

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

904 WRIT PETITION NO.6275 OF 2020

Rais Ahmed Siddiqui,
Age 55 years, Occu. Retired as Junior Clerk,
R/o Udgir Tq. Udgir,
District Latur.

... Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Agricultural, Animal Husbandry,
Dairy Development and Fisheries Department,
Mantralaya, Mumbai-32.
2. Maharashtra Animal and Fisheries Science University
Nagpur, Tq. District. Nagpur,
Through its Registrar.
3. The Associate Dean,
Veterinary College, Udgir,
Tq. Udgir, District Latur.
4. The Comptroller,
(Accounts and Finance),
Maharashtra Animal and Fisheries
Sciences University, Hanuman Tekadi,
Futala Road, Nagpur,
Tq. District Nagpur.
5. The Vice-Chancellor,
Maharashtra Animal and Fishery Sciences
Nagpur, Hanuman Tekadi, Futala Road,
Nagpur, Tq. District Nagpur.
6. Shri. D. B. Raut,
Age 57 years, Occu. Service,
Maharashtra Animal and Fishery Sciences,
Nagpur, Hanuman Tekadi, Futala Road,
Nagpur, Tq. District Nagpur.

... Respondents

WITH

CIVIL APPLICATION NO.457 OF 2021

IN

WRIT PETITION NO.6275 OF 2020

Rais Ahmed Siddiqui,
Age 55 years, Occu. Retired as Junior Clerk,
R/o Udgir Tq. Udgir,
District Latur.

... Applicant

Versus

1. The State of Maharashtra
Through its Secretary,
Agricultural, Animal Husbandry,
Dairy Development and Fisheries Department,
Mantralaya, Mumbai-32.
2. Maharashtra Animal and Fisheries Science University
Nagpur, Tq. District. Nagpur,
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3. The Associate Dean,
Veterinary College, Udgir,
Tq. Udgir, District Latur.
4. The Comptroller,
(Accounts and Finance),
Maharashtra Animal and Fisheries
Sciences University, Hanuman Tekadi,
Futala Road, Nagpur,
Tq. District Nagpur.

... Respondents

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Advocate for Petitioner/Applicant : Mr. A. V. Patil-Indrale.
AGP for Respondent No.1-State : Mr. S. B. Yawalkar.
Advocate for Respondent Nos.2 to 6 : Mr. P. G. Rodge.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 13.10.2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner has put forth prayer clauses "B, B-1, C and C-1" as under :

"B. By issuing writ of mandamus or any other appropriate writ, order or directions, the respondents be directed to release arrears of provisional pension of petitioner in view of order dated 04.02.2020 issued by respondent No.3 as per provision of Rule 126 of the Maharashtra Civil Services (Pension) Rules, 1982 and the provision of Government Resolution dated 25.06.2020 along with interest @ 12% per annum and for that purpose issue necessary directions."

"B-1. By issuing appropriate writ, order or directions, the impugned order / notice dated 22nd December, 2020 issued by respondent No.2 regarding cancellation of VRS order of petitioner w.e.f. 31st March, 2018, be quashed and set aside and for that purpose necessary directions be issued."

"C. By issuing further writ of mandamus or any other appropriate directions the respondents be directed to grant and sanction final monthly regular pension to the petitioner and other consequential benefits as admissible in law expeditiously within two months and for that purpose necessary directions be issued."

"C-1. Pending admission, hearing and final disposal of the writ petition, the further proceeding pursuant to order / notice dated

22nd December, 2020 issued by respondent No.2 regarding cancellation of VRS order of petitioner w.e.f. 31st March, 2018 be stayed and for that purpose necessary directions be issued."

3. We have extensively heard the learned advocates for the respective sides, on 12.10.2021 and today. The learned advocate for the petitioner and the learned advocate for the University have tendered their brief written notes of submissions along with certain orders previously passed by the Labour Court / Industrial Court / the learned Single Bench of this Court.

