

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1330 OF 2016

1. Pandit s/o Gallusingh Jadhav
age 61 years, occ. pensioner
r/o Vivekanand Nagar
Old Pedgaon Road,
Parbhani
2. Prakash s/o Ambadas Gaikwad
age 61 years, occ. pensioner
r/o Lokashangar, B.Raghunath Road,
Infront of Maruti Temple
Parbhani, Dist. Parbhani
3. Mohd. Abdul Matin
age 61 years, occ. pensioner
r/o Haji Abdul hameed Colony
Parva Road, Parbhani
4. Kashinath s/o Manikrao jadhav
age 61 years, occ. pensioner
r/o Vrundavan Colony, karegaon Road,
Parbhani, Dist. Parbhani
5. Jagannath Dagdobarao Deshmukh
age 60 years, occ. pensioner
r/o Sant Meera Nagar
Jayakawadi to HUDCO Road,
Parbhani, Dist. Parbhani
6. Babu s/o Sakharam Dhere
age 60 years, occ. pensioner
r/o Rameshwar Nagar, Parbhani
Dist. Parbhani
7. Bhimrao s/o Sitaram Deshmukh
age 60 y ears, occ. pensioner
r/o Vridavan Colony
Karegon Road, Parbhani
Dist. Parbhani

8. Madhukar s/o Gangadharrao Dahale
age 60 years, occ. pensioner
r/o Near R.R. Petrol Pump
Basmath Road, Parbhani
Dist. Parbhani
9. Devidas s/o narayanrao Kalane
age 59 years, occ. pensioner
r/o 114, Narayan Nivas
Yashodhan Nagar
Near Kalyan Mandap, Parbhani
Dist. Parbhani
10. Pandurang s/o Shankarrao Bansode
age 59 years, occ. pensioner
r/o Parvatinagar, Jayakwadi HUDCO
Road, Parbhani, Dist. Parbhani

Petitioners

Versus

1. The State of Maharashtra
Through its Secretary
Town Planning & Municipal
Administration Department
Mantralaya, Mumbai 32.
2. The Director of Municipal
Administration, Vorli, Mumbai
3. The Divisional Commissioner
Aurangabad Division
Aurangabad.
4. The District Collector
Parbhani
5. The Accountant General II
Nagpur
6. The Commissioner,
Municipal Corporation, Parbhani
Dist. Parbhani

Respondents

WITH
WRIT PETITION NO. 11374 OF 2016

1. Gangadhar s/o Kishanrao Kadam
age 58 years, occ. pensioner
r/o Krushi Sarthi Colony
Basmat Road, AT Post Parbhani
Dist. Parbhani
2. Mohd. Samiuddin Mohd. Samsaaddin
age 58 years, occ. pensioner
r/o Masum Colony, Subedarnagar Road
Parbhani, Dist. Parbhani.

Petitioners

Versus

1. The State of Maharashtra
Through its Secretary
Town Planning & Municipal
Administration Department
Mantralaya, Mumbai 32.
2. The Director of Municipal
Administration, Vorli, Mumbai
3. The Divisional Commissioner
Aurangabad Division
Aurangabad.
4. The District Collector
Parbhani
5. The Accountant General II
Nagpur
6. The Commissioner,
Municipal Corporation, Parbhani
Dist. Parbhani

Respondents

Mr. S.K. Patil, advocate for petitioners.
Mr. S.B. Yawalkar, A.G.P. for respondents 1 to 5.
Mr. S.S. Bora, advocate for respondent no.6.

CORAM : R.M.BORDE &

K.K. SONAWANE, JJ.

DATE : 26th FEBRUARY, 2018

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioners were employed in the erstwhile Municipal Council Parbhani and after formation of the Municipal Corporation, they were absorbed in Corporation services. Petitioners contend that by virtue of the orders passed by the State Government on 22.10.2010 / 04.11.2010, they have been absorbed in the State services. The order passed by the Commissioner referred to above, declares that petitioners would be entitled to claim the benefits under the Defined Contributory Pension Scheme. It is directed in the said order to the Municipal Corporation to remit the amount of contribution to the State Government for disbursement of the pensionary benefits to the petitioners.
4. Petitioners got retired on attaining the age of superannuation and are claiming pensionary benefits from the State Government. It is the stand of the State Government that since the petitioners were not actually posted by issuing posting orders, although there are orders passed on 22.10.2010 and 04.11.2010, directing their absorption in the State services, they cannot be presumed to be government employees. Petitioners, until their date of retirement,

continued to function as the employees of the Municipal Corporation. The State Government thus, refused to treat petitioners as the State employees and claimed they shall have to be paid pension amount out of the funds of the Municipal Corporation. It is the contention of the Municipal Corporation that the monetary contribution of each of the petitioners together with Corporation's contribution has been transmitted to the State Government and as such, it is the responsibility of the State Government to disburse the amount of pension. It has also been pointed out that the State authorities have directed the Municipal Corporation to disburse the amount of pensionary benefits to the petitioners.

5. The issue raised in the instant petitions is no more *res integra* and is covered by the decision rendered by the Division Bench of this Court in the matter of Bandopant Vs. State of Maharashtra in Writ Petition No. 7865/2014 and connected matters decided on 28.04.2016. In identical circumstances, the Division Bench of this Court has ruled that it is the responsibility of the Municipal Corporation to pay the pensionary benefits to the employees since they were actually not awarded posting by the State Government and as such, shall be deemed to be the employees of the Corporation. In view of the decision rendered by the Division Bench in identical matters, instant petition also deserves to be disposed of with identical directions.

6. Learned counsel for Municipal Corporation states on instructions that the monetary contribution of each of the petitioners has been forwarded to the State Government and on

receipt of the amount from the State Government, the dues payable to the petitioners would be paid forthwith by the Municipal Corporation. In the circumstances, respondent-State is directed to return back the monetary contribution deposited by the Municipal Corporation with the State towards pension amount payable to the petitioners together with interest which is liable to be passed on to petitioners, as expeditiously as possible, preferably within a period of four weeks from today.

7. On receipt of the amount by the Municipal Corporation, pensionary benefits payable to each of the petitioners shall be paid together with arrears, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of the amount from the State Government. Petitioners, in the meanwhile, shall comply with the requirements of furnishing necessary information / documents with the Municipal Corporation.

8. Rule made absolute in above terms. In the facts and circumstances of the case, there shall be no order as to costs.

K. K. SONAWANE
JUDGE

R.M.BORDE
JUDGE