

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1808/2009

Secretary, Water Conservation Department & Oth.

..VS..

Smt. Suman Marotrao Rewaskar & Oth.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N. R. Patil, A.G.P. for the petitioners
Shri N. R. Saboo, Advocate for the Respondent Nos. 1,
2, 3(a) to 3(c)

CORAM : Z.A.HAQ, J.

DATED : 03/06/2019

Heard.

2] The original respondents (employees) had filed complaint under Section 28 read with Item Nos. 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971, contending that the present petitioners (Employers) indulged in unfair labour practices by not paying the pensionary benefits as per the entitlement of the respondents (employees). According to the employees, they had worked for more than 13 years before they were regularized from 01/11/1994 and therefore, as per Note No.1 below Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982, 50% of the service period of temporary employment of each of the employee was required to be taken into account while calculating the pension.

3] The employers had opposed the claim of the employees on various grounds. The employer contended that the complaint was not maintainable as the Department of Social Forestry cannot be said to be an “Industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947. The employer contended that the employees have to seek redressal of their grievances under the provisions of the Administrative Tribunals Act, 1985. On merits of the matter, the employer contended that the employees have not been able to establish that they were in employment prior to 01/11/1994.

4] On going through the impugned order, I find that the Industrial Court has dealt with all the contentions of the employer exhaustively. The Industrial Court has referred to the various judgments cited before it and has recorded its findings in paragraph No.16 of the impugned order that the employees have pleaded and have led evidence to establish that Department of Social Forestry is an “Industry”.

The Industrial Court has dealt with the objection taken by the employer regarding the maintainability of the complaint under Section 28 of the Act of 1971, repealing the objection raised on behalf of the employer, relying on Sections 14 and 15 of the Administrative Tribunals Act. Industrial Court has recorded its findings on this point in paragraph No. 15 of the impugned order.

The findings recorded by the Industrial Court on the above points cannot be faulted with.

5] As far as merits of the matter are concerned, the Industrial Court has assessed the evidence on record and giving due weightage to the fact that the services of the 3 employees (respondents) were regularized with effect from 01/11/1994, it is recorded that the employees were entitled for pensionary benefits.

The entitlement of the employees for the benefit as per Note No.1 below Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 is also rightly considered by the Industrial Court in paragraph Nos. 13 and 14 of the impugned order as follows:

“13. It was vehemently submitted by Miss Raut, advocate appearing for the complainants that complainant Nos. 1 to 3 were clearly Government employees and the provisions of Maharashtra Civil Services (Pension) Rules were applicable to the complainants. Admittedly complainant Nos. 1 to 3 were working with the Department of Social Forestry and the provisions of Maharashtra Civil Services (Pension) Rules were applicable. This fact is also clear even from the copies of appointment orders placed on record at Exh. 22 to 24. Condition No. 4 of the appointment order

clearly stipulates that the employees shall be governed by the Maharashtra Civil Services (Pension) Rules. There can be no dispute regarding this proposition at all. It was further submitted by Miss Raut, advocate that complainant Nos.1 to 3 would be entitled for pensionary benefits in view of Note 1 to Rule 57 of Maharashtra Civil Services (Pension) Rules which reads as under :

“In cases of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion on their posts, one half of their previous continuous service shall be allowed to count for pension.”

14. It was submitted by Miss Raut, advocate that earlier the wages of complainant Nos. 1 to 3 were being paid from contingency and subsequently they were brought on regular establishment. As such as per these aforesaid provisions half of their previous services shall be allowed to count for pension. From this, it is very clear that the period prior to the time when the employees were working on regular basis has also to be taken into consideration for the purpose of qualifying for pensionary benefits. It was submitted by Shri. U. S. Deshmukh, advocate that Rule 57 of Maharashtra Civil Services (Pension) Rules is applicable to the employees who have

been paid from contingency and were subsequently brought on regular establishment, but there is no material to show that the complainants were being paid wages from contingency. I am unable to accept this contention since the employees were working on daily wages prior to regularization and so their wages were being paid from contingency only. Secondly even the respondent has not placed on record any material to show that the wages were not paid from contingency. On the contrary, perusal of Rule 57 as well as 110(2)(b) clearly show as to how computation for grant of pension has to be made in case of employees who reached the age of superannuation and were entitled to pension. Further, respondent Department, of Social Forestry has not placed on record any other material to show that complainant No. 1 to 3 were not entitled for pension at all. Respondents have only taken a plea in the written statement that complainant were not entitled for pension as they have not completed qualifying period of ten years. Complainants were running short of this period only by few months. As such on going through Note 1 of Rule 57, I am of the view that complainant were clearly entitled for grant of pensionary benefits since they had completed more than ten years of qualifying service. Even otherwise complainants have placed on record

copy of seniority list which clearly shows that complainants had put in more than 12 years and 13 years of service and this period of work on temporary basis could not be ignored though the same was regularization. As such I am of the view that complainants had completed required period of ten years to qualify for the grant of pensionary benefits.”

6] The petitioners (employers) have not been able to satisfy that the conclusions of the Industrial Court are not sustainable. I concur with the conclusions of the Industrial Court and see no reason to interfere with the impugned order.

7] Hence the petition is dismissed.

8] The petitioners shall pay costs of Rs.10,000/- to respondent No.1, Rs.10,000/- to legal representatives of respondent No.2 and Rs.10,000/- to legal representatives of respondent No.3.

The amount of costs shall be paid within three months, failing which the officer/officers responsible to implement this order will be liable to pay the amount of costs from their salary.

9] The order passed by the Industrial Court shall be implemented within three months from today.

CIVIL APPLICATION NO. 2943/2011

In view of disposal of writ petition, the civil application for vacation of stay does not survive, therefore, disposed of.

(Z.A.HAQ, J.)

Namrata