

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.858 OF 2008

Petitioners :

- 1) Purushottam s/o Manohar Deshpande,
Aged about 68 years, Occupation : Retired,
R/o Near Bhaskar Bhagirathi Borkute Layout,
Behind Nilkanth Bichhayat Kendra,
Narendra Nagar, Nagpur
- 2) Bhaurao s/o Laxmanrao Bajagare (Dead)
through L.Rs.
 - 2A) Smt. Kusum w/o Bhaurao Bijagare,
Aged about 80 Yrs., Occ. Housewife,
R/o Gaikwad Chowk, Ward No.3, Armori,
Dist. Gadchiroli.
 - 2B) Shri Yashwant s/o Bhaurao Bijagare,
Aged about 50 Yrs., Occ. Service,
R/o Near Dhuniwala Baba math, Nagpur
Road, Wardha
 - 2C) Smt. Durga d/o Bhaurao Bijagare,
Aged about 46 Yrs., Occ. Housewife,
R/o Gaikwad Chowk, Ward No.3, Armori,
Dist. Gadchiroli.
 - 2D) Shri Vilas s/o Bhaurao Bijagare,
Aged about 44 Yrs., Occ. Business,
R/o Gaikwad Chowk, Ward No.3, Armori,
Dist. Gadchiroli.
 - 2E) Shri Suhas s/o Bhaurao Bijagare,
Aged about 40 Yrs., Occ. Private Service,
R/o Bramhapuri, Samrat Ashok Chowk,
Dist. Chandrapur.

- 3) Bramhanand s/o Chinduji Sonkusare,
Aged about 75 years, Occupation – Retired,
R/o At Post Mundhri (Bk.), Tahsil Mohadi,
District Bhandara.
- 4) Pandhari s/o Govindrao Tijare (Dead)
through L.Rs.
 - 4A) Shri Bhaskar s/o Pandhari Tijare,
Aged about 48 Yrs., Occ. Service.
 - 4B) Shri Anil s/o Pandhari Tijare,
Aged about 44 Yrs., Occ. Agriculturist.
 - 4C) Smt. Muktabai w/o Pandhari Tijare,
Aged about 68 Yrs., Occ. Housewife.

All 4 A to C are r/o Talodi (Kh),
Po. Gangalwadi, Tah. Bramhapuri,
Dist. Chandrapur.
 - 4D) Smt. Sushma w/o Shamkumar Panchbudhe,
Aged about 40 Yrs. Occ. Housewife,
R/o Bhillewada, Tah. & Dist. Bhandara.
- 5) Bhanu s/o Sadashiv Kamble,
Aged about 77 Years, Occupation – Retired,
R/o Near Durga Mandir, Armori,
District Gadchiroli.

– Versus –

Respondents : 1) State of Maharashtra,
Through its Secretary,
Department of Industries & Labour,
Mantralaya, Mumbai – 32.

- 2) Development Corporation of Vidarbha Ltd.,
through its Managing Director,
Mahajan Building, First Floor, Main Road,
Sitabuldi, Nagpur.
- 3) Office of the Accountant General (A&E)-II,
through its Senior Accounts Officer,
Maharashtra, Civil Lines, Nagpur.
- 4) Maharashtra State Khadi & Village Industrial
Board, through its Chief Executive Officer,
19/21, Manohardas Street, Fort, Bombay-
400001.

Mr. P.D. Meghe, Advocate for the Petitioners.

Ms. M.H. Deshmukh, A.G.P. for Respondent Nos.1 & 3.

Mr. D.M. Kakani, Advocate for Respondent No.4.

CORAM : NITIN JAMDAR & ANIL L. PANSARE, JJ.

DATE : 24 FEBRUARY 2022.

ORAL JUDGMENT - (Per Nitin Jamdar, J.)

The Petitioners, four in number, have filed this Writ Petition seeking pensionary benefits.

