

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11309 OF 2017

Mohd. Amanullah Khan s/o
Mohd. Bakshullah Khan Durani,
Age: 58 Years, Occu.: Retired,
R/o.: Yusuf Colony, Near Aksa Function
Hall, Old Jalna, Tq. And Dist.: Jalna

..Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32

2. The Municipal Council,
Jalna, Tq. and Dist.: Jalna,
Through its Chief Officer

.. Respondents

Shri Vivek J. Dhage, Advocate for the Petitioner.
Shri P. N. Kutti, A.G.P. for Respondent No. 1.
Shri J. J. Patil, Advocate for Respondent No. 2.

Coram: S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.

Reserved for Orders on: 10th July, 2018

Order pronounced on: 5th September, 2018

ORDER (Per S. V. Gangapurwala, J.):

1. The present writ petition is filed seeking

directions against the respondent to count the service of the petitioner from the date of initial appointment for the purpose of pensionary benefits and time bound promotion.

2. Mr. Dhage, learned counsel for the petitioner submits that the petitioner was appointed on daily wages as an 'Electric Pump Operator' continuously till 7th July, 1999. On 7th July, 1999, the petitioner has been made permanent employee of respondent no. 2 as an 'Electric Pump Operator'. On 30th June, 2017, the petitioner stood retired on attaining the age of superannuation from the post of 'Electric Pump Operator'. The learned counsel submits that as the petitioner has completed 12 years of service on a permanent post, he is entitled for time bound promotional pay scale. The learned counsel submits that, time and again he made representations to count his services from the initial date of appointment on daily wages, the same is not considered. The learned counsel relies on Rule 57 of the *Maharashtra Civil*

Services (Pension) Rules, 1982. The learned counsel also relies on the judgment of the Apex Court in a case of **State of Tripura and others Vs. K. K. Roy** reported in **2004 AIR SCW 1**, so also, the judgment in a case of **Union Public Service Commission Vs. Dr. Jamuna Kurup and others** reported in **2008 AIR SCW 3780**. The learned counsel further relies on the judgment of the Division Bench of this court in a case of **Shivappa Bhujangappa Bembale Vs. State of Maharashtra and another** reported in **2005 (3) Mh. L. J. 709** and another judgment in Writ Petition No. 7170 of 2010 [*Mohd. Khaja S/o Abdul Hakim Vs. Maharashtra Animal & Fishery Sciences University and others*] dated 22nd February, 2011, and in Writ Petition No. 2016 of 2010 [*Shivaji s/o Jyotiba Pawar and another Vs. The State of Maharashtra and others*] dated 21st September, 2010, to submit that the services rendered on daily wages ought to be counted half for the purpose of pensionary benefits.

3. Mr. Patil, learned counsel for respondent no. 2 submits that the petitioner initially was appointed as an 'Electric Pump Operator' on daily wages and his services were regularised on 7th July, 1999, by respondent no. 2 in the light of the Government Policy. His services for all purposes would be counted from the date of his regularisation viz. 7th July, 1999. The time bound promotional benefits have been given to the petitioner on 27th December, 2012. The learned counsel further submits that, as per Government Resolution dated 8th March, 1999, issued by the General Administration Department, the seniority of the employees whose services have been regularised will be counted from the date of order of regularisation of their services. The same Government Resolution further states that benefit of the affected services will not be given / counted for any purpose. The learned counsel further submits that, Rule 57 – non-pensionable service of the *Maharashtra Civil Services*

(Pension) Rules, 1982 would not benefit the petitioner. The same will have to be read in consonance with Rule 9 (39) – pensionable service, Rule 30 – commencement of qualifying service, Rule 47 – effect of interruption in service. The learned counsel relies on the judgment of the Apex Court in a case of State of Haryana and others Vs. Piara Singh and others reported in AIR 1992 SC 2130, to submit that the Government can issue orders with regard to regularisation prescribing date by which prescribed period of service should have been put in. It is open for the Government to put forth the terms and conditions of regularisation. The learned counsel submits that the petitioner has no case, the same be dismissed.

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

5. It is not a matter of debate that the petitioner was initially appointed as an 'Electric Pump Operator' on daily wages on or about 12th

August, 1985. It is also not a disputed fact that since 12th August, 1985 the petitioner was continuously working on daily wages as an 'Electric Pump Operator' with respondent no. 2 till 07th July, 1999, and on 07th July, 1999 the petitioner was regularised in service as an 'Electric Pump Operator' in the pay scale of Rs.750-12-870. Since the said date the petitioner was serving as a regular employee till the date of his superannuation on 30th June, 2017.

6. The petitioner seeks directions against the respondent to count his service from the date of initial appointment viz. 12th August, 1985 for the purpose of time bound promotion, as well as, pensionary benefits.

7. Rule 9(39) of the *Maharashtra Civil Services (Pension) 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 appointment order dated 07th July, 1999.

8. Note - 1 of Rule - 57 of the *Maharashtra Civil Services (Pension) 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 appointment 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 *Maharashtra Civil Services (Pension) Rules, 1982*. The respondents are harping upon the Government Resolution dated 8th March, 1999. The said Government Resolution is in a regional language. Clause 'E' reads thus -

“(ई) अभावित नियुक्तीचा फायदा कुठल्याही प्रयोजनार्थ/कारणासाठी देण्यात येणार नाही.”

The same is not incorporated in appointment order dated 07th July, 1999. It does not appear that the said clause was made known to the petitioner.

9. Be that as it may, the said clause nowhere states that Note - 1, Rule - 57 of the *Maharashtra Civil Services (Pension) Rules, 1982* would not be applicable, so also, the appointment 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 *Maharashtra Civil Services (Pension) Rules, 1982*. Reading the *Maharashtra Civil Services (Pension) 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.

10. The other grievance of the petitioner for counting the service from the year - 1985 for time bound promotional pay scale does not appear to be in consonance with the Rules. The time bound promotional pay scale is awarded to an employee with continuity to remove stagnation. The services rendered from the year - 1985 were on daily wages and not as a regular permanent employee. The petitioner could not have thought of any promotional avenue while on daily wages. The time bound promotional pay scale is made applicable with a view that within 12 years of the appointment the petitioner cannot be promoted because of the unavailability of the post or otherwise though the petitioner is eligible. The

appointment of the petitioner in the year – 1985 was purely on daily wages. The petitioner can think of taking benefit of a promotional post only after he has been made permanent and regularised in service and the said date is 07th July, 1999. The petitioner has been awarded time bound promotional pay scale on 27th December, 2012, on completion of 12 years after the petitioner was regularised. In view of that, the petitioner is not entitled to count his services from the year – 1985 for time bound promotional pay scale.

11. In the result, we pass following order -

ORDER

I] The petitioner is not entitled for time bound promotional pay scale considering his service from the year – 1985, and the time bound promotional pay scale granted to him in December – 2012 considering his regular service from 7th July, 1999 is proper.

II] The service rendered by the petitioner on daily wages from the year – 1985 till the

date the petitioner is regularised shall be counted half for the purpose of pensionary benefits.

12. Writ Petition accordingly partly allowed. No costs.

[SUNIL K. KOTWAL, J.] [S. V. GANGAPURWALA, J.]

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