

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

**WRIT PETITION NO. 9134 OF 2016**

Kantaram Govindrao Shejwal,  
Age: 64 Years, Occu.: Retired,  
R/o.: Brahman Galli Kannad,  
Tq.: Kannad, Dist.: Aurangabad .. **Petitioner**

**Versus**

1. State of Maharashtra,  
Through Secretary,  
Urban Development Department,  
Mantralaya, Mumbai – 32
2. Director of Municipal Administration,  
3<sup>rd</sup> Floor, GTS Building,  
Sarpochkanwala Road,  
Varli – Mumbai
3. Kannad Municipal Council,  
Kannad, Dist.: Aurangabad,  
Through its Chief Executive Officer  
.. **Respondents**

Mr. Parag Vijay Barde, Advocate for the  
Petitioner.

Mrs. M. A. Deshpande, Addl. G. P. for Respondent  
Nos. 1 and 2.

Mr. Sadashiv S. Shete, Advocate for Respondent  
No. 3.

**CORAM: S. V. GANGAPURWALA &**  
**R. G. AVACHAT, JJ.**

**DATE: 07<sup>th</sup> DECEMBER, 2018**

**ORAL JUDGMENT (Per S. V. Gangapurwala, J.):**

1. Rule. Rule returnable forthwith. With the consent of learned counsel for respective parties matter is taken up for final hearing.

2. The petitioner seeks directions against the respondents to pay pensionary benefits including gratuity to the petitioner by considering petitioner's temporary services with respondent no. 3 from 01.01.1981.

3. Mr. Barde, learned Advocate for the petitioner submits that on or about 01.01.1981 petitioner joined services of respondent no. 3 as 'Clerk' in Recovery Department as a temporary employee. After rendering 20 years of continuous service, the permanency and regularisation benefits were accorded to the petitioner under order dated 25.10.2001. The petitioner stood retired on 30.06.2010, on attaining the age of superannuation. The pensionary benefits are not sanctioned to the petitioner on the ground that

the petitioner has not put in ten years of service from the date of regularisation. The services rendered as a temporary employee has not been counted. The learned counsel relies on Rule 57 and Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 (*hereinafter referred to 'Rules-1982'*).

4. The learned counsel for the petitioner relies on the following judgments -

*[I] Devidas Bhiku Borker and others Vs. The State of Maharashtra and another reported in 2011 (7) ALL MR 363.*

*[II] Sou. Rashmi Shriram Mone Vs. State of Maharashtra and others reported in 2017 (3) ALL MR 703.*

*[III] Asger Abraham Amin Vs. Life Insurance Corporation of India reported in 2015 AIR SCW 6362.*

*[IV] Ahmednagar Municipal Corporation, Ahmednagar Vs. Malan Kisan Asmar and others*

*reported in 2016 DGLS (Bom.) 942.*

*[V] Mahatma Phule Krishi Vidyapeeth Vs. Ganpat Kisan Karle reported in 2016 DGLS (Bom.) 191.*

*[VI] U. Raghavendra Acharya and others Vs. State of Karnataka and others reported in AIR 2006 SC 2145.*

*[VII] Prabhakar Marotirao Dalal Vs. State of Maharashtra and another reported in 2008 (5) ALL MR 306.*

*[VIII] State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another reported in AIR 2013 SC 3383.*

*[IX] All India Reserve Bank Retires Officers Association and others Vs. Union of India and others reported in AIR 1992 SC 767.*

*[X] Jagjeevan Jaikumar Sanghai (deceased) through Legal Heirs Asha w/o. Jagjeev Anrao Sanghai and another Vs. Parbhani Municipal Corporation and others reported in 2018 DGLS (Bom.) 802.*

5. Mr. Shete, learned Advocate for respondent no. 3 submits that the order of permanency / regularisation to the petitioner is clear. Clause 8 of the order regularising the services of the petitioner specifically provides that the petitioner would not be entitled for the benefit of his past service rendered on daily wages. In view of that, the petitioner would not be entitled for the benefit of the service rendered as a daily wager. The service from 25.10.2001 only would be counted. The petitioner stood retired on 30.06.2010. The petitioner did not complete ten years qualifying service, as such would not be entitled for pensionary benefits.

6. The learned Additional Government Pleader submits that the petitioner would not be entitled for pensionary benefits and the service rendered as temporary cannot be counted for pensionable purpose in view of Clause 8 of order dated 25.10.2001.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The petitioner has been regularised on 25.10.2001 i.e. prior to the introduction of the DCPS scheme and the petitioner would be governed by the old pension scheme i.e. Rules-1982.

9. It is not a matter of dispute that the petitioner was working on daily wages since 01.01.1981 and eventually came to be regularised in service on 25.10.2001 and since the said date was serving as a regular employee till the date of his superannuation on 30.06.2010.

10. The petitioner seeks directions against the respondents to pay pensionary benefits including gratuity to the petitioner by considering petitioner's temporary services with respondent no. 3 from 01.01.1981.

11. Rule 9(39) of the *Rules-1982*, defines pensionable service as service which qualifies the

Government servant performing it to receive the pension from the Consolidated Fund. Rule 30 provides that the 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 permanent post in Government service or holds a suspended lien or certificate of permanency. It is not disputed that the petitioner is made permanent under the order dated 25.10.2001.

12. Note - 1 of Rule - 57 of the *Rules-1982* provides that in cases of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to be counted for pension. The petitioner it appears was paid his emoluments from the contingency while working

on daily wages. The regularisation order nowhere provides that the earlier service rendered by the petitioner on daily wages is excluded or is brought outside the purview of Note - 1 of Rule - 57 of the Rules-1982. The respondents are harping upon Clause 8 of the order dated 25.10.2001. The said Clause is in a regional language and the same reads thus -

“८. मागील रोजंदारीवरील सेवा कोणत्याही आर्थिक व सेवा विषयक लाभासाठी ग्राह्य धरण्यात येणार नाही.”

13. The said clause nowhere states that Note - 1, Rule - 57 of the Rules-1982 would not be applicable, so also, the regularisation order also does not lay down any exception from considering the services rendered on daily wages for pensionable purpose as provided in Note - 1, Rule - 57 of the Rules-1982. Reading the Rules-1982, it is manifest that the services rendered by the petitioner on daily wages shall be counted as half for the purpose of pension.

14. In the result, we pass following order -

**ORDER**

I] The service rendered by the petitioner on daily wages from 01.01.1981 till the date the petitioner is regularised shall be counted half for the purpose of pensionary benefits.

II] Rule is made absolute in above terms.

15. The Writ Petition accordingly stands disposed of. No costs.

**[R. G. AVACHAT, J.]      [S. V. GANGAPURWALA, J.]**

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