02] The Petitioners were appointed in Kosa Project as Clerks with the erstwhile Madhya Pradesh Government, and upon State reorganization, their services were transferred to the State of Maharashtra by order dated 26 November 1965. By Government

Resolution dated 7 June 1974, the Petitioners services were transferred to the Development Corporation of Vidarbha Ltd.-Respondent No.2.

03] The Petitioners challenged the action of their transfer by filing Writ Petition No.1060/1974 and sought to quash the orders dated 29 November 1965 and 7 June 1974. The said Writ Petition was disposed of on the statement made by the Government that all the benefits are granted to the Petitioners. The Petitioners joined Respondent No.2-Corporation with effect from 1 March 1977.

04] Since the Petitioners' pension was not finalized, the Petitioners filed Writ Petition No.741/2001. This Writ Petition and an earlier pending Writ Petition No.423/1991 were disposed of by order dated 20 June 2006 directing the State to give an option to the Petitioners as per Clause 4(iv)(b) of the Government Resolution dated 17 October 1967. Thereafter, since no compliance was done, the Petitioners filed Contempt Petition. The Contempt Petition was disposed of. The Petitioners also filed an Application for clarification of the order dated 20 June 2006 in Writ Petition No.741/2001. This Application was disposed of granting liberty to the Petitioners to file a fresh Petition. Accordingly, the Petitioners have filed the present Petition for a declaration that the Petitioners are entitled to get monthly pension and consequently retiral benefits with effect from 1 March 1977 and that the arrears as per the Badkas and Bhole Pay Commission

be paid to the Petitioners as per Government Resolution dated 22 November 1994. The Petitioners also sought retiral benefits and interest with effect from 1 March 1977.

05] We have heard learned Counsel Mr. P.D. Meghe for the Petitioners, learned A.G.P. Ms. M.H. Deshmukh for Respondent Nos.1 & 3 and learned Counsel Mr. D.M. Kakani for Respondent No.4.

06] The learned Counsel for the Petitioners submitted that the Petitioners having been absorbed in the services of Respondent No.2-Corporation, are entitled to pensionary benefits from the date of absorption and not from the date of their superannuation from Respondent No.2-Corporation, which has been taken as a relevant date by the State Government. The learned Counsel for the Petitioners submitted that Petitioner No.1 retired on superannuation on 31 July 1997, Petitioner No.2 on 31 January 1997, Petitioner No.3 on 31 July 1992 and Petitioner No.4 retired on 31 January 1999. The learned Counsel submitted that action of the State Government in taking these dates as relevant for grant of pension is entirely incorrect and is contrary to the Rule 67 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "Pension Rules of 1982" for short). The learned Counsel submitted that the Government Resolution dated 17 October 1967 has been subsequently modified by a Government Resolution dated 25 April 1973 and as per the

Government Resolution dated 25 April 1973, which subsequently was incorporated as a Rule in the year 1982, the Petitioners are entitled to *pro-rata* pension and gratuity in respect of the services rendered under the State Government as applicable under the Rules from the date of absorption in Respondent No.2-Corporation, i.e. from 1 March 1977. The learned Counsel submitted that the State be directed to calculate and pay pension admissible to the Petitioners as per Rule 67(d).

07] The learned A.G.P. submitted that the Petitioners had been paid all their pensionary benefits as per the Government Resolution dated 17 October 1967, and nothing survives in this Petition. The learned A.G.P. sought to contend that the Petitioners continued in Government Service under Respondent No.2-Corporation, which is akin to Government service, and the dates of superannuation of the Petitioners from the Corporation are correctly taken as their date of retirement. The learned A.G.P. submitted that it is not permissible for the Petitioners to draw both salary and pension.

