

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

908. WRIT PETITION NO. 11903 OF 2016

KAZI ALLAUDDIN S/o MUNIRODDIN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. A.A. Mukhedkar, Advocate for petitioners.
Mr. S.K. Tambe, Asstt. Govt. Pleader for Respts. No. 1,2,4 & 5
Mr. R.S. Shinde, Advocate for respondent No.3

CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVAL, J.J.

DATE : 25th APRIL, 2019

ORAL ORDER:

1. Mr. Mukhedkar, learned Counsel for the petitioner submits that the petitioner was working in the establishment of erstwhile Gram Panchayat, Ardhapur District Nanded. Same was subsequently converted into Municipal Council, Ardhapur in the year 2013. Petitioner was working as Recovery Clerk with the erstwhile Gram Panchayat, Ardhapur since 1st December 2013. According to the learned Counsel for the petitioner, petitioner was absorbed as employee of the Municipal Council, Ardhapur, upon establishment of the Municipal Council. Past service of the petitioner was counted for

the purpose of seniority but for the purpose of pension and other benefits, service from the date of establishment of the Municipal Council is counted. Same is illegal. Petitioner's services rendered with the Gram Panchayat should be counted and treated at par with Government servants. Section 76(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 would come to the aid of the petitioner. Learned Counsel submits that the petitioner, an employee of the Municipal Council, Ardhapur, is already given benefits of leave encashment and gratuity under the orders of Lokayukta, Mumbai, dated 11th April 2017 in case No. LOAA/COM/2616/2015 (T-2). In case of Municipal Council, Bhadrawati District Chandrapur under Govt. Resolution dated 3rd June 2000, past services rendered by Gram Panchayat employees were counted for the purpose of pension. The petitioner cannot be discriminated. The State Government has power to take decision in that regard. The Municipal Council on its part itself negated the case of the petitioner. It ought to have forwarded the case to the Government.

2. Mr. Shinde, learned Counsel for respondent No.3 and learned Asstt. Govt. Pleader submit that past services rendered by the petitioner with the erstwhile Gram Panchayat cannot be considered for the purpose of pension. Service rendered with the

Gram Panchayat is non-pensionable service.

3. We have considered the submissions. The order creating new posts for the purpose of employing the petitioner and other employees, who were working with erstwhile Gram Panchayat, states that their services shall be counted from the date petitioner and other employees are in the service with the Municipal Council. Prior service rendered by the petitioner and other employees with the Gram Panchayat is not considered for pension purpose.

4. From 1st November 2005 DCPS scheme came into force. In view of that, Govt. resolution in case of Bhadrawati Municipal Council passed in the year 2000 would not be relevant in this case. Admittedly, prior to 1st November 2005 petitioner was in service of the Gram Panchayat and said service was non-pensionable. Petitioner was governed by the service conditions applicable to the employees in service of the Gram Panchayat. It is only when the Municipal Council is constituted, petitioner's service would come within the ambit and purview of pensionable service but as the Municipal Council is established in 2009, the M.C.S.R. (Pension) Rules, 1979 would not apply and the DCPS scheme would apply. In view of above, it is not possible to accept contention of the

petitioner that past services rendered with the Gram Panchayat be treated for the purpose of pensionary benefits.

5. As far as services rendered with Gram Panchayat to be counted for the purpose of gratuity and leave encashment is concerned, the said reliefs are already granted by the Lokayukta, Mumbai, as mentioned above, and in view of that the petitioner shall apply to the Municipal Council for the said purpose and the Municipal Council in consultation with the State Government shall decide it, within a period of six months.

6. The writ petition is accordingly disposed of. No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Madkar