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

914 WRIT PETITION NO.8522 OF 2018

**SHAM KERBA GAIKWAD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Mr G. J. Kore, Advocate for petitioners;
Mr P. S. Patil, A.G.P. for respondent Nos.1 & 2;
Mr V. B. Deshmukh, Advocate for respondent No.3

AND

952 WRIT PETITION NO.8685 OF 2018

**SIMNTINI GUNDIBA BODHALE
VERSUS
MUNICIPAL COUNCIL OSMANABAD THROUGH ITS
CHIEF OFFICER**

...

Mr G. J. Kore, Advocate for petitioners;
Mr V. B. Deshmukh, Advocate for respondent

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

DATE : 27th October, 2021

PER COURT:

1. In Writ Petition No.8522/2018, filed by 110 petitioners, whose names are mentioned in the cause title, prayer clauses (B), (C) and (D) read as under :

(2)

“B. By issuing writ of mandamus or any other appropriate writ or direction in like nature, the respondent no.1 to 6 may be directed to consider/count temporary service of the petitioner’s as one half for the benefits of seniority retirement/pension purpose.

C. By issuing writ of mandamus or any other appropriate writ or direction in like nature, the respondent no. 1 to 6 may kindly be directed to consider/count previous service of the petitioners for the benefits of time bound promotion scheme as per the govt. Resolution dated 07/10/2016.

D. By issuing writ of mandamus or any other appropriate writ or direction in like nature, the respondent No. 2 to 6 may kindly be directed to decide representation filed by the petitioners dated 05/07/2017, 01/09/2017, 28/09/2017 and 03/10/2017.”

2. In Writ Petition No.8685/2018, the petitioner has put forth prayer clauses (B) and (C), which read as under :

“B. By issuing writ of mandamus or any other appropriate writ or direction in like nature, the respondent authority may be directed to considered/count her previous service (i.e. from 19/09/1991 to 14/06/2017) for time bound promotion scheme and for pension purpose.

C. By issuing writ of mandamus or any other appropriate writ or direction in like nature, the respondent authority may kindly be directed to decide

(3)

representation filed by the petitioner dated 05/04/2018, 23/04/2018 and 02/06/2018.”

3. We have considered the extensive submissions of the learned Counsel for the respective sides and have perused Rule 30 and Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. We have perused the view taken by this Court in the Judgment dated 13/08/2015, delivered in Writ Petition No.3493/2015, filed by **Vijaya Satyavijay Hiraskar versus The State of Maharashtra and others**. We have also perused the view taken by this Court in **Mahatma Phule Krishi Vidyapeeth, Rahuri versus Ganpat Kisan Karle, 2016 (4) Bom. C.R. 790**.

4. It is thus, a settled position of law that all such employees, who are employed in State instrumentalities covered under the Maharashtra Civil Services (Pension) Rules, 1982 and have been regularized in service, would be eligible for pensionary benefits by reckoning by 50% on their temporary engagements, keeping in view Rule 30, which reads as under :

“30. Commencement of qualifying service.

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from

(4)

the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency.

[Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than 10 years, or voluntary after the completion of 20 years of qualifying service, shall be eligible for grant of superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Guaranty; and family Pension at the same scale as admissible to permanent Government servant.]

Exception -

The rules regarding grant of terminal benefits to temporary Government servant [except those mentioned in the second proviso who retire being confirmed in any post in Government service are embodied in Appendix II.

Note 1. *If a Government servant in holding a temporary post when the permanent post on which he holds a lien is abolished in the circumstance described in rule 81 or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service.*

(5)

Note 2. *In case of employee of former Indian States who have been absorbed in Government service previous pensionable service rendered by them under the same State should it immediately followed by Government service be taken into account for purposes of pension on his final retirement from Government service. Pensionable service rendered under different States should be taken into account for purpose of pension provided that the employees were transferred or sent on deputation from one State to another under a written agreement between the Governments of the States concerned.*

(The term “immediately” appearing in Note 2 above includes a break in service if it does not exceed six months, between the date on which the service was terminated and the date of his re-employment in service).

The question whether the previous service in Indian States is pensionable or not should be determined in accordance with these rules as if those rules were applicable to that service.

Note 3. *See rule 57.”*

5. The learned Advocate for the Municipal Council canvasses a fallacious submission that, because these petitioners were not being paid their salary from the contingency fund and were paid directly by the Municipal Council as temporaries, Rule 57 would be applicable. Rule 57 reads thus :

(6)

“57. Non-Pensionable service.

As exceptions to rule 30, the following are not in pensionable service :-

- (a) government servants who are paid for work done for Government but whose whole time is not retained for the public service,*
- (b) Government servants who are not in receipt of pay but are remunerated by honoraria,*
- (c) Government servants who are paid from contingencies,*
- (d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable,*
- (e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.*

Note 1- *In cases of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.*

Note 2- *In the case of persons who were holding the posts of Attendants prior to 1st. April 1966, one-half of their previous continuous service as Attendants, shall be allowed to count for pension.”*

6. Considering the law laid down by this Court in *Vijaya Satyavijay Hiraskar* (supra) and in *Mahatma Phule Krishi Vidyapeeth, Rahuri* (supra), it is beyond debate that such

(7)

temporary employees, would be entitled for pensionary benefits after considering their temporary services in accordance with Rule 30.

7. The petitioners have placed before us an incomplete annexure, in which, the dates of joining of several petitioners have not been mentioned. Hence, the necessary details as regards their service tenures are not before us. Nevertheless, this would not dent the merits of their claims.

8. As such, these petitions are allowed with the following directions :-

(a) The respondent – employer in Writ Petition No.8685/2018 shall consider the case of the said petitioner (Simantini Gundiba Bodhale), in terms of prayer clause (B) reproduced above;

(b) We direct the respondent – Municipal Council in Writ Peititon No.8522/2018, to consider the cases of the petitioners individually, by taking into account their first date of joining temporary service and the period that they have rendered post regularization, in view of the law laid down by this Court referred to above, and decide their

(8)

entitlements for pensionary benefits and consequential reliefs, on or before 31/12/2021;

(c) If any adverse orders is passed against any of the petitioners, such orders shall be communicated to the concerned petitioner within 15 days i.e. on or before 15/01/2022;

(d) All such petitioners, who are held entitled for pensionary benefits, would be paid such benefits before 01/02/2022 and for which, the respondent – Municipal Council shall initiate expeditious steps for processing their pension papers;

(e) Arrears of pension shall also be paid to the eligible petitioners, on or before the 28th day of February, 2022;

(f) Any aggrieved petitioner would be at liberty to seek redressal of his grievance by resorting to a remedy as is statutorily provided.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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