

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

WRIT PETITION NO. 13774 OF 2017

Udgir Municipal Council,
Tal Udgir Dist: Latur
Through its Chief Executive Officer ... Petitioner

Versus

- 1] Shalivahan Bhimrao Kapale
Age: 51 years, Occu: Service
R/o: Kapale galli, Tq: Udgir,
Dist: Latur
- 2] Director of Municipal Administration
Third Floor, GTS Building,
Sir Pochkhanwala Marg,
Varli-Mumbai ... Respondents

**WITH
WRIT PETITION NO. 5271 OF 2020**

Udgir Municipal Council,
Through its Chief Executive Officer
Tq: Udgir, Dist: Latur ... Petitioner

Versus

- 1] Shalivahan Bhimrao Kapale
Age: 62 years, Occu: Retired
R/o: Kapale Galli, Udgir,
Tq: Udgir, Dist: Latur
- 2] Director of Municipal Administration
Government Transport Service Building,
3rd Floor, Sarpochkhanwala Marg,
Varli-Mumbai-30 ... Respondents

....

Mr. P. V. Barde, Advocate for petitioner
Mr. V. P. Golewar, Advocate for respondent No.1
Mr. Y. G. Gujrathi, AGP for respondent No.2

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 15th FEBRUARY, 2021
PRONOUNCED ON : 21st APRIL, 2021

ORDER :-

. Both these writ petitions are being decided by this common order, since issues involved therein are overlapping with each other.

These petitions have been filed by Udgir Municipal Council (for short 'Municipal Council'). Respondent No.1 herein is an employee of the Municipal Council working on daily wages. Respondent No.2 is the Director of Municipal Administration. He remained absent in the proceedings before the Industrial Court.

2. Respondent No.1 Shalivahan (for short 'respondent') had filed Complaint (ULP) No.170 of 2013 against the Municipal Council and the respondent No.2, claiming relief of permanency in service on account of having completed 240 days continuous service on daily wages. The Industrial Court, Latur, vide its judgment and order

dated 13.04.2017, allowed the said complaint with a direction to the Municipal Council to forward a proposal, complete in all respects to regularise the services of the complainant with retrospective effect and for granting all such monetary benefits and seniority from such date, vis-a-vis as have been conferred to the workman junior to the respondent (Shalivahan), within a period of two months from the date of the said order. The Municipal Council and respondent No.2 have also been directed not to terminate the services of the respondent, pending the said proposal. They were further directed to pay the difference between salary/wages actually paid and as payable in pursuance of the said order. This order is under challenge in Writ Petition No.13774 of 2017. Pending the writ petition, the respondent superannuated on 14.02.2018. He, therefore, filed Complaint ULP No.20 of 2018 claiming pensionary benefits. The said complaint was allowed by the Industrial Court vide its judgment and order dated 03.02.2020. The same is under challenge in Writ Petition No. 5271 of 2020.

3. Heard learned Counsel for the parties. Perused the impugned orders and the documents relied upon.

Shri P. V. Barde, learned Counsel appearing for the Municipal Council would submit that the respondent was working on daily wages. On his attaining the age of superannuation he was not assigned any work. The claim of the respondent is fraudulent, since he claimed to have had joined the service with the Municipal Council way back in the year 1971. He claimed to have faced termination in 1974. Vide impugned judgment and order passed in Complaint (ULP) No.170 of 2013, the respondent has not been made permanent in service. Only the direction was issued to forward the proposal for his regularisation in service. The Municipal Council has no authority to grant status of permanency. It is only the State Government which can create post for the establishment of the Municipal Council. The Industrial Court misinterpreted relevant rules of the Maharashtra Civil Services (Pension) Rules, 1982 and directed to count the past service for grant of pension. The learned Counsel, therefore, urged for allowing both the writ petitions.

4. Learned AGP reiterated the submissions made by the learned Counsel appearing for the Municipal Council.

5. Shri V. P. Golewar, learned Counsel representing the respondent, would on the other hand, submit that both the petitions

have become infructuous in view of the fact that the Government of Maharashtra vide G.R. dated 05.02.2019 has made daily rate employees of the Municipal Council recruited during 11.03.1993 and 27.03.2000, permanent. For accommodating such employees the posts have been created on the establishment of the Municipal Council. According to the learned Counsel, name of the respondent figures in the list of employees who have been made permanent in service.

