



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1526 OF 2020

- | | | |
|---------------------------------------|---|-----------------|
| 1. Panvel Municipal Corporation |] | |
| Panvel. Dist. Raigad. |] | |
| 2. Commissioner Cum Administrator, |] | |
| Panvel Municipal Corporation, Panvel. |] | ... Petitioners |

Versus

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|--|---|-----------------|
| 1. Ambo Kannu Bhagat |] | |
| R/o. Harigaon, Tal. Panvel, Dist. Raigad. |] | |
| 2. Divisional and Regional Director, |] | |
| Commissioner and Administration, |] | |
| Kokan Division, Kokan Bhavan, Navi Mumbai. |] | ... Respondents |

WITH
WRIT PETITION NO.1528 OF 2020

- | | | |
|---------------------------------------|---|-----------------|
| 1. Panvel Municipal Corporation |] | |
| Panvel. Dist. Raigad. |] | |
| 2. Commissioner Cum Administrator, |] | |
| Panvel Municipal Corporation, Panvel. |] | ... Petitioners |

Versus

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|--|---|-----------------|
| 1. Kalya Dama Pathe |] | |
| R/o. Moho, Tal. Panvel, Dist. Raigad. |] | |
| 2. Divisional and Regional Director, |] | |
| Commissioner and Administration, |] | |
| Kokan Division, Kokan Bhavan, Navi Mumbai. |] | ... Respondents |

WITH
WRIT PETITION NO.11940 OF 2019

- | | | |
|---------------------------------------|---|-----------------|
| 1. Panvel Municipal Corporation |] | |
| Panvel. Dist. Raigad. |] | |
| 2. Commissioner Cum Administrator, |] | |
| Panvel Municipal Corporation, Panvel. |] | ... Petitioners |

Versus

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|--|---|-----------------|
| 1. Pandurang Rama Mhatre |] | |
| R/o. Vihumbhe, Tal. Panvel, Dist. Raigad. |] | |
| 2. Divisional and Regional Director, |] | |
| Commissioner and Administration, |] | |
| Kokan Division, Kokan Bhavan, Navi Mumbai. |] | ... Respondents |

WITH
WRIT PETITION NO.1527 OF 2020

- | | | |
|---------------------------------------|---|-----------------|
| 1. Panvel Municipal Corporation |] | |
| Panvel. Dist. Raigad. |] | |
| 2. Commissioner Cum Administrator, |] | |
| Panvel Municipal Corporation, Panvel. |] | ... Petitioners |

Versus

- | | | |
|--|---|-----------------|
| 1. Motiram Mohan Dhulaji Popeta |] | |
| R/o. Sukhapur, Tal. Panvel, Dist. Raigad. |] | |
| 2. Divisional and Regional Director, |] | |
| Commissioner and Administration, |] | |
| Kokan Division, Kokan Bhavan, Navi Mumbai. |] | ... Respondents |

Mr. A. S. Rao for Petitioners in all Writ Petitions.

Ms. Chhaya S. Rokade for Respondent No.1 in all Writ Petitions.

CORAM :- SANDEEP V. MARNE, J.
RESERVED ON :- 11 OCTOBER, 2023
PRONOUNCED ON :- 17 OCTOBER, 2023

JUDGMENT

1. These 4 Petitions are filed by Panvel Municipal Corporation challenging the Judgment and Order dated 05/04/2019 passed by the Industrial Court, Thane, in complaints filed by Respondent No.1 in each of the above Petition, for counting of services rendered by them prior to their regularization as qualifying services for pension. By the impugned Judgment and Order, the Industrial Court has allowed the complaints and directed that the Respondents are entitled to pensionary benefits as per Rule 30 of The Maharashtra Civil Services (Pension) Rules, 1982 (**Pension Rules**) by taking into consideration their qualifying services from the dates of their initial appointments.

2. Facts of the case in narrow compass. The erstwhile Panvel Municipal Council had engaged Respondent No.1 on daily wage basis in various years as under :-

WP 1526/2020 – Ambo Kannu Bhagat – 1977

WP 1527/2020 – Motiram Mohan Dhulaji Popeta - 1977

WP 1528/2020 - Kalya Dama Pathe – 1972, and

WP 11940/2019 – Pandurang Rama Mhatre – 1975.

