

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO.6702 OF 2021**

Rahimkhan s/o Aminkhan Pathan  
Age : 57 years, occ : service as  
Assistant Registrar, Mahatma Phule  
Krishi Vidyapeeth, Rahuri,  
Taluka Rahuri, Dist. Ahmednagar.

Petitioner

Versus

1. The State of Maharashtra  
Through it's Secretary  
Rural Development Department,  
Mantralaya, Mumbai – 32.
2. Zilla Parishad, Ahmednagar,  
Through its Chief Executive  
Officer.
3. Mahatma Phule Agriculture  
University, Rahuri, Tal. Rahuri,  
District Ahmednagar  
Through it's Registrar.

Respondents

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Mr. Chandrakant Shinde, Advocate for the petitioner.  
Smt. M.A. Deshpande, A.G.P. for respondent No. 1- State.  
Mr. R.S. Devdhe, Advocate for respondent No. 2.  
Mr. M.P. Gude, Advocate for respondent No. 3.

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**CORAM : C.V. BHADANG AND  
SANDIPKUMAR C. MORE, JJ.**

**DATE : 14 JUNE 2022**

**ORAL JUDGMENT (PER C.V. BHADANG, J.) :**

Rule. Rule made returnabale forthwith. Learned A.G.P. and learned Counsel for the respondents waive service for the respective respondents. Heard finally by consent of the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the communication dated 17 March 2021 issued by the third respondent University thereby refusing to extend the benefits of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as “the 1982 Rules”) and the General Provident Fund Scheme to the petitioner on the ground that the petitioner has not complied with the conditions of Clause III of the Circular dated 12 January 2007 issued by the Finance Department of the State of Maharashtra.

3. The second respondent Zilla Parishad had issued an advertisement for recruitment to the post of an Attendant somewhere in April 2005. The third respondent University also issued an advertisement for filling up the post of an Assistant Superintendent in the establishment of the University on 27 April 2005. The petitioner being desirous of the employment, applied for both the posts in pursuance of the two advertisements. The

petitioner was eventually selected and was appointed as an Attendant (Group D) in the second respondent Zilla Parishad and joined the duties on 23 September 2005. Subsequently, on 28 March 2006, the petitioner came to be selected for the post of an Assistant Superintendent in the third respondent University, and therefore, he tendered his resignation to the Zilla Parishad on 31 March 2006 which was accepted on the same day. The petitioner was eventually relieved on the same day and he joined as an Assistant Superintendent with the third respondent University on 1 April 2006.

4. On his retirement / superannuation, the petitioner sought counting of the service with the Zilla Parishad for the purpose of pensionary benefits under the 1982 Rules and for the benefit of the Provident Funds Scheme. The University sought certain particulars from the Zilla Parishad and by a communication dated 7 January 2021, the Zilla Parishad informed that the recruitment and selection of the petitioner was as per the regular procedure. The probation period was not applicable to the appointment of the petitioner as an Attendant (Group D). It was also intimated that there was no break in service inasmuch as the

petitioner was relieved from the Zilla Parishad on 31 March 2006 and joined the University on the next day i.e. on 1 April 2006. However, in so far as point No.3 is concerned, it was informed by the Zilla Parishad that the petitioner had not sought permission of the Competent Authority in the Zilla Parishad for taking part in the recruitment process of the University.

5. It appears that by a subsequent communication dated 30 April 2021, a copy of which is tendered by the learned Counsel for the petitioner across the bar, the Zilla Parishad informed the University, that as the petitioner was not in service of the Zilla Parishad on the date on which he had applied for the post of an Assistant Superintendent in the University, there was no occasion for him to obtain any prior permission. The University, placing reliance on the Circular dated 12 January 2007, has refused to extend the benefit of the 1982 Rules and General Provident Fund Scheme to the petitioner. It is, in these circumstances, that the petitioner has approached this Court.

6. We have heard the learned Counsel for the parties. With the assistance of the learned Counsel for the parties, we have gone through the record.

7. A perusal of the Circular dated 12 January 2007 would show that by the Government Resolution dated 31 October 2005, the Government had introduced a new Defined Contributory Pension Scheme (DCPS) which was made applicable to the Government servants who are recruited on or after 1 November 2005 in the State Government service. By the said Circular, the Government has clarified that an employee who had applied for the post on pensionable establishment in some other department and subsequently was appointed in the new post on or after 1 November 2005, will be covered under the Maharashtra Civil Services (Pension) Rules, 1982 and General Provident Fund Scheme, provided the following conditions are fulfilled :

- (i) The earlier appointment of the Government servant should be a regular appointment i.e. should have been appointed after fulfillment of all the requirements (e.g. age-limit, educational qualification, appointment through Maharashtra Public Service Commission / Selection Board etc.) prescribed under the recruitment rules for the concerned post.
- (ii) The Government servant should have completed the probation period of the earlier post satisfactorily.

(iii) The Government servant should have applied for the new post through proper channel / with proper prior permission of the administrative authority concerned.

(iv) The period of break, if any, in service in between the above two appointments, should not be more than the joining time permissible under the rules of transfer.

8. The University has found that the petitioner has not fulfilled the condition in Clause (iii) of the Circular.

9. However, as noticed earlier, both the advertisements by the Zilla Parishad as well as the University, were issued in the month of April 2005 and the petitioner had simultaneously applied for both the posts. It can, thus, be seen that there was no occasion for the petitioner to have sought permission of the Competent Authority in the Zilla Parishad before applying for the post of an Assistant Superintendent in the University. That is precisely what is communicated to the University by the Zilla Parishad by communication dated 30 April 2021. In such circumstances, we find that the University is not justified in refusing to extend the benefits of the pension under the 1982 Rules and General Provident Funds Scheme to the petitioner for the reason of non-compliance of Clause (iii) of the Circular dated 12 January 2007.

In that view of the matter, we quash and set aside the communication dated 17 March 2021 and direct the respondent University to consider the claim of the petitioner for pension and under the General Provident Fund Scheme on its own merits and in accordance with law, within a period of three months from today. The University shall not reject the claim of the petitioner for the reason of non-compliance of Clause (iii) of the Government Circular dated 12 January 2007.

10. Rule is made absolute in aforesaid terms with no order as to costs.

**SANDIPKUMAR C. MORE, J.**

**C.V. BHADANG, J.**