

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO.2691 OF 2020

Vitthal Pandurang Kumbhar .. Petitioner.
v/s.
Kolhapur Municipal Corporation .. Respondent.

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Mr. Meelan Topkar with Ms. Pavitra Manesh, for the Petitioner.
Mr. Sagar A. Mane, for the Respondent-MCGM.

CORAM:- M. S. KARNIK,J.

DATE :- 18th OCTOBER, 2022.

ORAL JUDGMENT:

1. The challenge in this writ petition filed under Article 227 of the Constitution of India is to an order dated January 29, 2018 passed by the Industrial Court, Kolhapur dismissing the complaint of Unfair Labour Practice (hereafter 'ULP' for short) filed by the petitioner (hereafter 'the employee' for short).

2. The employee filed a complaint of ULP before the Industrial Court for a direction to the Kolhapur Municipal Corporation (hereafter 'the Corporation' for short) to consider the services rendered by the employee on daily wages for the purpose of benefit of pension. The employee was engaged as a daily wager with the Corporation in construction department w.e.f. 3rd August, 1987, where he worked continuously in such capacity till 16th June, 2004. The employee participated in the selection process for the post of ward-boy in the Health

Department of the Corporation. The employee was recommended by the selection committee and thereafter appointed by an order dated 17th June, 2004, whereafter the employee became a permanent employee of the Corporation and was holding the post of ward boy till his retirement from the Health Department. The employee superannuated on May 31, 2011. The employee made a request that the service period as a daily wager with the Corporation be considered for computation of pensionary benefits in terms of 'Pension Regulations of Kolhapur Municipal Corporation' (for short 'Pension Regulations') of the Corporation. The Corporation framed the Pension Regulations under Section 465 (1)(h) of the Bombay Provincial Municipal Corporation Act, 1949. The Industrial Court, for the reasons recorded in the impugned judgment and order, dismissed the complaint.

3. Shri Meelan Topkar, learned Counsel appearing on behalf of the employee contended that the Industrial Court misconstrued Regulation 7 of the Pension Regulations. In his submission, the ingredients of Regulation 7 stand fulfilled in the present case. It is submitted that the Industrial Court while construing the provision, has added words in Regulation 7, which is impermissible. He submits that the employee was in the service of the Corporation, engaged as a daily wager for the period from 3rd August, 1987 till 16th June, 2004 continuously. Pursuant to the issuance of the advertisement for appointment to the post of a ward-boy, the employee was duly selected and appointed on the post of ward-boy. The

employee was holding lien over such a post. In such circumstances, half of continuous of services rendered by the employee as a daily wagger ought to have counted for the purpose of pension is the submission of learned counsel.

4. Mr. Sagar Mane, learned Counsel for the Respondent-Corporation, on the other hand supported the order passed by the Industrial Court. It is submitted by him that the purport of Regulation 7 is that the municipal employee should have worked previously on daily wages on the same post on which he is subsequently appointed to hold a lien permanently. He submits that, it is the experience of the particular post as a daily wagger that would entitle the employee concerned to claim pensionary benefit in terms of Regulation 7. It is submitted that the employee was working in a different department altogether, on a different post, which had no concern with the post of ward boy in the health department of the Corporation over which he hold a permanent lien. He submits that, pursuant to the advertisement, the employee was appointed as a ward-boy in the Health Department and, therefore, the services rendered by the employee in the construction department on daily wages cannot be taken into consideration for the purpose of granting pensionary benefit under Regulation 7, as he is holding a permanent lien on a different post altogether. Learned counsel urged that if such an interpretation placed by learned advocate for the employee is to be accepted, then daily wagers in any department of the Corporation will stake a claim for pensionary benefits in the

post on which they later hold permanent lien, though they have not discharged the duties or having the experience of that post as a daily wager. I have perused the affidavit-in-reply filed on behalf of the Corporation.

CONSIDERATION: -

5. Heard the learned Counsel. The facts are not in dispute. Admittedly, the employee worked as a daily wager in the construction department w.e.f. 3rd August, 1987 till 16th June, 2004 continuously, for a period of almost 17 years. It is, thereafter, that he was appointed as a ward-boy, a post on which he held a permanent lien in the health department w.e.f. 17th June, 2004. He reached the age of superannuation on 31st May, 2011.