4. The services of the Respondent No.1 in each of the Petition (**Respondents**) were regularized vide order dated 11/12/2000. The Municipal Council was later converted into Panvel Municipal Corporation. The Respondents retired on attaining age of superannuation on various dates *qua* 30/04/2010, 31/05/2010, 31/03/2003 and 31/12/2008 respectively. Since their qualifying service from the date of regularization did not add to 10 years as required under the provisions of the Pension Rules, the Respondents were denied pension. The Respondents therefore

approached the Industrial Court, Thane, by filing Complaints under Section 28(1) read with Item Nos.5 and 9 of Schedule IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**'the Act'**). The Complaints were resisted by the Municipal Corporation by filing Written Statement questioning the maintainability of Complaints on account of non-existence of employer–employee relationship. The Industrial Court has proceeded to allow the Complaints vide Judgment and Order dated 05/04/2019 holding that the Petitioner – Municipal Corporation has engaged in unfair labour practices falling under Item 9 of Schedule IV of the Act. The Industrial Court has declared that the Respondents are entitled to payment of pension under the provisions of Rule 30 of the Pension Rules, by computing their daily wage service from the dates of the respective appointments. The Petitioners are also directed to pay costs of Rs.10,000/- to each of the Respondent. Aggrieved by the decision of the Industrial Court, the Petitioners - Municipal Corporation has filed the present Petitions.

5. Mr. Rao would appear on behalf of the Petitioner - Municipal Corporation and submit that the Industrial Court did not have jurisdiction to entertain the Complaints filed under the provisions of the Act. There was no employer – employee relationship between the Municipal Corporation and the Respondents as on the date of filing of the Complaints. He would submit that a specific stipulation was included in the order dated 11/12/2000 to the effect that previous services rendered by the Respondents would not be computed for any purposes and that therefore the Industrial Court has erred in directing the Municipal Corporation to compute those services for pension. That, the said condition in the letter dated 30/11/2000 has not been challenged by the Respondents and therefore, they have acquiesced in the same. That,

under Rule 30 of the Pension Rules, temporary service cannot be included towards qualifying service for pension. That, the daily wage services were intermittent in nature and could otherwise not qualify for pension. Mr.Rao would rely upon the provisions of Rule 57 of the Pension Rules to contend that the temporary services rendered by the Respondents cannot be counted towards qualifying service. He would pray for setting aside of the order of the Industrial Court.

6. *Per Contra*, Ms.Rokade, learned Counsel appearing for Respondent employees in all Writ Petitions would oppose the Petitions and support the Orders passed by the Industrial Court. She would submit that despite being regularized in service in the year 2010, the Respondents are denied the benefits of pension. That, they have rendered more than 30 years of service with the Municipal Council / Corporation and are entitled to be paid pension in respect of their services. She would submit that the case of the Respondents is squarely covered by the provisions of Rule 30 of the Pension Rules. She would pray for dismissal of the Petitions.

7. Rival contentions of the parties now fall for my consideration.

8. The issue which arose for consideration of the Industrial Court was whether the services rendered by the Respondents on daily wage basis from the dates of their initial appointments could qualify for pension under the provisions of the Pension Rules. There is no doubt to the position that the Respondents initially rendered services on daily wages and have later been absorbed in the services of the Municipal Corporation by the order dated 11/12/2000. Three of the Respondents have rendered more than 9 years of qualifying service and are falling short of a few months of service for receiving pension. To illustrate, the

Respondent No.1 in Writ Petition No.1526/2020 – Ambo Kannu Bhagat has been regularized on 11/12/2000 and superannuated on 30/06/2010. She has thus submitted that the Respondents have rendered 9 and half years of qualifying service and fell short of just 6 months of service for receiving pension.

9. The Respondents approached the Industrial Court with a prayer to compute their daily wages service towards qualifying service for pension so that they complete the requisite period of 10 years for pension. The Industrial Court has relied upon the provisions of Rule 30 of the Pension Rules which reads thus :

“30. Commencement of qualifying service.

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency.

Provided further that, in cases where a temporary Government servant retires, on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntary after completion of twenty years of qualifying service, shall be eligible for grant of superannuation, Invalid or, as the case may be; Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.

Exception -

The rules regarding grant of terminal benefits to temporary Government servants [except those mentioned in the second proviso] who retire without being confirmed in any post in Government service are embodied in Appendix II.

Note1.- If a Government servant is holding a temporary post when the permanent post on which he holds a lien is abolished in the circumstances described in the rule 81, or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service.

Note 2.- In the case of the employees of former India States who have been absorbed in Governments service previous pensionable service rendered by them under the same State should it immediately followed by Government service be taken into account for purposes of pension on his final retirement from Government service. Pensionable service rendered under different States should be taken into account for purposes of pension provided that the employees were transferred or sent on deputation from one State to another under a written agreement between the Governments of the States concerned."

