

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

WRIT PETITION NO. 4064 OF 2017

Omprakash s/o. Bansilal Agrawal
Age. 64 years, Occ. Retired,
R/o. Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development, Mantralaya,
Mumbai - 32.
2. The Chief Executive Officer,
Zilla Parishad, Ahmednagar,
District Ahmednagar.
3. The Block Development Officer,
Panchayat Samiti,
Dist. Ahmednagar.

.. Respondents

Mr. S.P. Pandav h/f. Mr. A.N. Walujkar, Advocate for petitioner.
Mr. A.V. Deshmukh, AGP for respondent/State.
Mr. A.D. Aghav, Advocate for respondent No.2.
Mr. S.T. Shelke, Advocate for respondent No.3.

**CORAM : SUNIL P.DESHMUKH &
S.M.GAVHANE, JJ.**

DATED : 10.07.2019

ORAL JUDGMENT [PER : S.M.GAVHANE, J.] :-

. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with the consent.

2. By this petition, the petitioner has prayed to issue writ of certiorari or any other appropriate writ or order directing the respondents to treat the

petitioner as a permanent employee from the date of his complaint i.e. 1988 and to grant all consequential benefits including increments, promotions and to declare him permanent employee w.e.f. 1988.

3. Mr. S.P. Pandav h/f. Mr. A.N. Walujkar, learned Counsel for the petitioner submitted that there is no dispute that initially petitioner came to be appointed as Muster Assistant on monthly basis on 01.08.1985 in Irrigation Department and worked with the respondent-authorities. He retired on superannuation on 31.08.2012 from village PHC, Padegaon, under Panchayat Samiti, Shrigonda, Dist. Ahmednagar. Petitioner filed complaint ULP No.10 of 1987 before the Member, Industrial Court, Ahmednagar alleging unfair labour practices. Said complaint was allowed by order dated 29.04.1994 and directions were issued to offer status and privilege of permanency and consequential benefits from the date of filing the complaint. Above said order in ULP is not challenged by the respondents and it has attained finality.

4. Mr. Pandav, learned Counsel submitted that as per policy of the Government, petitioner came to be absorbed as Health Assistant in the office of Zilla Parishad, Ahmednagar on 31.07.2004. Though the petitioner became permanent employee as Muster Assistant in 1988, as per order of the Industrial Court, the entry in his service record as a permanent employee is taken from the date of his absorption and in-fact said date of permanency is from 1988 and not from the date of absorption and therefore it is submitted that the relief as

claimed be granted. Mr. Pandav, learned Counsel further submitted that other similarly situated employees had filed Writ Petition No.8359 of 2013, 11183 of 2015, 11185 of 2015 and 11188 of 2015 and by order dated 13.08.2015 in writ petition No.8359 of 2015 and by order dated 04.08.2016 in writ petition Nos. 11183 of 2015 and 11185 of 2015, permanency was granted to the employees/petitioners in the said writ petitions from 1988 i.e. from the date of filing ULP by them and therefore present petitioner is also entitled to similar relief. Learned Counsel for the petitioner has placed reliance on order dated 06.09.2017 passed by the Division Bench of this Court in writ petition No.12043 of 2016 and companion writ petitions, in which in paragraph 3 of the said order, the Division Bench has referred writ petition No.8359 of 2015 decided on 13.08.2015 and writ petition No.11183 of 2015 with connected writ petitions decided on 07.04.2016. Paragraph Nos.6 and 7 of order dated 06.09.2017 reads thus :-

“ 6. It is not disputed that in these matters, the petitioners had approached the Industrial Court by filing complaint ULP. The said complaints are allowed and Industrial Court directed present respondent/State to accord those complainants/petitioners herein status and privileges of permanency and consequential benefits from the date of filing of complaints. As the pensionary benefits are not being accorded, one of such complainants filed writ petitions bearing Writ Petition No.2946 of 1997, writ petition No.2236 of 1997 and writ petition No.2246 of 1997. The Division Bench of this Court partly allowed the said petitions and passed the following order.

“1. In view of the Judgment and Order dated 08th April, 1997 passed by the learned Industrial Court, Solapur for the purpose of considering the grant of pensionary benefits, the petitioners shall be treated as Permanent Employees with effect from 01st October, 1988 till the respective dates of superannuation.

2. In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned Authorities for grant of pensionary benefits.

3. If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

4. We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not

examined the case of the Petitioners as regard the eligibility of pensionary benefits.

5. Rule is made partly absolute on both terms with no order as to costs.

7. The Special Leave Petition filed against the said judgment and order is also dismissed. In the light of that, we adopt the same course as adopted by this Court in the above said writ petitions and pass the following order.

I) In view of the Judgment and Order passed by the Industrial Court for the purpose of considering the grant of pensionary benefits, the Petitioners shall be treated as Permanent Employees with effect from the date of their complaints i.e. from the date of filing of their respective ULP's till the respective dates of superannuation.

II) In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned authorities for grant of pensionary benefits.

III) If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

IV) We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not examined the case of the Petitioners as regard the eligibility of pensionary benefits.

V) Rule is made partly absolute on above terms with no order as to costs.

VI) Writ petitions accordingly partly allowed. ”

5. Case of present petitioner is similar to the petitioners in the above referred petitions. Therefore, we adopt the same course as adopted by Division Bench of this Court in above said writ petitions and pass following order :-

I) In view of the Judgment and Order passed by the Industrial Court for the purpose of considering the grant of pensionary benefits, the Petitioner shall be treated as Permanent Employee with effect from the date of his complaint i.e. from the date of filing of his ULP till the date of superannuation.

II) As the petitioner is already superannuated, it will be open for him to make a representation to the concerned authorities for grant of pensionary benefits.

III) If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representation is made.

IV) We make it clear that, apart from issuing directions regarding the date of permanent employment of the Petitioner, we have not examined the case of the Petitioner as regard the eligibility of pensionary benefits.

V) Rule is made partly absolute on above terms with no order as to costs.

VI) Writ petition is accordingly partly allowed.

[S.M.GAVHANE,J.]

[SUNIL P.DESHMUKH,J.]