6. For deciding the controversy that arises for consideration in the present writ petition, it may be useful to reproduce the reasons assigned by the Industrial Court while dismissing the complaint. Paragraphs 6 to 10 thereof reads as under:-

"6. It is not a disputed fact that the Complainant was initially in the employment with the Respondent Corporation as a daily wager in Construction Department w.e.f. 03.08.1987 and that he had worked continuously as a daily wager till 16.06.2004. Further it is not disputed that the Complainant through the selection process was appointed as a permanent employee on the post of Ward Boy in the Health Department of the Respondent Corporation vide order dated 17.06.2004. Again it is an admitted fact that the Complainant retired from the services on account of superannuation on 31.05.2011. Thus, the Complainant was undisputedly working with the Respondent Corporation as a daily wager from 03.08.1987 till 16.06.2004 in Construction Department. Further, undisputedly, the Complainant was selected

through selection process and was taken as permanent employee on the post of Ward Boy in the Health Department vide order dated 17.06.2004.

7. The only narrow compass of dispute in this case is whether the services of Complainant on daily wages for the period from 03.08.1987 till 16.06.2004 is to be considered as service for the purpose of pension. In this respect the Complainant relies upon the Kolhapur Municipal Corporation Pension Regulations framed under Sec.465(1)(h) of the Bombay Provincial Municipal Corporation Act, 1949 and also the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. As per Regulation-2(ii)(a) of the Kolhapur Municipal Corporation Pension Regulations it is provided that these Regulations do not apply to municipal servants on daily wages. Further as per Clause (7) of these Regulations it is provided that, notwithstanding anything contained in Clause-(ii) of Regulation-2 of these Regulations, a municipal employee who has worked previously on daily wages and subsequently appointed to hold a lien on permanent post, half of continuous service rendered by him on daily wages shall be counted for the purpose of pension.

8. Admittedly, in the present case before me the Complainant though has worked on daily wages for the period as contended in the complaint he was not continued and made permanent on the same post. From the pleadings of the Complainant itself it is clear that he was appointed through the selection process on a totally different post and in a different Department and, therefore, it cannot be said that the Complainant has worked previously on daily wages and was subsequently appointed to hold a lien on permanent post. Moreover, it is specifically provided in the Regulations that the Kolhapur Municipal Corporation Pension Regulations will not apply to municipal servants on daily wages. The basis of claim of the Complainant is not in accordance with the service rules and, therefore, according to me, the

Respondent has not committed breach of any service rules in not counting the service of the Complainant on daily wages for the purpose of pension.

9. The Complainant has filed on record certain documents, which are admitted by the witness on behalf of the Respondent, to show that one employee Shri Murlidhar Lad was granted benefits of pension by counting his service on daily wages. The documents in this respect on record clearly reflect that said Shri Lad was working on the post of Mukadam on daily wages and thereafter he was made permanent on the same post and, therefore, his service period on daily wages was counted for the purpose of pension. The case of Shri Lad cannot be equated with the case of the Complainant, since Shri Lad was working on daily wages on the same post on which he was made permanent.

10. The case law relied upon on behalf of the Complainant in **Executive Engineer Panchayat (MAA & M) Department & Anr. V/s Samudabhai Jyotibhai Bhedi & 3 Ors.** (2017 III CLR 689, Gujarat HC) cannot be made applicable to the case of the Complainant since in the facts of said case before the Hon'ble High Court the concerned employee was working on daily wages and thereafter was regularized on the same post. Case of the Complainant does not fit in the said Rules for the purpose of benefits of pension. It is unambiguous that as per rules counting of daily wage service for the purpose of pensionary benefits is only in respect of the employee who has worked on the same post on daily wages and later on made permanent on the same post. In this case clearly the Complainant was working on daily wages in Construction Department and thereafter through selection process he was taken into permanent employment as a Ward Boy in Health Department. In view of the above the Complainant has failed to make out case of unfair labour practice against the Respondent Corporation as alleged in the complaint."

