

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

77 WRIT PETITION NO.163 OF 2019

BHAURAO THAKAJI BENKE

.. Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS .. Respondents

...

Advocate for Petitioner : Shri Manoj Dond Patil h/f.

Shri Chandrakant K. Shinde

AGP for Respondents- State : Shri S.B. Yawalkar

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**CORAM : S V GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**

Dated: November 05, 2019

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PER COURT :-

1. The petitioner was appointed as Muster Assistant. The petitioner filed Complaint ULP No.90 of 1989 alleging unfair labour practice and directing grant of status and privileges of permanency and other consequential benefits from the date of complaint. The same was allowed by the Industrial Court directing the respondents/ State to grant status and privileges of permanency and other consequential benefits. The learned counsel for petitioner submits that, one of the mustering assistants filed Writ Petition No. 2946 of 1997 before this Court at it's Principal seat at Bombay. The Division Bench of this Court gave directions in the said writ petition to consider the past services for grant of pension in view of the judgment and order passed by the Industrial Court. The same relief is being claimed by this petitioner in the present writ petition. The

learned counsel submits that, the special leave petition filed against the said judgment and order of this Court is also dismissed.

2. The learned Additional Government Pleader states that, the past service cannot be considered of the petitioner in view of the scheme framed by the Government and approved by the Apex Court vide Government Resolution dated 01.12.1995 and the subsequent Government Resolution of the year 1999. The learned Addl. G. P. further submits that, it is only after the mustering assistant is absorbed in Government service, he can be considered as Government employee and benefits of Government service can be accorded to him. As this petitioner after absorption did not complete the period of qualifying service, he is not entitled for pensionary benefits.

3. It is not disputed that in this matter, the petitioner had approached the Industrial Court by filing complaint ULP. The said complaint is allowed and Industrial Court directed present respondent/State to accord those complainant/petitioner herein status and privileges of permanency and consequential benefits from the date of filing of complaint. As the pensionary benefits are not being accorded one of such complainants filed writ petitions bearing Writ Petition No. 2946 of 1997, Writ Petition No. 2236 of 1997 and Writ Petition No. 2246 of 1997. The Division Bench of this Court partly allowed the said petitions and passed the following order.

“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 Petitioners shall be treated as Permanent Employees 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 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 respective Petitioners, we have not examined the case of the Petitioners as regards the eligibility of pensionary benefits.

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

4. The Special Leave Petition filed against the said judgment and order is also dismissed. In the light of that, we adopt the same course as adopted by this Court in the above said writ petitions and pass the following order.

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 ULP till the date 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 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.

5. Rule is made partly absolute on above terms with no order as to costs.

[AVINASH G. GHAROTE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Gajanan