4. Considering the chequered history of litigation between the parties and the previous orders passed by various Courts, we are not required to advert to the entire submissions canvassed before us. We are, therefore, summarizing the salient features, which deserve consideration while deciding this petition, as follows :

- (a) It is undisputed that the petitioner joined duties with the Erstwhile Agricultural University on 01.10.1986 on daily wages.
- (b) Upon receiving a written notice of proposed removal from

service with effect from 01.04.2001, the petitioner approached the Labour Court by preferring complaint ULP No.18 of 2001. He was performing the work of Clerk / Typist from the day, he was appointed.

- (c) By judgment dated 26.12.2001, the Labour Court declared that the University had indulged in unfair labour practices and the item 1(f) of Scheduled IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short 'M.R.T.U. and P.U.L.P. Act'). The University was directed to cease and desist from indulging a ULP and was directed to continue the petitioner as a daily wages scheme workman as before.
- (d) Both the parties approached the Industrial Court by preferring Revision ULP Nos.179 and 181 of 2004.
- (e) The Industrial Court rejected both the revision petitions.
- (f) The University approached the learned Single Judge Bench of this Court in Writ Petition No.4567 of 2004. The said petition was withdrawn by the University and the same was disposed off vide order dated 10.11.2008. The

petition was earlier admitted.

- (g) The petitioner preferred Writ Petition No.5812/2004 before this Court and had put forth his prayers under paragraph No.19(A) to 19(C) which read as under :

"(A) To hold and declare that the petitioner's services as Junior Clerk shall be deemed to have been transferred and he has become an employee of the respondent No.1 on and from the date appointed by the Government Resolutions dated 2.7.2001 and 3.8.2001 and therefore, entitled to grant of all the consequential benefits thereof including continuity in service, arrears of salary, seniority, etc.

(B) To direct the respondents to forthwith pay salary to the petitioner for the post of Junior Clerk on and from the date appointed by the Government Resolutions dated 2.7.2001 and 3.8.2001 with interest at the rate of 18% per annum by issuing a Writ of Mandamus or any other appropriate writ, order of direction.

(C) Pending hearing and final disposal of the above Writ Petition, the respondents, their officers, subordinates, agents and servants be restrained from accepting applications, considering and filling in one post of Junior Clerk in the respondent No.1 in terms of Advertisement No.18816 and 18818 of 2004."

- (h) This Court, by judgment dated 02.11.2017 delivered in the said Writ Petition, noted that the Labour Court had

allowed the ULP complaint of the petitioner in which he had challenged his proposed termination. To make things clear, he had approached the Labour Court against the notice of termination and by interim orders, he was protected. As such, there was no question of break in service. Considering these factors, this Court allowed the petition and recorded its observations in paragraph No.10, which read as under :

"10. Considering the length of service of the petitioner, and the circumstances in which the new University was created for the purposes of all Veterinary Colleges being brought under the umbrella of the said University, we hereby allow this petition by concluding that the petitioner's services shall be deemed to be continued with respondent No.1 on the post which he was earlier occupying with the erstwhile Marathwada Agricultural University, Parbhani with reference to its Research Centre at Beed. The petitioner's services shall be deemed to be continuous. The petitioner would be entitled for all such benefits as are permissible in law, in the light of the service conditions applicable to the petitioner."

- (i) Since the petitioner was not being given the benefits as directed by the Labour / Industrial Court as well as by this Court, he preferred Contempt Petition No.380 of 2018.