10. However, the situation where temporary service of a government servant is followed without interruption by confirmation is dealt with under Rule 33 of the Pension Rules which reads:

"33. Service tendered under Government followed without interruption by confirmation counts in full as service qualifying for pension.

A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57.

Note - *The benefit of above rule should also be extended to Government servants who have rendered service in temporary post in the former Civil Supplies Department including those re-employed after the break, provided they agree to refund the terminal gratuity, if any, received by them on their retrenchment from the former Civil Supplies Department (In order to avoid hardship, the gratuity may be refunded in monthly installments not exceeding twenty). Competent authorities are authorized to condone where necessary, breaks not exceeding 3 years. In cases where break exists, the terminal gratuity referred to above should be refunded within three months from the date of the order of the competent authority condoning the break and the right to count the service under the above rule does not accrue until the gratuity is wholly refunded. The condonation should be postponed until the Ex-Civil Supplies Department personnel actually pass the examination, if any, required for confirmation and are actually confirmed. The benefit*

of condonation of break should be allowed only in those cases in which breaks have occurred on account of discharge from service for want of post and not on any other ground e.g. voluntary resignation etc. and in computing the period of break, the terminal leave availed of by the persons concerned, should also be taken into account. The leave salary is not, however, refundable.”

11. Thus under Rule 33, a government servant holding permanent post on the date of retirement is entitled to have his temporary services counted for pension. The only exception is in respect of services falling under Rule 57. Rule 57 on which reliance is placed by Mr. Rao, reads thus :

“57. Non-pensionable service

As exceptions to rule 30, the following are not in pensionable service :-

- (a) Government servants who are paid for work done for Government but whose whole time is not retained for the public service,*
- (b) Government servants who are not in receipt of pay but are remunerated by Honoraria,*
- (c) Government servants who are paid from contingencies*
- (d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable.*
- (e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.*

Note 1- *In cases of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.*

Note 2- *In the case of persons who were holding the posts of Attendants prior to 1 st April 1966, one-half of their previous continuous service as Attendants, shall be allowed to count for pension.”*

12. Even under Rule 57, employees who are paid from contingencies and who are subsequently brought on a regular pensionable establishment, one-half of their previous continuous service can be computed as qualifying service for pension. Perusal of the impugned order passed by the Industrial Court would indicate that it has relied upon provisions of Rule 30 of Pension Rules, which have no application to the present case. The concept of computing previous temporary services followed by regularization is to be found either in Rule 33 or in Rule 57. The distinction between Rule 33 and Rule 57 is that Rule 33 applies where the temporary or officiating services are rendered by a government servant before confirmation in some another post. Thus, the temporary or officiating service contemplated under Rule 33 ought to be on a regularly sanctioned post. In that situation, the entire temporary or official service would count as qualifying service.

13. On the contrary Note 1 of Rule 57 governs the situation where the temporary services are not rendered against the regularly sanctioned post and the employee concerned is paid from the contingencies. Thus, Note 1 of Rule 57 governs the situation where temporary services are rendered on a post which is not sanctioned. In that situation, only 50% of the temporary services would count as qualifying service for pension.

14. In the present case, the services rendered by the Respondents prior to their absorption were not against regularly sanctioned posts. As pleaded by the Petitioner – Municipal Corporation both before the Industrial Court as well as in their petitions, post for absorption of Respondents were created and thereafter order of absorption was passed on 11/12/2000. Thus, the services rendered by the Respondents prior to

11/12/2000 were paid out of contingencies. The services of the Respondents would therefore be covered by Note 1 of Rule 57 and not by Rule 33 of the Rules. Therefore, only one-half of the service rendered by the Respondents prior to the dates of their absorption would count for pension.

15. The Industrial Court has erred in directing computation of the entire service prior to absorption as qualifying service for pension. To that extent, the order passed by the Industrial Court is not sustainable.

16. I accordingly proceed to pass the following order.

ORDER

- (i) Orders dated 05/04/2019 passed by the Industrial Court are modified to the extent that only 50% of services rendered by the Respondents from the dates of their initial appointments till 11/12/2000 shall be computed as qualifying service for pension.
- (ii) The Respondents be accordingly paid pensionary benefits by adding 50% of their daily wage / temporary service to their regular service.
- (iii) The arrears of pension and pensionary benefits be paid within a period of 4 months from today.

17. With the above directions, Writ Petitions are disposed of. There shall be no orders as to costs in the present Petitions and costs directed to be paid by the industrial Court are also made easy.

(SANDEEP V. MARNE, J.)