08] We have perused the reply affidavit filed by the State. The reply-affidavit is solely based on the Government Resolution dated 17 October 1967, and there is no reference to the Rule of 1982 or the Government Resolution dated 25 April 1973. It is true that in Clause (iii) of Government Resolution dated 17 October 1967; it is stated explicitly that the pension and gratuity in respect of the service

rendered under the Government would be disbursable only from the date the Government servant would normally have superannuated had he continued in Government Service. Clause (iii) of the Government Resolution dated 17 October 1967 reads thus :

“(iii) The pro rata pension, gratuity etc. admissible in respect of the service rendered under Government would be disbursable only from date the Government servant would have normally superannuated had he continued in Government service.”

However, the Government Resolution dated 25 April 1973 has modified the Government Resolution dated 17 October 1967 and substituted para 1 (iii) is as under :

“1 (iii) The pro rata pension, gratuity etc. admissible in respect of the service rendered under Government would be disbursable either from the earliest date from which the Government servant could have been retired voluntarily under the rules applicable to him or from the date of absorption in the Undertaking/Corporation, whichever is later.”

Thereafter, the Pension Rules of 1982 in Rule 67(d) provides thus:

“(d) The pro rata pension, gratuity etc. admissible in respect of the service rendered under Government would be disbursable either from the earliest date from which the Government servant could have been retired voluntarily under the rules

applicable to him or from the date of absorption in the concerned organization, whichever is later."

Therefore, the relevant date for the purpose of retiral benefit regarding the Government servant absorbed in public service undertaking has undergone a substantial change from the Government Resolution of 1967 to the Government Resolution of 1973 and the Pension Rules of 1982.

09] The absorption of the Petitioners was on 1 March 1977 based on Government Resolution dated 25 April 1973. Therefore, the absorption took place when the stipulation under the Government Resolution of 1967 was no longer in existence. However, the reply-affidavit does not consider this position and does not refer to the Government Resolution dated 25 April 1973, when the absorption of the Petitioners in service of Respondent No.2 took place. Therefore, the fundamental basis of the calculations of the Respondent-State is incorrect.

10] As regards the other contention regarding continuous Government service when the Petitioners had filed the Writ Petition earlier, i.e. Writ Petition No.741/2001, no such stand was taken by the State. In fact, there is a reference to the Pension Rules of 1982, but it is not explained in the reply how the Government Resolution of 1973 or Rule 67 does not apply to the Petitioners' case, and it is simply omitted

from consideration. According to us, the Respondent-State, in the light of the fact that absorption took place on 1 March 1977, ought to have considered the implications of the Government Resolution dated 25 April 1973 and Rule 67 of the Pension Rules of 1982 and calculated the pension. This is having not been done; we are constrained to direct the Respondent-State to undertake this exercise.

11] Accordingly, we direct the Respondent-State Government to examine the claim of the Petitioners for retiral benefits in terms of Rule 67(d) of the Pension Rules of 1982 (when incorporated the Government Resolution of 1973), calculate the pensionary benefits dues and communicate the outcome to the Petitioners, preferably within a period of eight weeks from the day the order is uploaded.

12] As regards the claims of the Petitioners for arrears of Badkas and Bhole Pay Commissioner is concerned, reply-affidavit filed by the Respondent-State states that the cheques towards these amounts were given to the Petitioners during the pendency of this petition; however, the Petitioners have returned the cheques on the ground that the amounts need to include the component of interest. The Petitioners could not have accepted these amounts without prejudice, keeping their claim of interest open. However, considering the age of each of the Petitioners, which is above eighty, we direct the Respondent-State Government to reissue the cheque to the Petitioners, excluding the

component of interest within eight weeks. As far as the claim of interest is concerned, the Respondent-State will consider the same as per the law and communicate the outcome to the Petitioners within the above stipulated period of eight weeks from the date order is uploaded

13] As regards the claim of earned leave, the learned A.G.P. states that the same has already been paid.

14] Rule is made absolute in the above terms. No costs.

**sandesh* [ANIL L. PANSARE, J.] [NITIN JAMDAR, J.]