits that the Petition deserves to be allowed. In support of his submissions, learned counsel placed reliance upon the exposition of law by the Supreme Court in the case of State of U.P. and another vs. Narendra Bahadur Singh and others¹. Learned counsel also placed reliance upon the exposition of law by the Division Bench of this Court in Judgment dated 31st March, 2015, in the case of Satish Ganpatrao Patil and others vs. the State of Maharashtra and others (Writ Petition No.2311 of 2013), Judgment dated 21st September, 2010, in Shivaji s/o Jyotiba Pawar and another vs. the State of Maharashtra and others (Writ Petition No.2016 of 2010), Judgment dated 24th August, 2011, in Syed Afzaluddin Ustad s/o Abdul Samad vs. the State of Maharashtra and

¹ 2011(12) SCC 474

another (Writ Petition No.815 of 2011), in Parshuram Vithoba Bhandare vs. State of Maharashtra and another².

6. On the other hand, learned counsel appearing for Respondent No.1 Municipal Corporation, referring to the affidavit in reply filed, submits that the Petitioner was initially appointed on humanitarian grounds and that too on purely temporary basis for the period of 45 days only and thereafter his services were discontinued and again, in the year 1991, by way of resolution passed by the then Municipal Council, Parbhani, he was appointed on compassionate ground, that too on daily wages. Since the date of his appointment on daily wages, the Petitioner has been continued from time to time by issuing fresh orders for the particular period only. In the year 2001, a policy decision was taken by the State Government whereby it was decided to absorb 252 employees of the

² 2001(4) Mh.L.J. 587

Municipal Council, Parbhani, who were working on daily wages in the permanent post, on certain conditions, which the concerned employees were required to accept as a precondition for the appointment on the permanent post. One of the condition was that, the employees will not claim any monetary or service benefit of the past service rendered by them on daily wages and all the employees have given sworn in affidavits, to that effect. The Petitioner has also tendered such affidavit, and as such now the Petitioner is not entitled to claim the pension on the basis of the service rendered by him on daily wages.

7. Learned counsel further submitted that in fact the Petitioner has alternative and efficacious remedy as available in law for redressal of his grievances and therefore the present Petition is not tenable. It is further submitted that the claim of petitioner in respect of 6th Pay Commission for the period of 7 months

is concerned, the same is under consideration of Respondent No.1 and the process of preparing the bill of difference is in progress and same will be paid as soon as the funds are available. It is further submitted that there is delay of almost six years in approaching this Court and the same has not been explained by the Petitioner and therefore it is submitted that the Petition deserves to be dismissed. Learned counsel further submits that if today the Petitioner is allowed to claim benefits of his past service as daily wager, that too, against his acceptance of service condition, then other 252 employees who are similarly situated, will also claim the said benefit and there will be heavy financial burden and as such the said prayer of the Petitioner cannot be accepted. Learned counsel therefore prayed that the Writ Petition may be rejected. In support of his aforesaid submissions, learned counsel placed reliance upon the exposition of law by the Supreme Court in the case of Union of India

vs. Keshab Lal Roy³.

8. We have considered the submissions of the learned counsel appearing for the Petitioner, learned counsel appearing for Respondent No.1 Municipal Corporation and also learned A.G.P. appearing for Respondent Nos.2 and 3. With their able assistance, we have carefully perused the pleadings, averments in the Petition, annexures thereto, the reply filed on behalf of Respondent No.1, annexures thereto, the exposition of law laid down in the reported and unreported Judgments, copies of which are placed on record.

9. It is pertinent to note that similar issue was raised before the Division Bench of this Court (CORAM: B.R. GAVAI AND M.T. JOSHI, JJ.), in Writ Petition No.815 of 2011 (Syed Afzaluddin Ustad s/o Abdul Samad vs. the State of Maharashtra and another). The brief facts in the case of Syed

³ 1996(10) SCC 326

Afzaluddin Ustad, referred above, were that, the Petitioner therein was Class-IV employee on daily wages with Respondent No.2 - Municipal Council, Udgir since the year 1987. His services came to be regularized along with number of other similarly situated employees vide Respondent No.1 - Government of Maharashtra's direction dated 29th December, 2000. He was superannuated on 31st August, 2005. At the time of regularizing the services, Respondent No.1 had declared that none of the employees shall claim any financial or other benefits by counting the earlier service rendered by them on daily wages. Therefore, the request of the Petitioner, therein, for grant of pension was refused.

