

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

WRIT PETITION NO.6420 OF 2019

The Commissioner, Women and Child Development Commissionerate, Pune and others.

Vs.

Malti wd/o Rambhau Chetule

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

Court's or Judge's orders

Shri H. D. Dube, Assistant Government Pleader for petitioners.

Shri V. P. Marpakwar, Advocate for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : NOVEMBER 29, 2019.

The challenge raised in the present writ petition is to the judgment of the Industrial Court in the complaint preferred by the respondent no.1 herein under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It was the grievance of the respondent that her services were not absorbed by the petitioners despite the fact that she was in continuous employment initially as Anganwadi Sevika from 02.02.1988 and thereafter as Mukhya Sevika from 25.10.2002. By the impugned judgment the Industrial Court has allowed the complaint and has directed that her services from the year 1988 be taken into consideration for determining the period of qualifying service to enable her to claim pension.

Shri H. D. Dube, learned Assistant Government Pleader for the petitioners has relied upon Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short 'the said Rules') along with Government Resolution dated 03.11.2008 to submit that since the service rendered by the respondent no.1 was not for a period of ten years from 25.10.2002 till her superannuation on 31.10.2012,

the respondent no.1 was not entitled to claim pensionary benefits. According to him, the learned Judge of the Industrial Court erroneously relied upon Rule 57 of the said Rules while allowing the complaint. The impugned judgment was therefore liable to be set aside.

Shri V. P. Marpakwar, learned counsel for the respondent no.1 supported the impugned judgment. According to him, the earlier services from 02.02.1988 though temporary in nature were liable to be taken into consideration in view of the provisions of Rules 33 and 57 of the said Rules. The Industrial Court was justified in relying upon the decision in **Writ Petition No.1293 of 2012 Deputy Director of Health Services, Nagar Circle, Shraddhanandpeth, Nagpur and others Vs. Smt. Shakun Ashok Kamble decided on 13.10.2017** as well as the judgment in **2018 (4) Mh.L.J. 947 Jagjeewan Jaikumar Sanghai (since deceased) through Legal Heirs Asha w/o Jagjeewanrao Sanghai and another Vs. Parbhani Municipal Corporation and others** in that regard. He therefore submitted that there was no reason to interfere in writ jurisdiction.

I have heard learned counsel and I have perused the documents on record. It is not in dispute that the respondent was in service as Anganwadi Sevika from 02.02.1988. Thereafter on 25.10.2002 she was absorbed Mukhya Sevika. She attained the age of superannuation on 31.10.2012. The qualifying service of ten years was short by period of seven days by taking into consideration her service as Mukhya Sevika. Considering the legal position as referred in the decisions relied upon by the learned counsel for the respondent, it is clear that by virtue of Rules 33 and 57 of the said Rules the service rendered as Anganwadi Sevika was

also liable to be taken into consideration for determining the period of qualifying service. The Industrial Court after considering those decisions has granted relief to the respondent. It is found that the legal position has been rightly applied to the facts of the present case. Hence, there is no reason to interfere with the impugned judgment. The Writ Petition is therefore dismissed. No costs.

JUDGE

Sarkate