



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

Writ Petition (WP) No. 2041 of 2022

Nirmala Wd/o Sahadev Jambulkar and another

Versus

**Vidarbha Irrigation Development Corporation (VIDC) through its Chief
Engineer, Nagpur and other**

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

Court's or Judge's Order

Shri R.S.Bhure, Advocate for the petitioner.

Mrs. M.S.Naik, AGP for the respondent nos. 1 to 3.

Shri H.D.Marathe, Advocate for the respondent no.4.

CORAM : ANIL S. KILOR, J.

DATED : 17th OCTOBER, 2023.

Heard.

2. The judgment and order dated 23rd February, 2022, passed by the learned Industrial Court, Nagpur in Complaint (ULP) No. 132 of 2012, partly allowing the complaint and thereby refusing to grant relief claimed by the petitioner in respect of payment of pension as per the Maharashtra Civil Services (Pension) Rules, is under challenge in this writ petition.

3. The ground on which the said relief was denied to the petitioner is recorded in paragraphs 21 and 22 of the impugned judgment which read thus:

21. It can be revealed from the pleadings that the Complainant himself is making the provisions of Model Standing Orders framed under the M.I.R. Act as a governing service conditions in his respect. Even in the Complaint filed by him challenging his dismissal before Learned Labour Court, it was his contention that he is governed by the provisions of Model Standing Orders for the purpose of his service conditions. The Judgment and Order passed by Learned Labour Court dated 13.10.2010, makes it abundantly clear that the Complainant was granted with the relief and his Complainant was allowed on the basis of findings of the Labour Court that the respondent has failed to comply with the provisions of Model Standing Orders. The learned Labour Court while passing the Order, had come to a clear finding that M.C.S.R. are not applicable in respect of the Complainant and therefore, his dismissal by following the M.C.S.R. was not legal.

22. The Respondent has placed Judgments of Hon'ble High Court before me on record and also the Judgments and Orders of Industrial Court. In all the cases, the Industrial Court as well as the Hon'ble High Court have uniformly held that the employees who are working under C.R.T.E are not amenable to the provisions of Maharashtra Civil Services Rules (M.C.S.R), and Model Standing Orders framed under M.I.R. Act are applicable to them. Therefore, now only for the purpose of Pension under Maharashtra Civil Services Rules, it cannot be said that the Complainant would be entitled. Therefore, the Complainant failed to make out any claim in respect of Pension as prayed by him.

4. In a Co-ordinate Bench of this Court dated 21st September, 2022 passed in Writ Petition No. 3179 of 2017 passed by this Court in *Smt. Gangabai Wd/o Shyamlal Sarwan Vs. State of Maharashtra and others*, this Court has held thus:

(10) Insofar as the relief of refusal to grant pension is concerned, the Industrial Court has refused it on the ground that in the earlier round of litigation, the Industrial Court had held that the provisions of the Rules of 1982 are not applicable. Shri Puranik, learned Amicus Curiae is right in submitting that there are no Rules in existence called "Maharashtra Civil Services Rules". The Rules are categorized into either the Maharashtra Civil Services (Pension) Rules or the Maharashtra Civil Services (Discipline and Appeal) Rules etc. In the absence of one comprehensive compilation of the Maharashtra Civil Services Rules, the Industrial Court could not have recorded a blanket finding holding that in the earlier round of litigation, the Industrial Court had held that the provisions of the Maharashtra Civil Services Rules are not applicable. To adjudicate this issue, it is relevant to note Rule 2 of the Rules of 1982, which reads as under:-

"2. Extent of application

Except where it is otherwise expressed or implied, these rules apply to all members of services and holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe.

They shall also apply to-

(a) any person for whose appointment and conditions of employment special provision is made by or under any law for the time being in force.

(b) any person in respect of whose service, pay and allowances and pension or any of them special provision has been made by an agreement made with him, in respect of any matter not covered by the provisions of such law or agreement, and

(c) Government servants paid from Local Funds administered by Government, except relating to the Foreign Service.”

(11) Reading of Rule 2 makes it clear that the provisions of the Rules of 1982 are applicable to all Members of services and holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe. It is not in dispute that there is no exclusion of these Rules in relation to the rights of Petitioner’s husband in any other statute or Rules. Rule 116 creates a right in favour of the family members of the Deceased Employee. It is not in dispute that Petitioner is a widow of Deceased Employee. Therefore, in my opinion, the rights of the Petitioner would be regulated by the Rules of 1982.”

5. In view of the law laid down by this Court in *Smt. Gangabai Wd/o Shyamlal Sarwan Vs. State of Maharashtra and others (supra)*, I am of the opinion that the learned Industrial Court shall re-consider the matter and examine the entitlement as claimed by the petitioner for grant of pension.

6. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned Industrial Court to decide the same afresh to the extent of relief claimed by the petitioner as regards pension under Maharashtra Civil Services (Pension) Rules. Accordingly, I pass the following order.

- i. The writ petition is partly allowed.
- ii. The impugned judgment and order dated 23rd February, 2022 passed by the learned Industrial Court, Nagpur in Complaint (ULP) No. 132 of 2012 is hereby quashed and set aside to the extent of denial of pension.
- iii. The learned Industrial Court, Nagpur shall decide the issue of pension afresh after hearing both the parties.
- iv. The parties shall appear before the learned Industrial Court, Nagpur on **31st October, 2023** at 11 am.
- v. The learned Industrial Court, Nagpur shall decide the same within one month from the date of appearance of the parties.

[ANIL S. KILOR, J.]