

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

WRIT PETITION NO. 4048 OF 2018

Devidas Narayan Shinde and Another .. Petitioners

Versus

The State of Maharashtra and Others .. Respondents

**WITH
WRIT PETITION NO. 3619 OF 2018**

Uttam Sandu Gadekar and Others .. Petitioners

Versus

The State of Maharashtra and Others .. Respondents

**WITH
WRIT PETITION NO. 11512 OF 2018**

Shakuntalabai Santaram Jadhav .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Mr. D. R. Irle Patil, Advocate for Petitioners.
Mr. S. B. Pulkundwar, AGP for Respondent No. 1.
Mr. M. N. Navandar, Advocate for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

Reserved for orders on : 17th October, 2019.

Order pronounced on : 08th November, 2019.

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

1. All these Writ Petitions are based on similar set of facts and involve common question as such to avoid rigmarole, are decided by the common order. For the sake of convenience the facts are taken from Writ Petition No. 4048 of 2018.

2. The petitioners initially filed Writ Petition seeking directions against the respondents to take into account the previous services of the petitioners till they are brought on permanent regular establishment under order dated 31.05.2016 and add and count one half of their past service for pension, gratuity and other pensionary benefits as contemplated under Rule 57 Note 1 of Maharashtra Civil Services (Pension) Rules, 1982 (MCSR Pension Rules). By way of an amendment, the petitioners challenged Clause (D) of Government Resolution dated 24.07.2015 whereby the respondent at the time of regularizing / absorbing the petitioners directed that the petitioners would be governed by Defined Contributory Pension Scheme (D.C.P.S.). The Petitioners further seek relief that the period from retrenchment order dated 31.03.2001 till the petitioners are reinstated in service may be regularized under Rule 33 of M.C.S. (Pension) Rules, 1982.

3. Mr. Irale Patil, learned Counsel for the petitioners strenuously contends that the petitioners joined the services on or about 1978 /

1980. They have worked on daily wages and brought on regular establishment on or about 31.05.2016. The petitioners have completed more than 16 years on daily wages prior to their confirmation on the permanent post. The petitioners were paid from contingency funds at the time they were working on daily wages. The learned Counsel relying on Rule 57 of M.C.S. (Pension) Rules, 1982 contends that the services rendered by the petitioners on daily wages shall be considered as half for pension. The learned Counsel further submits that the Clause (D) of the Government Resolution dated 24.07.2015 regularizing the services of the petitioners is illegal. The respondents cannot take away right of petitioners to get pension and other retiral benefits.

4. The learned Counsel further submits that though retrenchment order was issued on 31.03.2001, the respondents had allotted the work to the petitioners on daily wages. The period from the date of retrenchment till they re-entered the services can be regularized as per Rule 33 of the M.C.S. (Pension) Rules. It is further submitted that the petitioners have given the chart showing the work rendered by the petitioners since the year 1978-79 till their absorption on regular establishment. According to the learned Counsel, the petitioners are entitled for pensionary benefits and the clause denying the benefit is

illegal. The petitioners could realize the effect of said clause only when their pension proposals are negated. The learned Counsel relies on the judgment of the Division Bench of this Court in Writ Petition No. 1533 of 2002 dated 05.03.2015. If the period of service of the petitioners is counted since initial date of appointment, then Rule 57 of the M.C.S. (Pension) Rules would come to the aid of the petitioners. Mr. Irale Patil, learned Counsel further relies on the judgment of the Division Bench of this Court dated 05.09.2018 in Writ Petition No. 11309 of 2017 and judgment dated 07.12.2018 in Writ Petition No. 9134 of 2016 to which one of us (S. V. Gangapurwala, J.) was a party.

5. Per contra, Mr. Navandar, learned Counsel for the respondents submits that the petitioners were retrenched on or about 31.03.2001. The petitioners were paid the retrenchment compensation. In view of that, no question arises of considering the past services of the petitioners. The petitioners were allowed to work subsequent to the retrenchment as and when the work was available. It is not that these petitioners continuously worked without any break. The petitioners never challenged Clause (D) of the Government Resolution dated 24.07.2015 and the terms and conditions in the appointment order of the petitioners dated 31.05.2016. The Government Resolution dated 24.07.2015 and the order dated 31.05.2016 making the petitioners

permanent clearly states that the petitioners would be governed by D.C.P.S. scheme. The learned Counsel relies on the judgment dated 19.12.2017 of the Division Bench of this Court in Writ Petition No. 7991 of 2016 with other connected writ petitions.