7. The Industrial Court proceeded on the footing that the employee held lien on a permanent post, which was a different post, in a different department, than the one which the employee worked previously on daily wages, hence, not entitled to claim the benefit of half of continuous service as a daily wager in view of Regulation 7. The Industrial Court was of the opinion that the post on which the employee worked on daily wages should be the same as the subsequent post on which he is appointed to hold a lien on a permanent post for entitling him the benefits of the Pension Regulations.

8. The claim is made by the employee on the basis of the Pension Regulations of the Corporation. Regulation 2(i) provides as under: -

“2(i) Except where it is otherwise expressed or implied and subject to the provisions of clause (ii) of the regulation, these regulations shall apply to all Municipal servants who hold a lien on the permanent post or would hold a lien on such a post had their lien not been suspended under the Municipal Services Rules and Regulations.”

(ii) in any case, it is distinctly provided for by or under regulations, these regulations do not apply to: -

- (a) Municipal servants on daily wages;
- (b) Municipal servant whose time is not exclusively devoted to the duties of their offices;
- (c) Govt. servants in Municipal employ;
- (d) Part time Municipal Officers and servants;

(e) Municipal officers and servants who are employed on honorarium;

(f) Municipal officers and servants who are governed by Employees Provident Fund Act, 1952.”

9. On a perusal of the Regulation 2(ii), I find that had it been a case that the employee was working only on daily wages and never held a lien on permanent post, in such a case there was no question of application of the Pension Regulations. The employee, however, was engaged on daily wages in the construction department and later-on holding a lien on the permanent post as a ward boy. The employee worked on daily wages and later as a ward boy under the same Corporation, but in a different department.

10. In the context of the present case, Regulation 7 of the Pension Regulations is relevant, which reads thus:

“7:- Notwithstanding anything in clause (ii) of Regulation of these regulations, a Municipal employee who has worked previously on daily wages and subsequently appointed to hold a lien on permanent post, half of continuous service rendered by him on daily wages shall be counted for the purpose of pension.”

11. The effect of Regulation 2(i), 2(ii) and 7 will have to be considered on the employee’s claim. Regulation 2(i) provides that except where it is otherwise expressed or implied and subject to the provisions of clause (ii) of the Regulation, the Pension Regulations shall apply to all Municipal servants who hold a lien on the permanent post. So far as the lien held by the employee on the permanent post of ward boy is

concerned, the Pension Regulations are applicable in view of Regulation 2(i). Clause (ii)(a) of Regulation 2 provides that Pension Regulations do not apply to Municipal servants on daily wages. Having regard to the language of Regulation 2(ii) (a) without anything more, the employee would not be in a position to claim the benefit of service he rendered as a daily wager. However, Clause (i) of Regulation 2 starts with the expression "except where it is expressed or implied and subject to the provisions of Clause (ii) of the Regulations", which read with the provision of Regulation 7, which begins with a non obstante clause, assumes relevance. The situation when the services rendered by a Municipal employee working on daily wages could be counted for the purpose of pension and to what extent is provided for in Regulation 7.

12. The employee is admittedly a Municipal employee who has worked on daily wages prior to his holding lien on a permanent post as a ward boy. Regulation 7 uses the expression "a Municipal employee who has worked previously on daily wages" meaning thereby that the first condition which has to be fulfilled is that prior to holding lien on a permanent post, the Municipal employee must have worked previously on daily wages. The second requirement is that such employee is subsequently appointed to hold a lien on permanent post. Regulation 7 speaks of "a Municipal employee" and therefore, what is essential is that the 'Municipal employee' must have worked on daily wages and subsequently appointed to hold a lien on permanent post, which obviously must be under the

same Corporation. The plain reading of the expression in Regulation 7 viz. "a Municipal employee who has worked previously on daily wages and subsequently appointed to hold on permanent post" would indicate fulfilling a two fold requirement to claim the benefit thereunder, (1) that the Municipal employee has previously worked on daily wages; and (2) subsequently appointed to hold a lien on permanent post. Once these conditions are satisfied, there is no reason to deprive the Municipal employee the benefit of Regulation 7.

13. Regulation 7 does not say that the Municipal employee should have worked on the same post in his capacity as a daily wager and then holds lien on a permanent basis on the same post. If the interpretation to Regulation 7 as adopted by the Industrial Court is accepted, then it would amount to adding the words 'on the same post' which would be against the plain and unambiguous language of Regulation 7. The employee has worked almost for 17 years on daily wages. In continuity to working on daily wages, the employee worked as a ward boy. He held permanent lien on the post of ward boy till his retirement.

