

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 5317 OF 2018
IN CP/544/2015

MADHUKAR GYANJI DHAGE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHERS

Mr.Nirmal Ramchandra J., Advocate for the applicant
Mr.S.M.Ganachari, AGP for the respondent/State
Mr.M.N.Navandar, Advocate for respondent No.2

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.
DATED : 27.04.2018**

P.C. :-

. Heard learned counsel appearing for the parties.

2. The Division Bench (A.V.Nirgude and V.L.Achliya, JJ) in Writ Petition No.1533/2002 (Madhukar Gyanaji Dhage Vs Marathwada Agricultural University and another) in paragraph No.23 has observed thus:

23. In the light of discussion made in the foregoing paras, we are of the view that it is a fit case wherein inherent powers under Article 226 of the Constitution of India deserves to be invoked to redress the grievance of Petitioner to undo the justice, which has been caused to him for years together. In the result, we pass the following order:

I. Clause (14) in the order dated 15.12.2001 shall be

treated as inoperative and quashed to the extent of Petitioner.

- II. Respondent No. 1 is directed to absorb and regularize the services of Petitioner w.e.f. 13.02.2002 i.e. the date on which Petitioner was reemployed and joined the services as a tractor driver.
- III. The Petitioner be treated as regularly absorbed on the post of driver w.e.f. 13.02.2002, and in continuous service from the said date till the date of attaining the age of superannuation.
- IV. The order of absorption on post of a tractor driver w.e.f. 13.02.2002 be issued in favour of Petitioner on or before 31.03.2015. However, in the facts and circumstances of this case, we direct the Petitioner shall be entitled to regular salary of the post of a tractor driver w.e.f. 01.04.2015 and he would not be entitled to claim any monetary benefit for the past services rendered by him from the date of his regularization i.e. 13.02.2002. Needless to state that he shall be entitled to continuity in service for all other purposes except monetary benefit from the date of his first appointment.
- V. It is clarified that the decision in the instant case shall not be treated as precedent as same has been rendered keeping in mind the peculiar facts and circumstances of this case.
- VI. Rule is made absolute in above terms. However, no order as to cost.

VII. In view of disposal of writ petition, pending Civil Application No. 3453 of 2005,1 stands disposed of.

3. Learned counsel appearing for respondent No.2 submits that respondent No.2 has filed the review application seeking review of the judgment and order dated 05.03.2015 passed in Writ Petition No.1533/2002. He submits that even upon careful reading of the directions contained in para No. 23 of the judgment in writ petition No.1533/2002 the petitioner is held entitled for the regular salary of the post of Tractor Driver w.e.f. 01.04.2015. Therefore, he submits that to extend the benefit of the New Defined Contributory Pension Scheme, the appointment of said employee should be prior to 01.11.2005. So the New Defined Contributory Pension Scheme is applicable in the case of the petitioner and not the pension scheme which was in force prior to 01.11.2005.

4. In reply to the submissions made by the counsel appearing for the respondent No.2, learned counsel appearing for the petitioner submits that the Division Bench in aforementioned judgment has directed the respondents to absorb the petitioner on the post of Tractor Driver w.e.f. 13.02.2002. Therefore, the petitioner is entitled for old pension scheme, which was

in force/operation prior to 01.11.2005. He further submits that on attaining the age of superannuation, the petitioner is going to retire on 30.04.2018.

5. We have carefully perused the directions issued by the Division Bench, reproduced herein above in particular Clause-IV thereof. Since respondent No.2 has filed review application and the same is yet to be heard, without prejudice to the rights and contentions of the parties, we direct respondent No.2 to process and prepare proposal for pension on provisional basis, treating the date of appointment of the petitioner as 13.02.2002. However, we make it clear that forwarding of said proposal by respondent No.2 would be without prejudice to the rights and contentions of the parties and on the basis of forwarding such proposal, the petitioner would not claim equity and as such action of respondent No.2 will be subject to the out come of the present petition and also the Review Application St. No.17584/2015.

6. In view of above the civil application stands disposed of.

7. Parties to act upon authenticated copy of this order.

[S.M.GAVHANE,J.]

[S.S.SHINDE,J.]