

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

WRIT PETITION NO.3388 OF 2020

Bhaurao s/o Maroti Pendhare
Occ. Retired employee of respondent
Municipal council,
aged about 72 years

... Petitioner

-vs-

Municipal Council Warora
Through its Chief Officer Warora,
District Chandrapur

... Respondent

A. Shelat, Advocate for petitioner.
Shri M. I. Dhatrak, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATE : February 08, 2022

Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard learned counsel for the parties.

The petitioner was engaged on daily wages with Municipal Council Warora on 08/07/1983. His services thereafter came to be transferred as Cement Tank Chowkidar. The State of Maharashtra by virtue of a policy decision regularised the services of various daily wage employees who were appointed prior to 10/03/1993. Accordingly by an order dated 17/03/2001 the services of the petitioner were regularised on the rolls of the Municipal Council. The petitioner thereafter attained the age of superannuation on 31/10/2008 and thus retired. The petitioner was not

being paid pension and hence he initially made a representation on which he was informed that since the pensionable service of the petitioner was less than the prescribed period of ten years, he was not entitled to receive pension. The petitioner pursued the matter and sought information on 08/04/2015 under the provisions of Right to Information Act, 2005. The petitioner was informed that the records pertaining to daily wage employees from 08/07/1983 to 17/03/2001 were not preserved by the Municipal Council. Ultimately on 31/08/2020 the petitioner issued a legal notice and as there was no response from the Municipal Council, he has approached this Court by filing the present writ petition. The petitioner prays that 50% service rendered as a daily wage employee be considered as per Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, the said Rules) for grant of pensionary benefits.

2. Shri A. Shelat, learned counsel for the petitioner submitted that the petitioner discharged duties as a daily wager from 08/07/1983 to 16/03/2001. His services were regularised on 17/03/2001 and such service after regularisation was for the period of seven years and seven months. This was short of ten years and therefore by applying the provisions of Rule 57 of the said Rules the petitioner would be entitled for pensionary benefits. In that regard the learned counsel placed reliance on the judgment of the Division Bench in *Jagjeevan Jaikumar Sanghai (D) Thr. LRs. vs. Parbhani*

Municipal Corporation and ors. 2018(4) MhLJ 947 as well as Writ Petition No.758/2021 (*St. Leelabai w/o Shri Motisaoji Padole vs. Municipal Council, Narkhed*) decided at Nagpur bench on 27/10/2021. On the aspect of the time taken to approach this Court it was submitted that the petitioner was pursuing the matter with the Municipal Council and only when it was informed that further records were not available that the petitioner took steps to seek redressal of his grievance. The learned counsel also invited attention to the judgment of learned Single Judge in Writ Petition No.4265/2016 (*Punjabrao Sadashivrao Alone vs. Chief Officer Nagar Parishad Narkhed and anr.*) decided on 12/02/2019 taking similar view which was subsequently affirmed by the Honourable Supreme Court. It was thus submitted that the petitioner was entitled for necessary relief.

3. Shri M. I. Dhatriak, learned counsel for the respondent opposed aforesaid submissions. According to him in view of the specific condition mentioned in the order of regularisation dated 17/03/2001, the services rendered as a daily wagger were not liable to be considered for any service benefits. This aspect was considered in Writ Petition No.216/2007 (*Bhaurao s/o Mahadeo Dhewale and anr. vs. Chief Executive Officer, Municipal Council, Pandharkawad and ors.*) decided on 16/01/2017 and hence on that premise no relief could be granted to the petitioner since the services rendered were less than ten years. The learned counsel placed reliance on

the said decision in *Bhaurao M. Dhewale* (supra) and submitted that the writ petition was liable to be dismissed. Moreover, there was considerable delay in approaching the Court which also disentitled the petitioner from any relief.

4. We have heard the learned counsel for the parties and we have perused the documents on record. It is not in dispute that the petitioner was appointed on 08/07/1983 on daily wages and his services were regularised on 17/03/2001. The services of the petitioner pursuant to the order of regularisation is for a period of seven years and seven months. For the purposes of receiving pensionary benefits qualifying service of ten years has been prescribed. A similar contention as raised herein by the Municipal Council that the earlier service rendered on daily wages was not liable to be taken into consideration for computing period of ten years as well as delay was turned down by relying upon the judgment of the Division Bench in Writ Petition No.815/2011 (*Syed Afzaluddin Ustad s/o Abdul Samad vs. The State of Maharashtra and anr.*) decided on 24/08/2011. This decision has been followed by another Division Bench in *Jagjeewan Jaikumar Sanghai* (supra). In this regard reliance can also be placed on the decision in *Leelabai Motisaoji Padole* (supra) decided by the Division Bench in somewhat similar facts. Considering the provisions of Rule 57 of the said Rules, it was held that a daily wager on being brought on regular establishment is entitled to benefit of 50% of the service rendered on daily wages. The Division Bench

referred to the adjudication by learned Single Judge in *Punjabrao Sadashivrao Alone* (supra). It was then found that under Rule 57 of the said Rules, half of the earlier service rendered on daily wages should be taken into consideration for granting pensionary benefits. The Division Bench noted that this judgment of the learned Single Judge was upheld by the Honourable Supreme Court but that challenge failed. We find that the petitioner herein is similarly placed as the petitioner in Writ Petition in Writ Petition No.758/2021 and hence we are inclined to follow the similar course as was followed therein.

5. Insofar as the judgment in Writ Petition No.216/2007 is concerned, the same has been decided on 16/01/2017 but we find that the same would turn on the facts of that case. The petitioners therein had challenged a condition in the appointment order by which they were deprived of their earlier service. This Court found that the said petitioners had approached the Industrial Court by filing a complaint seeking the relief of regularisation but that complaint was withdrawn. In these facts the Court held that no directions to regularise the services of the petitioners so as to claim pensionary benefits could be granted. We find that the facts of the present case are quite distinct from the facts of the aforesaid decision.

6. In that view of the matter we find the petitioner is entitled to the relief as prayed for. Accordingly Municipal Council, Warora is directed to pay pension to the petitioner in accordance with Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 along with arrears preferably within a period of six months from today. The services rendered by the petitioner on daily wages from 08/07/1983 to 16/03/2001 shall be taken into consideration as permissible under Rule 57 of the said Rules.

Rule is made absolute in aforesaid terms with no order as to costs.

(Pushpa V. Ganediwala, J.)

(A. S. Chandurkar, J.)