

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

WRIT PETITION NO.2791/2021

Sujatha wd/o Kailash Gaikwad,
aged major, r/o Ramteke Nagar,
Gali No.4, Beltarodi Road,
District Nagpur.

.....PETITIONER

...V E R S U S...

1. The State of Maharashtra through
Department of Health and Family
Welfare.
2. Government Medical College and
Hospital, Nagpur through its Dean.
3. Government Medical College and
Hospital, Nagpur through its
Superintendent.

...RESPONDENTS

Mr. D. P. Bhongade, Advocate for petitioner.
Mr. A. M. Deshpande, Addl. G.P. for respondent nos. 1 to 3.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 19.08.2022

JUDGMENT (Per: Anil L. Pansare, J.)

Rule. Rule is made returnable forthwith. Heard
finally by consent of learned counsel for the parties.

2. The petitioner is aggrieved by the act of
respondents, denying pension to her after death of her

husband, who was working as “Sweeper”, with respondent no.3-Government Medical College and Hospital, Nagpur.

3. It is the case of the petitioner that initially her husband was working as Sweeper as a temporary employee for the period from 04.09.1986 till 2004. In the year 2004, the husband of the petitioner filed a complaint being ULP No.367/2004 before the Industrial Court, Maharashtra (Nagpur Bench), Nagpur, claiming benefit of permanency. The Industrial Court vide order dated 01.10.2010 has rendered a finding that the complainant therein i.e. husband of the petitioner has proved that the respondent no.3 herein has committed unfair labour practice under Items 4 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 by not making him permanent on the post of Sweeper. Respondent no.3 was directed to cease and desist from engaging in such an unfair labour practice. The Industrial Court, further directed the respondent no.3 to regularize service of the complainant and to extend all monetary benefits to him from

the date of filing of the complaint i.e. from 22.11.2004 and to pay him difference of wages within three months.

4. There is no dispute that the said order of Industrial Court has attained finality. Despite the aforesaid directions, the respondents have not extended the benefits to the husband of the petitioner on one count or the other.

5. In the reply, the respondents have taken a plea that the petitioner was working as *Badli Worker*, who was appointed for a fixed period. The appointment of husband of the petitioner was not against any clear vacancy and sanctioned post and he was engaged only as a stop gap arrangement for a period of 29 days. His appointment was for a limited period and therefore the husband of the petitioner could not have claimed regularization in service.

6. Mr. Deshpande, learned Addl. G. P. submits that by order dated 05.01.2016, the service of the petitioner's husband was regularized with effect from 07.12.2015.

However, it was noted that the date of birth of the petitioner's husband was 31.12.1953. He had completed 60 years of age on 31.12.2013. Therefore, he was not eligible to get benefits of regularization which were granted to him vide order dated 05.01.2016. Therefore, the said order was recalled and revised order dated 10.03.2016 came to be issued withdrawing regularization granted to the husband of the petitioner. The said order has not been challenged by the petitioner and therefore the order is binding upon the petitioner.

7. We find the approach of the respondents to be disgraceful. The plea taken by the respondents is equally applicable to them having not challenged the order dated 01.10.2010 passed by the Industrial Court, Maharashtra (Nagpur Bench), Nagpur granting relief of permanency to the husband of the petitioner with a direction to the respondents to cease and desist from engaging in unfair labour practice. Unfortunately, the unfair labour practice continues at the hands of the respondents till today. The respondents ought

not to have taken such a plea in the given situation.

8. We, therefore, are required to allow the petition in the following terms.

(a) Respondent nos. 1 to 3 are directed to release the contribution of pension amount of the petitioner-husband from the date of death of her husband i.e. 21.11.2016 as per the last drawn salary of the deceased husband along with interest at the rate of 9% per annum.

(b) Needless to say, benefits of pension shall continue to be extended by the respondents, in accordance with the Pension Rules in favour of the petitioner.

(c) Rule is made absolute in the above terms.
No order as to costs.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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