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

907 WRIT PETITION NO.5277 OF 2022

AMBIRABAI SHAYMARAO GHAYAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr A. V. Indrale Patil, Advocate for petitioner;
Mr S. G. Karlekar, A.G.P. for respondent/State

**CORAM : RAVINDRA V. GHUGE
AND
ANIL L. PANSARE, JJ.**

DATE : 28th June, 2022

PER COURT:

1. By this petition, the petitioner, who is a 72 years old widow, has put forth prayer clauses (C), (D) and (E), which read as under :-

“(C) By issuing appropriate writ, order or directions, the respondents be directed to grant pensionary benefits of the deceased Shyamrao Vishvnath Ghayal to the petitioner wife including the monthly pension and other admissible benefits including family pension by considering half service rendered by her deceased husband on temporary basis i.e. about 12 years, in addition to service rendered by him on permanent post by quashing and set aside the impugned communication dated 26.10.2021 issued by respondent No. 2 and accordingly the petitioner be paid arrears of pensionary benefits as well as regular family pension along with interest @ 12% per annum and for that purpose necessary directions be issued.

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(D) Pending admission, hearing and final disposal of this writ petition, the respondent, particularly, respondent Nos.2 and 3 be directed to grant monthly retiral pension to the petitioner by considering her deceased husband's service on permanent post as well as half service on temporary basis and for that purpose necessary directions be issued.

(E) Pending admission, hearing and final disposal of this writ petition, the respondents be directed to deposit arrears of pensionary benefits of petitioner deceased husband along with interest @ 12% p.a. in this Hon'ble Court and for that purpose necessary directions be issued."

2. We have considered the strenuous submissions of the learned Advocate for the petitioner, who has based his submissions on the principle of "continuous/recurring cause of action". In this backdrop, the facts of the case are as under :-

(a) The husband of the petitioner claims to have been working from 1973 as a 'Labourer' on temporary basis with the respondent Agricultural University.

(b) He was appointed on a vacant post of 'Labourer' by the University on 11/07/1996.

(c) She claims that he was in permanent service on the post of 'Labourer' from the said date.

(d) He attained the age of 60 years on 31/12/1997 and therefore, she claims that he had put in 18 years in

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permanent employment.

(e) He passed away on 06/06/2005.

(f) He never sought pension or pensionary benefits or retiral benefits from January 1998 till he passed away.

(g) His widow, the petitioner moved a representation on 30/09/2020, seeking pensionary benefits, after 15 years of the demise of her husband.

(h) The widow moved Writ Petition No.5737/2021 before this Court and by an order dated 28/06/2021, this Court disposed of the petition and permitted the petitioner to espouse her representation with the University.

(i) By the impugned communication dated 26/10/2021, the University has informed the petitioner that her husband had worked for only 1 year 5 months and 10 days as a 'Majdoor' on temporary basis from 22/07/1996 till 31/12/1997.

(j) The University has also informed that, as the deceased was not working for a minimum of three years on a permanent vacant post, he was not qualified for pension.

3. It is, thus obvious from the above recorded facts that, there is no evidence of the deceased having worked on daily wages,

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continuously with the respondent/University from 1973 on-wards. The petitioner relies upon a chart prepared by a Scientist working in the University, dated 14/02/2020, setting forth that the deceased was working on daily wages in between 1973-1995.

4. It is undisputed that a permanent employee, who may not have completed qualifying service for pension under Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short 'the said Rules'), would be entitled for pensionary benefits, by reckoning his earlier temporary employment to the extent of 50%. With such addition, if he completes the qualifying service of 10 years for pensionary benefits, he is entitled to the same. However, an employee, who is through out a temporary and never in the permanent service of the employer, cannot derive the advantage of Rule 57 of the said Rules.

5. We have, therefore, perused the purported order of appointment, dated 11/07/1996, which the petitioner widow claims to be an order of granting permanency and regularization on a permanent vacant post to her deceased husband. A single glance at the opening words of the said order indicate that, the husband of the petitioner, along with several other daily wagers,

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were appointed on a temporary basis, with the benefit of a particular scale of wages. That order does not have even a semblance of being an order of granting permanency and regularization to the deceased husband.

6. The learned Advocate for the petitioner has relied upon a recent view taken by the Hon'ble Apex Court, dated 20/05/2022, in Civil Appeal No.4100/2022, filed by Shri. M. L. Patil (deceased), through Legal heirs Vs. State of Goa and another, to buttress his submission that, pensionary benefits are of a recurring nature, and therefore, non-payment of pension is a continuous cause of action.

7. In the said case, this Court, at Goa, concluded that the petitioner was entitled for an extended period in service from 58 years to 60 years. He was granted the said benefits of two years of extension in service. He was granted all consequential monetary benefits. However, arrears of pension, as per the revised rates were not granted on the point of delay. The Hon'ble Apex Court did not find favour with this view only to the extent of denial of pensionary benefits.

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8. In the case in hands, it is apparent that, the petitioner was never in the permanent service of the University. He was a daily wager till he attained the age of 60 years. Thereafter, he himself did not move a single application for pensionary benefits for 8 years till he passed away. 15 years after his demise, the petitioner moved a representation. These facts are glaring. Moreover, he was never entitled for pension.

9. In view of the above, this petition is dismissed.

(ANIL L. PANSARE, J.)

(RAVINDRA V. GHUGE, J.)

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