

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3461 OF 2018

Vyankat S/o. Bhimrao Suryawanshi,
Age: 78 Years, occu.: Nil,
R/o.: Shri Nagar, Barshi Road,
Latur, Tq. & Dist.: Latur

Versus

1. The State of Maharashtra,
Through the Secretary,
Finance Department,
Mantralaya, Mumbai – 32
2. The Director of Accounts and Treasuries,
Maharashtra State,
New Administration Building No. 15 and 16,
Plot No. 176, Free Press Journal Marg,
Mumbai 400021
3. The Secretary,
General Administration Department,
Mantralaya, Mumbai – 32
4. The Secretary,
Co-operation and
Rural Development Department,
Mantralaya, Mumbai – 32

Mr. Tukaram M. Venjane, Advocate for the
Petitioner.

Mr. K. B. Jadhavar, A.G.P. for the Respondents.

**CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE: 11th FEBRUARY, 2019

ORAL JUDGMENT (Per S. V. GANGAPURWALA, J.) :

1. The petitioner on 11.02.1961 was appointed as a 'Gul Clerk' with Agricultural Produce Market Committee, Latur (*hereinafter referred to 'APMC Latur'*). Thereafter, on 02.08.1966 was selected as 'Clerk' by the selection committee of the Agricultural Department, State of Maharashtra. The petitioner joined with the Agricultural department on 03.08.1966 and up to 02.08.1966 the petitioner worked with the APMC Latur. On or about 28.02.1998, the petitioner on attaining the age of superannuation retired from the Government service. The service rendered by the petitioner with APMC Latur from 11.02.1961 is not considered for pensionary benefits on the ground that APMC Latur is autonomous body.

2. Mr. Venjane, learned counsel for the petitioner submits that the petitioner joined APMC

Latur on 11.02.1961 and the services are governed as per the provisions of the Hyderabad Agricultural Markets Act of 1339 Fasli. As per Section 7A of the Hyderabad Agricultural Markets (Amendment) Act, 1956, the employees of APMC are considered as belonging to civil service of the State designated as Hyderabad marketing service. In view thereof, the earlier service rendered is required to be counted for the purpose of pensionary benefits.

3. The learned Assistant Government Pleader submits that the petitioner was appointed with APMC Latur. It is an autonomous body. The pension scheme is not applicable to APMC. The petitioner entered into the Government service with effect from 03.08.1966. Prior to that, he was taking salary from the funds of the market committee. The market committee does not get grants from the Government. The salary to the petitioner was not disbursed from the State revenue or from the local fund while serving with APMC Latur. The petitioner

is not entitled for consideration of his service rendered with APMC Latur.

4. We have considered the submissions canvassed by the learned counsel and the learned Assistant Government Pleader for respective parties.

5. The issue raised in the present petition is no longer *res integra* in view of the judgment of the Division Bench of this Court in Writ Petition No. 8226 of 2006 dated 09.06.2014. The Court in the said judgment observed thus-

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...The petitioners, who are appointees of Market Committees in Marathwada region, were appointed in consultation with Market Committee of the Maharashtra and in accordance with Hyderabad Agricultural Market (Amendment) Act and this position has been admitted in additional affidavit-in-reply presented on behalf of Respondents No. 2 & 3 on 24.11.2008. It is, thus, clear that as per the provisions of Section 7A of the Hyderabad Agricultural Marketing (Amendment) Act, 1956, the employees are declared as belonging to Civil Services of the State designated as Hyderabad Marketing Service. Thus, the employees appointed by taking recourse to provisions of Hyderabad Agricultural Markets Act, 1339 Fasli, shall have to be deemed as belonging to Civil Services of the State.

15. It is also to be taken note of that in view of Section 64 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, Hyderabad Agricultural Markets Act, 1339 Fasli, stood repealed, however the repeal does not affect the previous operation of any enactment so repealed and anything done or action taken (including any appointment, delegation or declaration made, order, rule, directions, or notice issued, bye law framed, Market Committee established, licences granted, fees levied and collected, instruments executed, any fund established or constituted) by or under the provisions of any such enactment shall, insofar as it is not inconsistent with the provisions of Act of 1963, be deemed to have been done or taken under the corresponding provisions of the instant Act (i.e. Act of 1963) and shall continue in force unless and until superseded by anything done or action taken under the Act of 1963. Thus, by virtue of provisions of Section 64 of the Act, appointments of the petitioners made in accordance with provisions of Hyderabad Agricultural Markets Act, 1339 Fasli, shall have to be recognised and in view of provisions of Section 7A of the Amendment Act, 1956, petitioners shall have to be treated as employees belonging to Civil Services of the State.

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17. The Division Bench of this Court, while dealing with Writ Petition No. 35 of 1990, has dealt with the issue and has recorded a categorical finding that the employees appointed by taking recourse to the provisions of Hyderabad Agricultural Markets Act, 1339 Fasli, shall have to be deemed as employees of the State in view of Section 7A

incorporated by Amendment Act of 1956. In paragraph no. 13 of the judgment, which is reproduced in paragraph no. 4 above, it is specifically observed by the Division Bench of this Court that taking into consideration the averments made in the petition together with documents filed on record and admissions given in reply, the employees of the Ex-Hyderabad State became Government servants. The case of the petitioners is not distinguishable for the reason that they are also appointed by taking recourse to provisions of Hyderabad Agricultural Markets Act, 1339 Fasli and this fact has not been controverted and cannot be controverted by the Respondents. We do not find any difficulty in accepting the analogy and the reasoning recorded by the Division Bench in Writ Petition No. 35 of 1990 decided on 15/16.09.1993. The provisions of Section 7A of the Hyderabad Agricultural Markets (Amendment) Act, 1956 (Act No. XXXII of 1956) inserted in Hyderabad Agricultural Markets Act, 1339 Fasli (Act No. II of 1339) Fasli are very much clear and provide no scope for raising a doubt that the petitioners shall be deemed to be a part of Civil Service of the State. The benefits accruable to the petitioners under the service conditions made applicable at the stage of appointment, cannot be taken away and their appointments and the conditions of service, as applicable to them, are protected by virtue of Section 64 of the Act of 1963."

6. It has also been held by the Division Bench of this Court that the services rendered by the employees with APMC pursuant to the Hyderabad Agricultural Markets Act 1339 Fasli and

subsequently as amended under Hyderabad Agricultural Markets (Amendment) Act, 1956 will have to be considered as a Government service. Pursuant to the decision of this Court referred to supra, the Government has issued Resolution dated 25.04.2016 according such benefit to the employees of APMC.

7. In the view of above, the respondents shall compute the period of service rendered by the petitioner with APMC Latur from 11.02.1961 to 02.08.1966 for the purpose of computing pensionable service. Rule accordingly made absolute in above terms.

8. Writ Petition accordingly stands disposed of.
No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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