

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

909 WRIT PETITION NO.171 OF 2012

Sahebrao Vithal Navthar,
Age-60 years, Occu-Retired,
Clerk, Office of the Taluka Inspector,
Land Record, Taluka Jamkhed,
R/o. Pimpri Sahali, Taluka Newasa,
Dist. Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Planning Department, Mantralaya,
Mumbai
2. The Deputy Director of Land Records,
Nasik Division, Nasik
3. The Superintendent of Land Records,
Dist. Ahmednagar
4. The Taluka Inspector of
Land Record, Taluka Jamkhed,
Dist. Ahmednagar

...RESPONDENTS

Mr.A.D. Sugdare, Advocate for the petitioner
Mr.A.V.Deshmukh, AGP for the respondent/State

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

DATE : 12.07.2019

ORAL JUDGMENT [PER: SUNIL P. DESHMUKH, J.]

. Rule. Rule made returnable forthwith. Heard learned counsel for the parties by consent.

2. The petitioner was complainant in proceeding bearing ULP No. 74 of 1989 before the Industrial Court at Ahmednagar. He had contended that he had been appointed as 'Mustering Assistant', and had continuously worked for more than 240 days in a year. He had rendered service for more than 7/9 years. Despite that no benefit of the same had been coming his way. He had alleged that there had been commission of unfair labour practice under item 9 of Schedule 4 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971.

3. The respondents had opposed claim in the complaint stating that the petitioner had been working under the E.G.S. and the provisions of Industrial Disputes Act, 1947 are not applicable and the court would not have jurisdiction. With reference to pleadings various issues were framed.

4. The Industrial Court had been pleased to allow the complaints of similarly situated persons including petitioner under its order dated 29-12-1994 directing the respondents to offer complainants' status and privileges of permanency and consequential benefits from the date of filing of the complaints. The respondents were further directed to calculate arrears of wages and of consequential benefits and to pay the same to the complainants

within a period of four months from the date of passing order.

5. The petitioner, it appears had been subsequently absorbed in 2004 as a clerk in the office of TILR, Jamkhed. On 31-05-2009 the petitioner retired on superannuation. However, benefit of past service was not been given to him and as such he had moved the Maharashtra Administrative Tribunal seeking its benefit. The original application failed. Thus, present writ petition.

6. Learned counsel Mr. Sugdare, taking stock of the situation refers to various aspects involved and particularly points out order dated 06-06-2018 in writ petition No. 539 of 2017 stating that the complaint ULP No. 96 of 1989 before the Industrial Court, Ahmednagar was by a person who had made similar request as that by petitioner and in the circumstances, while his request for computing the period of past service stands granted with effect from the date of complaint, the decision rendered by the Maharashtra administrative tribunal in petitioner's original application would be said to be impliedly overruled and as such urges this court to grant similar benefits to the petitioner.

7. Learned AGP, however, submits that absorption of petitioner is with reference to government resolution dated 01-12-1995, containing specific clause refusing entitlement to pension and other service benefits. Further government resolution dated 21-04-1999 had been issued laying down the conditions of service of mustering assistant, *inter-alia*, that mustering assistant would not

be Government Servant and would not be governed by Maharashtra Civil Services Rules. Learned AGP in support of his submissions refers to circular dated 15-04-2009. In view of the same, while the petitioner had been absorbed in the service in 2004 and retired in 2009, it does not mean he completes qualifying service. In the circumstances, decision of the tribunal would not be liable to be interfered with.

8. After having heard learned counsel for the parties, it appears to be indisputable position that petitioner in present writ petition is similarly situated person as the petitioner in writ petition No. 539 of 2017. The division bench of this court under its order dated 06-06-2018 has referred to a decision in the writ petition No. 2946 of 1997 and two other companion writ petitions quoting following observations therein:

"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 petitioner shall be treated as permanent employee 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 a 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 petitioners, we have not examined the case of the petitioner as regards the eligibility of pensionary benefits.

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

9. In the present matter it may have to be considered that it is indisputable position that the petitioner had indeed approached the Industrial Court by filing the complaint and the complaint had been allowed issuing directions as referred to above and that those directions have become final since it had not been posed any challenge to. Industrial Court had directed to accord the petitioner status and privileges and permanency and consequential benefits from the date of complaint. It is further indisputable position that Special Leave Petition filed by the State against the judgment and order in writ petition No. 2946 of 1997 and two other writ petitions had been dismissed. Referring to the same in the writ petition No. 539 of 2017 following order had been passed.

"1] In view of the judgment and order dated 29-12-1994 passed by the learned Industrial Court, Ahmednagar, 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 complaint ULPs till the respective dates of superannuation.

2] In case of the petitioner who was already superannuated, it will be open for him to make a representation to the concerned authorities for grant of pensionary benefits.

3] If such a 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.

4] 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 regards the eligibility of pensionary benefits."

10. Having regard to aforesaid, the claim by the petitioner appears to be legitimate. Learned counsel Mr. Sugdare, further submits that the benefit of the orders in the writ petitions as well as special leave petition had not been available while the tribunal had decided the original application of the petitioner. Having regard to the circumstances, we deem it expedient to pass following order.

ORDER

a] In view of the judgment and order dated 29-12-1994 passed by the learned Industrial Court, Ahmednagar in complaint ULP No. 74 of 1989 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 complaint ULPs till the respective dates of superannuation.

b] Since the petitioner has already superannuated, it will be open for him to make a representation to the concerned authorities for grant of

pensionary benefits.

c] If such a 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.

d] 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 regards the eligibility of pensionary benefits.

e] Rule made absolute accordingly. The writ petition is disposed of. No costs.

[S. M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]