- (j) In the said Contempt proceedings, an affidavit-in-reply was filed by Mr. Narendra Kashinath Lonkar, who has affixed the stamp below his signature as Registrar, Maharashtra Animal and Fishery Sciences University, Nagpur, on 09.07.2018. In the said affidavit, it is specifically set out in paragraph No.7 as under :

"7. In view of this the Petitioner made representation dated 28.12.2017, 01.02.2018, 07.02.2018 and 17.03.2018 requesting the University for the appointment order on the post of Jr. Clerk w.e.f. 01.10.1986. This Hon'ble Court has directed the respondent to continue the services of the Petitioner on the post which he was occupying in erstwhile Marathwada Agricultural University, parbhani. The Petitioner was working as a Skill typist on daily wages basis in MAU Parbhani and the Hon'ble Court did not direct the respondent to issue the appointment order to the petitioner on the Post of Jr. Clerk from 01.10.1986. However, the University was ready to award the petitioner the other consequential benefits as per the Order of Hon'ble High Court. After following the laid procedure, the University issued a letter dated 02.04.2018 to the Petitioner informing the above facts. In the said letter, the respondent communicated the petitioner that University is ready to count the service of petitioner from 01.10.1986 for the pensionery benefits. However, when the said letter was sent by registered post it was refused to be accepted by the petitioner and returned with a remark "the party is outstation for medial treatment". Even, the Office Messengers were sent to the

residence of the Petitioner but the letter was not accepted either by the Petitioner or by his relatives / parents. The Copy of the University letter dated 02.04.2018 and the report of the messengers duly attached by the concerned Associate Dean and marked as 'Annesure R-1-1.'

- (k) The University was ready to award the petitioner the consequential benefits as per the order of Hon'ble High Court. After following the proper procedure, the University issued a letter dated 02.04.2018 to the petitioner informing the above facts. In the said letter, the respondent communicated to the petitioner that the University is ready to count the service of petitioner from 01.10.1986 for the pensionary benefits. However, when the said letter was sent by Registered Post it was allegedly refused to be accepted by the petitioner and returned with the remark "the party is out station for medical treatment".

5. It is, therefore, crystal clear that the submissions canvassed by the University before us that the petitioner was not granted continuity in service by the Labour Court, is wholly misconceived since the petitioner had approached the Labour Court prior to his termination by challenging the proposed

termination notice and was granted interim relief. Needless to state, he would be entitled for continuity of service from 01.10.1986, even if it is presumed that he was terminated. So also, the University has taken a specific stand in the reproduced portion above, in contempt proceedings, that the petitioner would be awarded consequential benefits and he would also be entitled for pensionary benefits by computing his service from 01.10.1986.

6. In view of the above, the written submissions of the University are fallacious and deserve no consideration, insofar as the above aspect is concerned.

7. As such, this leaves us with one issue that the voluntary retirement application of the petitioner, though was rejected earlier, was subsequently accepted by the Registrar of the University, who is the appointing, disciplinary and terminating authority since the petitioner is a Class-III employee. The acceptance of his voluntary retirement application dated 24.12.2019, having been issued by an authorized officer, whether it can be said that a person without authority or jurisdiction has accepted the voluntary retirement application

of the petitioner.

8. The learned advocate for the University has strenuously contended that the petitioner was seeking voluntary retirement on the ground of ill health. No doubt he had issued a three months' notice to the University and his severing of employer-employee relationship was to take effect after 31.03.2018, his request for voluntary retirement was turned down by communication dated 26.03.2018 as he did not subject himself for examination by the Medical Board as required under Rule 73 of the M.C.S. (Pension) Rules 1982.

9. The University has taken a stand that though it does not have documentary evidence to prove that the letter dated 26.03.2018 was served upon the petitioner (there is nothing placed before us), it is stated in paragraph No.10 of the written notes that the said notice was published in "Dainik Lokmat" on 24.06.2018, which is after three months. It is also canvassed that a messenger had gone to the residence of the petitioner. His sister refused to accept the letter and the messenger accompanied by employees of the University have prepared a report to that effect.

10. We have reservations in considering such report as there was no plausible reason for the University to send a messenger to the residence of a Class III employee to tell him that his voluntary retirement application is not being favourably considered, in the backdrop of the contention of the University that the letter was sent by Registered Post Acknowledgment Due. *Prima facie*, it appears that as the University does not have the acknowledgment receipt, that a report seems to have been generated to indicate that messengers went to the residence of the petitioner.