14. In my opinion, the twin conditions of Regulation 7 stand satisfied in the present case, on a plain reading thereof. I do not find it equitable to deprive the employee who has worked almost for 17 years on daily wages, the benefit of Regulation 7, for counting half of continuous service rendered by him on daily wages, for the purpose of pension.

15. Regulation 7 of the Pension Regulations is a provision of

a social welfare legislation. Assuming there is any ambiguity in the interpretation of Regulation 7 which is capable of two constructions, court should adopt a beneficial rule of construction and prefer that construction which fulfills the policy of the Regulation and is more beneficial to the persons in whose interest the Regulation has been passed. I may hasten to add the limitation placed by Their Lordships while adopting such approach in **Jeewanlal Ltd. and others vs. Appellate Authority under the payment of Gratuity Act and others**¹. Their Lordships observed that “in an anxiety to advance beneficent purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none”. Their Lordships have further observed that “when, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the courts to consider”. The aforesaid observations made by me are quoted from paragraph 11 of the decision in **Jeewanlal Ltd. (supra)**.

16. The decision in **Jeewanlal Ltd. (supra)** though rendered in the context of the Payment of Gratuity Act, 1972, however, the observations made by Their Lordships in paragraph 11 are in the context of construing a social welfare legislation. I have taken guidance from these observations while construing Regulation 7 in the present case. Paragraph 11 in **Jeewanlal**

1 (1984) 4 SCC 356

Ltd. (supra) reads thus: -

“**11.** In construing a social welfare legislation, the court should adopt a beneficent rule of construction; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none”.

17. It would also be necessary to refer with profit the observations of the Supreme Court in **State of Rajasthan & others vs. O. P. Gupta**². The Supreme Court was considering the question whether, the length of the service of the employee therein for the purpose of calculating pension and other retiral benefits should include the services rendered with the Rajasthan Agriculture Engineering Board and Rajasthan State Agro Industry Corporation, prior to his appointment as Assistant Director (Agro-Industries, Department of Industries, State of Rajasthan). The observations of the Supreme Court, especially those in paragraph 28 are significant. It would also be useful to refer to the observations made in paragraphs 26 and 27. Paragraphs 26, 27 and 28, are reproduced, read thus:

² SLP (Civil) No.16734/2002 decided on September 19, 2022.

"26. It is to be presumed that prior permission had been taken unless the contrary could be established by the State. May be there was a delay of six years in filing the Writ Petition, however, it is well settled that the laws of limitation do not apply to exercise of jurisdiction under Article 226 of the Constitution of India. Relief under Article 226 of the Constitution of India being discretionary, the Courts might in their discretion refuse to entertain the Writ Petition, where there is gross delay on the part of the Writ Petitioner, particularly, where the relief sought would, if granted, unsettle things, which are already settled.

27. In this case, the Respondent-Writ Petitioner is claiming pension, which is a life long benefit. Denial of pension is a continuing wrong. This Court cannot also be oblivious to the difficulties of a retired employee in approaching the Court, which could include financial constraints.

28. It is settled law that when financial rules framed by the Government such as Pension Rules are capable of more interpretations than one, the Courts should lean towards that interpretation which goes in favour of the employee".

(emphasis supplied by me)

18. In view of the above discussion, in my opinion, the language of Regulation 7 is plain and unambiguous. It is not possible for me to accept the interpretation of Regulation 7 which will have the effect of depriving the employee the benefit of services he rendered for 17 years on daily wages before holding a substantive lien on a permanent post. I, therefore, do not subscribe to the view of the Industrial Court in its interpretation of Regulation 7 of the Pension Regulations.

19. The impugned order passed by the Industrial Court is, therefore, set aside. The complaint before the Industrial Court

deserves to be allowed.

20. The Corporation is directed to grant benefit of half of continuous service rendered by the petitioner on daily wages for the purpose of pension in terms of Regulation 7 of the Pension Regulations.

21. The order passed by this Court be complied with by the Corporation, including payment of arrears, within a period of three (3) months from today.

22. No costs.

(M.S.KARNIK, J.)