

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

WRIT PETITION NO.4191/2022

1. Kawadu S/o Shri Ganpat Kapse,
aged about 63 Yrs., Occ. Retired employee
of respondent, R/o Mahatma Phule Road,
Ramtek, Tah. Ramtek, Dist. Nagpur.
2. Ramesh S/o Shri Ganbaji Wanjari,
aged about 62 Yrs., Occ. Retired employee
of respondent, R/o Shivaji Ward, Ramtek,
Tah. Ramtek, Dist. Nagpur.
3. Ashok S/o Shri Sampat Fale,
aged about 59 Yrs., Occ. Retired employee
of respondent, R/o Bhagat Singh Ward,
Ramtek, Tah. Ramtek, Dist. Nagpur. ... Petitioners

- Versus -

Municipal Council, Ramtek,
through its Chief Officer, Ramtek,
Tah. Ramtek, Dist. Nagpur. ... Respondent

Mr. A. Shelat, counsel for the petitioners.
Mr. M.I. Dhattrak, counsel for the respondent.

CORAM: ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 12.4.2023

ORAL JUDGMENT (Per Rohit B. Deo, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The grievance of the petitioners, who have superannuated from Municipal Council, Ramtek is that the retiral benefits are not received.

3. The Municipal Council, Ramtek has filed affidavit in response and has fairly admitted that retiral dues of the petitioners have not been paid entirely.

4. We extract paragraph 3 of the affidavit in response which reads thus:

“3. That the details given in the paragraph No.5 of the petition about retiral dues as claimed needs to be corrected, as the corrected figures are not given.

Details of retiral dues of petitioner No.1:-

(i) So far as gratuity is concerned, out of claim of Rs.5,23,050/- the answering respondent has already paid the amount of Rs.2,05,610/- to the

petitioner No.1 and an amount of Rs.3,17,440/- is remained to be paid to the petitioner No.1.

(ii) So far as the payment of leave encashment is concerned, out of claim of Rs.3,53,020/- the answering respondent has not paid any amount to the petitioner No.1 and Rs.3,53,020/- is due and will be paid to the petitioner No.1.

Details of retiral dues of petitioner No.2:-

(i) So far as gratuity is concerned, out of claim of Rs.2,89,050/- the answering respondent has already paid the amount of Rs.1,10,000/- to the petitioner No.2 and an amount of Rs.1,79,050/- is remained to be paid to the petitioner No.2.

(ii) So far as the payment of leave encashment is concerned, out of claim of Rs.3,19,296/- the answering respondent has not paid any amount to the petitioner No.2 and Rs.3,19,296/- is due and will be paid to the petitioner No.2.

(iii) That so far as claim of the petitioner No.2 about the consideration of the service rendered by the petitioner No.2 on daily wages is concerned, the same is denied as the petitioner No.2 himself has accepted the order of regularization dated 04.08.1997, and particularly condition No.4. Therefore the petitioners are estopped from claiming the said benefits. This factual aspect needs to be considered while applying the ratio laid down by this Court (Aurangabad Bench) in case of Jagjeevan Jaikumar Sanghai (D) Thr. LRs. Vs. Parbhani Municipal Corporation & Ors, reported in 2018(5) ALL MR 550. The said ratio is not applicable in the present case as the petitioner No.2 is already getting pension and he is not short of service period for that purpose.

Details of retiral dues of petitioner No.3:-

(i) So far as gratuity is concerned, out of claim of Rs.7,95,300/- the answering respondent has

already paid the amount of Rs.1,20,000/- to the petitioner No.3 and an amount of Rs.6,75,300/- is remained to be paid to the petitioner No.3.

(ii) So far as the payment of leave encashment is concerned, out of claim of Rs.5,63,940/- the answering respondent has not paid any amount to the petitioner No.3 and Rs.5,63,940/- is due and will be paid to the petitioner No.3. That the claim about benefit of the 2nd senior pay grade is concerned, the calculation correctly made is of Rs.1,51,137/- only.

The copy of chart showing the details of the payment made and payment due to be paid to the petitioners is annexed herewith and marked as Annexure R/1, to the present submission.”

5. The learned counsel for the petitioners Mr. Shelat does not dispute the correctness of the calculations in paragraph 3

of the affidavit in response filed on behalf of the Municipal Council, Ramtek.

6. We direct the Municipal Council, Ramtek to pay the petitioners retiral dues as spelt out in paragraph 3 of the affidavit in response, within next six months, along with statutory interest which is restricted to the amount of gratuity.

7. The petition is allowed in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

Tambaskar.

Signed By: NILESH VILASRAO
TAMBASKAR

Private Secretary
Date: 17.04.2023 10:31