6. We have considered the submissions canvassed by the learned Counsel for the respective parties.

7. It is a matter of record that all these petitioners were appointed on daily wages and were retrenched under order dated 31.03.2001. These petitioners have been paid with the retrenchment compensation by cheques and the retrenchment compensation has been accepted by the petitioners. Subsequently, the petitioners have been again given work from 2002 onwards. The petitioners have placed on record the chart showing the work done by the petitioners after retrenchment till their regularization on the substantive post. The chart would depict that the petitioners have not continuously worked. The work was allotted to the petitioners as and when the work was available. To illustrate, the petitioner no. 1 in Writ Petition No. 4048 of 2018 has worked for only 10 days in March 2003, 14 days in April 2003 and 11 days in May 2003. For the year 2005, the said petitioner has worked only for 6 days in April. In the year 2006 said petitioner has worked for only 20 days in March. The said petitioner Devidas Shinde in the year

2008 has not worked for a single day from April to December 2008.

8. The same is the position with other petitioners also. The aforesaid fact would make it clear that as and when the work was available the petitioners were given the work.

9. The Government issued resolution dated 24.07.2015 wherein it was decided that those persons working on daily wages with the agriculture universities as skilled, unskilled employees and labourers would be made permanent / regularized and for the said purpose the supernumerary posts were created. These petitioners were regularized on the supernumerary posts. The posts were to be abolished once the said employee stood retired from service or for some other reasons the said posts became vacant. The said aspect would make it clear that the petitioners were not working on substantive post prior to regularizing the services of the petitioners. Supernumerary posts were created as one time measure. As the petitioners were not working on substantive posts, nor the posts were vacant, the State had to create supernumerary posts and the same were created in the year 2016. The petitioners came to be regularized under order dated 31.05.2016. Clause (D) of the Government Resolution dated 24.07.2015 specifically provides that the D.C.P.S. scheme dated 31.10.2005 would be made applicable to the petitioners. The appointment order / order making the petitioners

permanent dated 31.05.2016 also provides that the petitioners would be governed by the D.C.P.S. and M.C.S. (Pension) Rules would not apply to the petitioners.

10. The petitioners are challenging the said conditions after their retirement. Moreover, the supernumerary posts were created for the first time in the year 2015-16. Terms and conditions were set out in the Government Resolution and annexure 1 of the order dated 31.05.2016 and these persons were appointed for the first time on 31.05.2016 on the said supernumerary posts created.

11. We could have considered the cases of the petitioners had the petitioners been appointed on substantive posts prior to 31.10.2005. As the petitioners were appointed on the supernumerary posts created in the year 2015-16 substantively, Rule 57 of the M.C.S. (Pension) Rules, 1982 would not apply.

12. The judgment relied by Mr. Irale Patil delivered in Writ Petition No. 11309 of 2017 and Writ Petition No. 9134 of 2016 would not be of any assistance to the petitioners as in Writ Petition No. 11309 of 2017, the petitioner therein was regularized and made permanent on 07.07.1999 and in Writ Petition No. 9134 of 2016 the petitioner therein was made permanent on 25.10.2001. In both these writ petitions the

petitioners were regularized and made permanent when M.C.S. (Pension) Rules, 1982 were applicable and D.C.P.S. scheme did not come in existence.

13. In the light of the above, it will not be open for the petitioners to contend that the services rendered on daily wages be considered for pensionary purposes. The provisions of the M.C.S. (Pension) Rules, 1982 would not apply to the petitioners, in view of the fact that for the first time the supernumerary posts were created in the year 2015-16 and petitioners were appointed on the supernumerary posts substantively in the year 2016. The provisions of the M.C.S. (Pension) Rules, 1982 did not apply to the employees, who are appointed on and after 01.11.2005.

14. In the light of the above, the case put forth by the petitioners cannot be considered.

15. In view of the above, no relief can be granted to the petitioners. Writ Petitions, as such are disposed of. No costs.

(ANIL S. KILOR)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.