11. Be that as it may, there is no dispute that the petitioner is not subjected to any departmental enquiry for any misconduct of a serious nature like misappropriation, misbehaviour etc., which could be a cause for refusing voluntary retirement. There are cases when chargesheeted employees seek voluntary retirement so as to escape the clutches of law and avoid a stigmatic removal / punishment. In such cases, an application for voluntary retirement can be turned down. If all things are normal and if a Class-III employee desires to seek voluntary retirement on health grounds, unless there are justifiable

reasons, such application need not be casually rejected.

12. In the instant case, the voluntary retirement application has already been accepted by the Registrar and the case papers of the petitioner have been processed. He was granted voluntary retirement with effect from 31.03.2018 - afternoon. It is contended that by the notice dated 22.12.2020, the acceptance of voluntary retirement vide the communication dated 16.12.2019 is sought to be over turned after 12 months.

13. The learned advocate for the petitioner submits that the petitioner's voluntary retirement is made effective after 31.03.2018. He is not claiming any wages for any period after the said date. His health condition is precarious and he is not even able to carry his body on his feet due to various ailments. On account of continued ill health and co-morbidities, he was unable to perform his duties from 12.03.2014 till 31.03.2018, a period of 1481 days. The associate Dean of the Department, in which the petitioner was working, considered his condition and passed an order on 20.01.2020 declaring this entire period to be leave without wages for medical reasons. The learned advocate for the petitioner submits that even for this period, he

is not seeking any wages as he was unable to work due to illness and the said period has been treated as leave without wages on medical grounds.

14. We are quite surprised as to why is the respondent-University travelling to an extent of attempting to recall the earlier order of acceptance of voluntary retirement on the basis of suspicious circumstances that the order of rejection of the voluntary retirement application vide communication dated 26.03.2018 was served on the petitioner. He is a Class-III employee, who desires to quit employment due to medical reasons. He is not claiming salary for 1481 days which is treated as leave without wages, due to medical reasons. Being unable to perform duties, he has no desire to work as his body does not support him. There is no D.E. against him. There are no charges levelled upon him. Instead of giving a quietus to the matter, the University seems to be chasing this petitioner right up to the end of the world. There was a situation when the University did not want to retain him in employment. Due to the intervention of the Labour and Industrial Courts as well as of this Court, that the petitioner rescued his service and now when fortuitous circumstances restrain him from performing

his duties, the University desires that he should continue in employment even when he is not able to physically stand on his feet, unsupported.

15. Taking an overall view of the above factors and specifically the statements made by the University in its affidavit-in-reply in the contempt proceedings, this petition is allowed. The impugned notice dated 22.12.2020 for cancelling his voluntary retirement with effect from 31.03.2018 is quashed and set aside. Taking into account the factors discussed above, he would not be entitled to back wages.

16. The Single Judge Bench of this Court has held in ***Mahatma Phule Krishi Vidyapeeth Vs. Ganpat Kisan Karle 2016 (3) AIR Bombay R. 697*** that the length of services of the employee on daily wages has to be considered while computing the qualifying service of 10 years under Rule 30. Rule 57 of the M.C.S. (Pension) Rules, 1982 and Note 1 and 2, were also considered. The case of the petitioner insofar as pensionary benefits are concerned, would be squarely covered by this judgment.

17. Therefore, his service from 01.10.1986 till 31.03.2018 shall be reckoned with for considering his pensionary benefits. His papers for regular pensionary benefits shall be processed by the respondent-University through the competent authority, on or before 30.11.2021 and the office of the A.G. Nagpur shall ensure that the regular pension of the petitioner is released on or before 31.12.2021. All arrears of pensionary benefits with effect from 01.04.2018 shall be paid to the petitioner, as expeditiously as possible and in any case, on or before 15.01.2022.

18. Rule is made absolute, in the above terms.

19. The pending Civil Application does not survive and stands disposed off.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-