

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

WRIT PETITION NO.6554 OF 2013

**THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
TARACHAND YASHWANT JADHAV**

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AGP for Petitioner : Mr. A. A. Jagatkar
Advocate for Respondent No.1 : Mr. S. D. Joshi

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CORAM : SMT. BHARATI DANGRE, J.

DATE : 24th JANUARY, 2022

PER COURT :

1. Heard the learned AGP for State and the learned counsel for respondent employee.

2. The petitioner is aggrieved by the decision of the Industrial Court, Ahmednagar, dated 03-09-2012, which allowed the Complaint (ULP) No.76/2007 filed by the respondent seeking declaration that the petitioner department has engaged in unfair labour practice under Item 9 Schedule IV of the Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 (for short 'the Act, 1971'). The Industrial Court directed to cease and desist from continuing to engage in unfair labour practice and accepting that the employee has rendered service of 8 years and 11 months, issued a

direction to consider one-half service of the complainant rendered as temporary on daily wages while computing eligibility of pension and was directed to submit proposal accordingly.

3. The State being aggrieved by the said decision has preferred the present writ petition by canvassing that the case of the respondent was covered by Rule 57(1) of the Maharashtra Civil Services Rules, (Pension) Rules, 1982 (for short 'the Rules, 1982'). However, erroneously the Industrial Court has referred to Note (2) and concluded that services of the respondent are pensionable.

The length of service rendered by the complainant as a temporary and on daily wages as well as in permanent capacity, not being in dispute, he was recorded to have rendered 8 years and 11 months service as a permanent employee. The question that arose for determination is whether this service entitle him to claim pension. The learned Industrial Court recorded finding that the complainant fall in category of Rule 57(C) i.e. Government servants who are paid from contingencies, by referring to Note-2 which is stipulated as under:-

“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”

Drawing benefits from the said Note, the learned Industrial

Court held that the act of petitioner holding the respondent to be not eligible for pension attracted Item 9 Schedule IV of the Act, 1971. It is pertinent to note that Rule 57 of the Rules, 1982, provide for the non-pensionable service and after referring various categories of services rendered by the Government Servant, Note-1 appended to the said Rule stipulate that, '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'.

4. The learned counsel for respondent, on the very first date of hearing of the petition filed by the State, conceded to the fact that Note-2 under Rule 57 has no applicability to the case of the respondent, and in fact, reference has to be made to Note-1 and this concession was recorded by this Court in its order dated 05-03-2014.

However, another event which occurred was the complaint being filed by Sarva Shramik Sangh, a trade union, in the form of Complaint (ULP) No.270/1987 against the State of Maharashtra and the Divisional Forest Officer, Ahmednagar, on behalf of 46 employees claiming permanency and it is not in dispute that the name of respondent was included in the list of employees tendered by the Sarva Shramik Sangh. The Industrial Court by judgment dated 14-07-1992

allowed the complaint and granted permanency to those workers whose names were mentioned in Annexure 'A' to the complaint and name of the respondent found place at Sr.No.6 of the said annexure.

By virtue of the said pronouncement, the respondent attained permanency with effect from 1987. However, the judgment was not given effect to, as the State chose to challenge it by filing Writ Petition No.264/1996 which was dismissed by this Court on 21-07-2000, thereby upholding the claim of permanency of the employees of Sarva Shramik Sangh from 1987. A special leave petition was preferred by the State against the decision of this Court and even that special leave petition was dismissed on 11-07-2001.

5. This resulted in institution of Misc. Recovery ULP No.1/2015 by the respective employees, filed under Section 50 of the Act, 1971, for recovery of the dues. The Industrial Court by judgment dated 14-08-2018 granted the said application by issuing certificate of recovery against 12 employees to the tune of Rs.1,19,30,412/-. This judgment of the Industrial Court, Ahmednagar, dated 14-08-2018 covered the claim of the present respondent to the tune of Rs.4,13,340/-.

6. Needless to state that because of the present writ petition

filed by the State, even the fruits of the order dated 14-08-2018 are denied to the respondent, though he is entitled to an amount of Rs.4,13,340/-, which was awarded to him, since the judgment of the Industrial Court delivered on 14-07-1992 confer the benefit of permanency upon him from the year 1987.

