

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

WRIT PETITION NO. 10552 OF 2018

Munjaji Narayan Gore,
Age : 65 Years, Occu. : Retired,
R/o Khanapur nagar Pingli Road,
Parbhani .. Petitioner

Versus

1. The State of Maharashtra,
For Secretary, Agriculture Dept.,
Mantralaya, Mumbai – 32.
2. The Vasantao Naik Marathwada
Agricultural University, Parbhani,
through its Registrar .. Respondents

Shri D. R. Irale Patil, Advocate for the Petitioner.
Shri S. B. Pulkundwar, A.G.P. for the Respondent No. 1.
Shri B. A. Shinde, Advocate for the Respondent No. 2.

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

DATE : 22ND APRIL, 2019.

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

. Rule. Rule made returnable forthwith. With consent of parties, taken up for final disposal.

2. The petitioner seeks following directions:

"B) The Hon'ble Court may be pleased to issue a writ of mandamus or a writ in like nature, and direct the respondent no.2, to take into account the previous service of petitioner between 28.05.1976 to 31.10.2004 total 8824 days and half of it 4412 days i. e. 12 years 1 month and 2 days and service rendered on permanent post of 8 years 1 month and 2 days, the total service would be more than 20 years and 2 months for the purpose of calculation the pension and pensionary benefits which comes more than 20 years and accordingly pay the pension and pensionary benefits as contemplated under Rule 57 Note (1) of M.C.S. (Pension) Rules, 1982

B 1) The Hon'ble Court may be pleased to grant interest on delayed payment as provided under Rule 129 (A) and 129 (B) of M.C.S. (Pension) Rules, 1982"

3. Mr.Irale Patil, learned Counsel for petitioner submits that the petitioner was working with Respondent No. 3 from the year 1976. The petitioner is absorbed as regular employee on 24.01.2005. The learned Counsel submits that the petitioner's service from 1976 is to be considered for the purpose of pension. The learned Counsel relies on Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. The learned Counsel submits that the claim for pension, gratuity and earned leave is not considered by the respondents.

4. Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under :

"57. Non Pensionable Service : As exceptions to Rule 30, the following are not in pensionable service:

(a) Government servants who are paid for work done for Government but whose whole time is not retained for the public service,

(b) Government servants who are not in receipt of pay but are remunerated by honoraria,

(c) Government servants who are paid from contingencies,

(d) Government servants holding posts which have been declared by the authority which created them to be nonpensionable.

(e) Holder of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government."

5. From the documents placed on record, it appears that the petitioner was appointed in the year 1976 on daily wages and was working as 'Mazoor'. It appears that under order dated 24.01.2005, the petitioner was brought on regular

pay scale i. e. absorbed as regular employee on 24.01.2005. The petitioner retired on attaining the age of superannuation on 28.02.2013.

6. It would be clear that in case of employee who is paid from contingencies and who is subsequently brought on regular establishment, half of previous service rendered is required to be counted for the purpose of pensionary benefits. The petitioner was absorbed on regular establishment in the year 2005. It appears that prior to absorption, the petitioner was paid wages from contingencies.

7. In that view, the petition deserves to be allowed. The respondents are directed to forward the proposal of petitioner for grant of pension and pensionary benefits by calculating half of the earlier service from 1976 till the date of absorption on regular establishment i. e. 24.01.2005 and further service as regular from 25.01.2005 till retirement. Same shall be done expeditiously.

8. Rule made absolute in above terms. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]