10. Division Bench of this Court (CORAM: B.R. GAVAI AND M.T. JOSHI, JJ.), in Writ Petition No.815 of 2011, referred above, in Para Nos.5, 6, 7 and 8 of the Judgment dated 24th August, 2011, held as under:

"5. In the present case, the petitioner is relying over the provisions of Rule 57 and more particularly note 1 of the said Rules for computation of past services. Therefore, there cannot be estoppel against the statutory instrument.

6. Besides this, the petitioner has relied in the similar declaration made by the Division Bench of this Court presided over by the Hon'ble the Chief Justice in Writ Petition no. 1542 of 2008 dated 25.8.2010. In the said case, another employee of respondent no.2-Municipal Council, Udgir sought the similar relief, whose services were also regularised by the respondent no.2. When his similar claim was refused by the respondent no.2 in the Writ Petition, he relied over the provisions of Rule 57 Note 1 of the said Rules and this Court has allowed the Petition.

7. In view of the above circumstances, the Petition will have to be allowed and the benefits of provisions of note 1 of Rule 57 of the said Rules will be applicable in his case. Accordingly, we hold that the half of the services of the petitioner rendered

between 16.2.1987 to 29.12.2000 are entitled to be counted for determining the pensionable service of the petitioner. If that is counted, the service of the petitioner comes to more than 10 years. In that view of the matter, we hold that the petitioner is entitled to pensionary benefits. The respondents shall take necessary steps for giving the pensionary benefits to the petitioner within a period of two (2) months from today and start making actual payment of the pension within a period of three (3) months from today.

8. It is further directed that all arrears of the pension shall be cleared within a period of six (6) months from today. Rule is made absolute in the above terms."

11. The facts in the present case are similar to that of the facts in Writ Petition No.815 of 2011, referred above. The Petitioner herein was also working on daily wages since 1989 and his services were regularized by order dated 31st August, 2001 and the Petitioner stood retired on attaining the age of superannuation on 31st July,

2006. His earlier service before regularization was not counted and he was denied the pensionary benefits. However, during the pendency of this Petition, the Petitioner - Jagjeevan Jaikumar Sanghai expired and his legal representatives are brought on record.

12. Taking the same view and for the same reasons as stated in the Judgment and Order dated 24th August, 2011 passed in Writ Petition No.815 of 2011, referred above, we pass following order:

O R D E R

(I) The Writ Petition is allowed.

(II) We hold that half of the services of the Petitioner - Jagjeevan Jaikumar Sanghai, rendered between 10th January, 1989 to 31st August, 2001 are entitled to be counted for determining the pensionable service of the Petitioner. If that is counted, the service of the Petitioner comes to more than 10 years.

In that view of the matter, we hold that the Petitioner- Jagjeevan Jaikumar Sanghai, is entitled to pensionary benefits.

(III) The Respondents shall take necessary steps for giving pensionary benefits of the Petitioner within a period of two (2) months from today and start making actual payment of the pension, to the legal heir of the Petitioner - Jagjeevan Jaikumar Sanghai, within three (3) months from today.

(IV) It is further directed that all the arrears of the pension shall be cleared within a period of six (6) months from today.

(V) Rule is made absolute on above terms. The Writ Petition stands disposed of, accordingly.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

. After pronouncement of the Judgment, learned counsel appearing for Respondent No.1 prays for stay to the effect and implementation of the Judgment and order pronounced today. The prayer is vehemently opposed by learned counsel appearing for the Petitioner. As the legal heirs of the Petitioner are waiting since long, we are not inclined to entertain the prayer for stay. Hence the said prayer stands rejected.

[S.M. GAVHANE, J.]

asb/MAR18

[S.S. SHINDE, J.]