7. The issue as to whether the Forest Department is State or not is no more *res integra* but the State argued that they have filed review petition before the Hon'ble Apex Court and submission of the State is that, pending the review petition the payment to respondent must wait. I find the aforesaid submission completely obnoxious and repelling. Here is an employee who is fighting for his rights and though conferred with the benefits of permanency with effect from 1987, he has been kept away from the fruits only on account of the State filing one proceeding or other. The learned counsel for respondent has conceded to his rights of receiving pension, right on the date on which the petition was filed but instead of accepting his bonafide the State has chosen to keep him away from the benefits of judgment of the Industrial Court passed in Complaint (ULP) No.270/1987, till he instituted the proceedings for recovery of dues under Section 50 of the Act, 1971. Even this yielded result in his favour on 14-08-2018, when it was declared that he was entitled to sum of Rs.4,13,340/-. However,

ruthlessly the State deprived the respondent of his benefits on the pretext that the present writ petition assailing the order passed by the Industrial Court holding him eligible for pension, is pending in this Court.

Today the position is that the petition filed by the State deserves to be allowed, since the decision of the Industrial Court by relying upon Rule 57, Note-2 cannot be made applicable as the service of the respondent being rendered, at the time when judgment was passed by the Industrial Court, was 8 years and 11 months. The employee cannot be further made to wait, awaiting the decision whether the Forest Department is State or not, which is pending before the Constitution Bench of the Hon'ble Supreme Court, in view of the reference being made in **the State of U.P. Vs. Jai Bir Singh**.

We are wary of the position that several employees have been granted benefits of permanency under the orders of this Court as well as the orders of the Hon'ble Apex Court, on the presumption that the Forest Department is an industry, and therefore, it is no exception in favour of the respondent who should be kept away from the benefits.

8. In the result Writ Petition No.6554/2013 filed by the State is allowed by setting aside the impugned judgment and order dated

03-09-2012 passed by the Industrial Court, Ahmednagar in Complaint (ULP) No.76/2007. However, with the passage of time and the intervening events of the respondent being conferred with permanency benefits, he has become entitled for benefits of pension on the basis of the length of the service rendered by him and in the wake of the decision delivered by the Industrial Court, Ahmednagar, holding the respondent eligible for permanency with effect from 1987, it is pertinent to note that the respondent continued to render his service to the department till attaining the age of superannuation in the month of September, 2003, since the findings rendered by the Industrial Court in Complaint (ULP) No.270/1987, the respondent was held entitled for permanency from 1987. Considering that the said judgment has been confirmed by the Hon'ble Apex Court and based on the said verdict the Industrial Court has calculated the amount due to him flowing from the said judgment, and on completion of qualifying service of 10 years, in terms of Rule 110 of Maharashtra Civil Services (Pension) Rules, 1982, the respondent is entitled for pension, which he was not entitled at the relevant time on account of his status as daily wager and on completion of service of 8 years and 11 months on the said relevant date. Needless to state that the benefit flowing from the judgment of the Industrial Court in Complaint (ULP) No.270/1987 will also make the respondent

eligible for pension of completion on qualifying services of 10 years and in turn entitle him for proportionate pension to be calculated as per Rule 110 of the Rules, 1982.

Hence, the petitioner department shall forthwith implement the judgment dated 14-08-2018 passed by the Industrial Court, Ahmednagar, in Misc. Recovery ULP No.01/2015 and the respondent shall be paid the amount due to him i.e. amount of Rs.4,13,340/- within a period of eight weeks from today. The amount shall carry an interest at the rate of 8% per annum from 14-08-2018. If there is failure to disburse the said amount to the respondent within a period of eight weeks from today, it shall carry further interest at the rate of 12% per day. The learned AGP to communicate the said order to the petitioner department and it shall be the responsibility of the concern officer of Forest Department, Ahmednagar, holding the charge of the post, to implement this order.

Since at the relevant time, service rendered by the respondent fell short of 13 months, however, the respondent on attaining age of superannuation in September, 2003, who has put in more than 10 years of qualifying service, is entitled for pension as per Rule 102 of the Rules, 1982. The petitioner department is, therefore, directed to compute the pension of the respondent and rework his

pensionary benefits by giving due weightage to the amount that has been awarded by the Industrial Court and in the recovery proceedings.

With the aforesaid direction, writ petition of the State is disposed off.

(SMT. BHARATI DANGRE, J.)