Turning to the merits of the matters, learned Counsel would submit that the respondent joined the services with the Municipal Council in January 1971 on the post of Choukidar. His services came to be terminated illegally in 1974 and industrial dispute, therefore, came to be raised. It was allowed with a direction to the Municipal Council to reinstate the respondent in service. Accordingly, the respondent was allowed to join the duties on 25.09.1998. The respondent superannuated in February 2018. The employees junior to the respondent have been granted all the pensionary benefits. The respondent, thus became entitled for such benefits. According to the learned Counsel, both the petitions are therefore liable for dismissal.

6. Admittedly, the respondent had initially joined the service with the Municipal Council on daily wages in January 1971. He came to be terminated from service in the year 1974. The respondent, therefore, filed a Reference, which culminated into industrial dispute bearing Reference (IT) No.331 of 1974. It was allowed vide judgment and award dated 29.01.1983. The respondent, thus, came to be reinstated in service on 25.09.1998. He attained the age of superannuation on 14.02.2018. During his tenure, the respondent filed Complaint (ULP) No.170 of 2013. it was allowed by the Industrial Court, Latur, vide its judgment and order dated 13.04.2017 in terms of the following order:

- “1. Com/ULP/No.170/2013 is partly allowed.*
- 2. The respondent No.1 is directed to forward a proposal, complete in all respects to regularize the services of the complainant with retrospective effect and for granting all such monetary benefits and seniority from such date, vis-a-vis as have been conferred to the junior workman, to the respondent No.2 within a period of two months from the date of this order.*
- 3. The respondent Nos.1 & 2 are directed not to terminate the services of the complainant during the pendency of said proposal and further directed to pay difference between the salary/wages actually paid to the complainant and as payable in pursuance of the instant order in accordance with the pay-scale of the permanent employee w.e.f. vis-a-vis date that junior workman is extended such benefits.*
- 4. Parties to bear their own cost. Proceeding is closed.”*

7. The aforesaid order has been under challenge in Writ Petition No.13774 of 2017. The order impugned in the said writ petition has not been stayed. The State of Maharashtra vide G.R. dated 05.02.2019 (the copy of which is on record), created 1416 temporary posts on the establishment of the Municipal Councils/Nagar Panchayats, with a view to accommodate the employees working on daily wages recruited during 11.03.1993 to 27.03.2000. The name of the respondent is at serial No.704 of the list of such employees who have been made permanent in service. It is therefore desirable to not decide Writ Petition No.13774 of 2017 on its own merits, since the challenge therein has become infructuous.

8. It is necessary to refer the relevant rules of the Maharashtra Civil Services (Pension) Rules, 1982.

30. Commencement of qualifying service - *Subject to the provisions of these rules, qualifying service of a Government servant shall commence from 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 ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government Servant.]

Exception – The rules regarding grant of terminal benefits to temporary Government servants [except those mentioned in the second proviso] who retire without being confirmed in any post in Government service are embodied in Appendix II.

Note 1. - If a Government servant is holding a temporary post when the permanent post on which he holds a lien is abolished in the circumstances 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.

Note 2. - In the case of employees 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 purposes 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.

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 case 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.”

9. The only question remained to be answered is as to whether the respondent would be entitled for pension and pensionary benefits. Admittedly, minimum ten years service is required for being eligible for pension. The respondent has been in continuous service with the Municipal Council from 25.09.1998 to 28.02.2018. It may appear that he was short of seven months service for being entitled for pensionary benefits. The respondent had served the Municipal Council during 01.01.1971 to 1974 in the past. This service needs to be counted for grant of pension to the respondent.

10. In view of Rule 44(1) of the Maharashtra Civil Services (Pension) Rules, 1982, a Government Servant who is dismissed, removed or compulsorily retired from service, but is reinstated on appeal or review, is entitled to count his past service as qualifying service for pension.

11. The respondent had, admittedly, been reinstated in service on 25.09.1998 pursuant to the order dated 05.05.1998 passed by the Labour Court, Latur, in Reference (IDA) No.27 of 1994. The services rendered by the respondent from 01.01.1971 to 1994 combined with the services rendered during 1998 to 2018, constitutes the qualifying service of more than ten years and thus he

becomes entitled to receive pension. No interference is therefore warranted with the orders impugned in both the writ petitions. The writ petitions, therefore fail. The same are dismissed.

[R. G. AVACHAT, J.]

SMS