

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

WRIT PETITION NO.600 OF 2017

Gulnavaj Sheikh Usman Pinjari

... Petitioner

Versus

Registrar,
Mahatma Phule Agriculture University & Anr.

... Respondents

...

Mr. Samir Shaikh, Advocate for the Petitioner

Mr. M. N. Navandar, Advocate for Respondent Nos.1 & 2

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 28th September, 2022

PER COURT :-

1. Challenge in this petition is to the order dated 26/03/2015, passed by the Industrial Court in Complaint (ULP) No.29/2013, thereby rejecting the complaint filed by the petitioner.

2. The petitioner filed Complaint (ULP) No.29/2013 seeking a declaration that, respondents have indulged in commission of unfair labour practice as per items 9 & 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'MRTU & PULP Act') by not considering service rendered by him since the year 1972 on daily wages, while granting him pensionary benefits. The said complaint is dismissed. Hence, the present petition.

3. Heard the learned Advocate for the petitioner and the learned Advocate for the respondents.

4. The learned Advocate for the petitioner, by relying on Rule 30 of Maharashtra Civil Services (Pension) Rules, 1982 (for short 'the said Rules') and decisions of this Court in **Mahatma Phule Krishi Vidyapeeth Vs. Ganpat** reported in **Laws(Bom) 2016-6-66**, **Devidas Bhiku Borker & Ors. Vs. The State of Maharashtra & Anr.** reported in **2011 (7) All MR 363**, **Parshuram Vithoba Bhandare Vs. State of Maharashtra & Anr.** reported in **2001(4) Mh.L.J.** and **Mahatma Phule Krishi Vidyapeeth Through its Registrar Vs. Ahmednagar Jilha Shetmajur Union & Ors.** in **Writ Petition No.104/2014**, contends that service rendered by petitioner on daily wages ought to have been taken into consideration by the respondents, while awarding pensionary benefits to the petitioner. He submits that though there was delay in approaching the Industrial Court, the delay was condoned. According to him, Industrial Court has failed to appreciate the contentions of petitioner in proper perspective. The reasons assigned by the Industrial Court, while rejecting the complaint are erroneous and therefore, impugned judgment cannot be sustained. He therefore submits that by setting aside the impugned judgment, writ petition deserves to be allowed.

5. The learned Advocate for respondents, on the other hand, has supported the impugned judgment. He submits that complaint filed by petitioner under Items 9 & 10 of Schedule IV of MRTU & PULP Act itself was not maintainable. He submits that judgments relied upon by the petitioner are not applicable to the facts of the present case and therefore, reliance of the petitioner on the same is misplaced. According to him, Rule 57 (1)(c) and 102 (b) of the said Rules, are applicable in the facts of the present case. He further submits that petitioner is already getting pension, as he had completed qualifying service and therefore, prayer of petitioner should not be entertained. He submits that there is no substance in the petition and the petition is liable to be rejected.

6. It is not in dispute that petitioner has worked with respondent on daily wages for the period between 16-10-1972 to 07-06-1983 and service was uninterrupted and continuous. Admittedly, petitioner was made permanent on 07-06-1983 and stood retired on superannuation in the year 2003. It is also not in dispute that petitioner is getting pension. However, petitioner now claims that service rendered by him on daily wages between 1972 to 1983 be taken into consideration, while calculating his pension.

7. The learned Single Judge of this Court, in Mahatma Phule Krishi Vidyapeeth (*Supra*), had an occasion to consider similar

issue. By relying on the Division Bench judgment in Waliuddin Pashasaheb Vs. State of Maharashtra & Anr. in Writ Petition No.1542/2008, this Court has held that in terms of Rule 30 of the said Rules, service rendered by petitioners therein on daily wages ought to have been taken into consideration as qualifying service under Rule 30 and for those, who are not covered by Rule 57.

8. In unreported decision in Writ Petition No.104/2014, in similar facts, this Court has held that though the complaints were filed after 15 years of retirement, this Court by recording statement of learned Advocate for petitioner therein, held that they are willing to give up their claim from the date of retirement till the filing of complaint, partly allowed the petition and directed that petitioner be paid pensionary benefits from the date of filing of their respective complaints.

9. In *Devidas Bhiku Borker (Supra)*, learned Division Bench of this Court held that service rendered by the petitioners therein, who were working as Seasonal Godown Keeper ought to have been reckoned for the purpose of pensionary benefits. It was therefore directed that service rendered by applicants therein as Seasonal Godown Keepers should be taken into consideration for purposes of computing the entitlement and quantum of their pension and respondents were directed to take into consideration entire period

of service rendered by applicants therein from the date of their joining as Seasonal Godown Keeper for the purpose of computing their entitlement and quantum of pension. Case of the petitioner is squarely covered by the aforesaid ratios.

10. Taking into consideration the fact that, petitioner has approached the Industrial Court after 10 years, petitioner is not entitled to claim the benefits from the date of retirement till the date of filing of complaint.

11. In the result, writ petition is partly allowed.

12. The respondents are directed to give pensionary benefits to petitioner by computing his service from 16-10-1972 to 07-06-1983, these benefits shall be payable to the petitioner from the date of filing of (ULP) complaint.

13. It is made clear that petitioner shall not be entitled for these benefits for earlier period.

14. Necessary calculations and computations be made and benefits be paid to the petitioner, within a period of eight weeks from the date of receipt of writ of this order.

15. With these directions, writ petition is disposed of.

[NITIN B. SURYAWANSHI, J.]

Sameer