

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

WRIT PETITION NO. 6788 of 2019

Shyambihari s/o Narmadaprasad Mishra and another.

Vs.

Municipal Commissioner, N.M.C., Nagpur.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.D.Ramteke, Advocate for petitioners.
Shri S. N. Bhattad, Advocate for respondent.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- SEPTEMBER 20, 2022

Heard.

The petitioners have challenged the communication dated 15.12.2018 issued by the Health Officer, Nagpur Municipal Corporation, Nagpur (for short, the Corporation) in which it has been stated that the petitioners would be entitled for the first benefit of Assured Career Progression Scheme from the year 2022 which is after completion of 12 years of service.

The petitioners were appointed as Compounder on daily wages on 12.02.1985. Since their services were not regularised, the petitioners approached the Industrial Court seeking the relief of regularisation in service. The Industrial Court having granted the relief of regularisation, the same was challenged by the Corporation in Writ Petition No.1282/2003. While allowing that writ petition partly, this Court observed as under :

“.... Hence it is directed that the respondent-Corporation shall fix the date of respective petitioners after completion of their 240 days of service from the date on which their names have been included in the common seniority list as date of entry into service and the period from that date onwards shall be counted for the

purpose of calculation of pension and gratuity only. Except this, the petitioners shall not be entitled to any other consequential benefit on account of such date.”...

Thereafter since the aforesaid direction had not been complied with, the petitioners had filed Contempt Petition No.222/2011 which was disposed on 02.02.2012 by holding that there was no disobedience. In this backdrop, the petitioners after their pay fixation sought the benefit of Assured Career Progression Scheme.

The learned counsel for the petitioners submits that since the petitioners entry in service was from 29.04.1991, the period of 12 years ought to be calculated from that date on the basis of which the petitioners were now entitled for second benefit under Assured Career Progression Scheme. The Corporation incorrectly has taken into consideration the date of their re-fixation as the date of entry in service. He has referred to the orders passed in the earlier proceedings to substantiate the claim.

The learned counsel for the respondent opposed the aforesaid submissions. According to him, the directions issued in Writ Petition No.1282/2003 are clear and the petitioners have been held not entitled to any consequential benefit after their names included in the seniority list. The pay-scale of the petitioners having been revised pursuant to the aforesaid orders in the year 2010, they would be entitled for the first benefit on completion of 12 years service which was in the year 2022.

It is seen from the record that in Writ Petition No.1282/2003 the only direction issued is to include the names of the petitioners in the seniority list as the date of entry in service. The same was to be taken into consideration for calculation of pension and gratuity. It was clearly directed that the petitioners would not be entitled for any monetary or consequential benefit.

On 16.11.2010 the Corporation passed an order absorbing them in service by placing them in the seniority list. The period of 12 years has accordingly been calculated from that date. In view thereof no fault could be found with the Corporation in doing so. Though the entry in service was from 29.04.1991, the order passed in the writ petition would not entitle the petitioners to any consequential benefit on account of that date.

As a result, we find that the Corporation was justified in holding the petitioners eligible to get benefit under the Assured Career Progression Scheme on completion of 12 years service from 2010. We therefore find that no relief could be granted to the petitioners. The writ petition stands dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.) (A.S.CHANDURKAR, J.)

Andurkar.