

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

WRIT PETITION NO. 5060 OF 2018

Sayyad Roshanali Sayyad Mumtaj Ali,
Aged about 65 Years, Occ. Nil
R/o Manjurpura, Tq.Achalpur,
Dist.Amravati

...Petitioner

// VERSUS //

1. Municipal Council,
Achalpur, Tq. Achalpur, Dist. Amravati
through its Chief Officer
2. Regional Director of Municipal,
Administration, Amravati Division,
Amravati

... Respondents

Shri N.R.Saboo, Advocate for the petitioner.

Shri N.S.Khandewale, Advocate for the respondent no. 1.

Ms. H.N.Jaipurkar, AGP for the respondent no.2/State.

CORAM : ANIL S. KILOR, J.

DATED : 25th JANUARY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 12th January, 2018 passed by learned Industrial Court in Complaint No.93 of 2010 rejecting the benefit of full pension by taking into consideration the full service period of the complainant and to pay him arrears including up to date pension, is under challenge in this writ petition.

3. The brief facts of the present case are as under :

The petitioner is the ex-employee of respondents since 19th June, 1986. Initially, the petitioner was appointed as a Coolie on daily wages basis and thereafter, Ward Jamadar and thereafter since 1992, the complainant was appointed as a Clerk on pay scale. He superannuated on 31st August, 2009 and he completed qualifying service, therefore, he claimed full pensionary benefits, which was denied to him and therefore the complaint was filed before the Industrial Court under Section 28 read with items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short M.R.T.U and P.U.L.P. Act).

4. The respondent resisted the claim and it is the case of the respondent that petitioner was engaged on daily wages and in view of notification issued by the Government of Maharashtra on 6th May, 2000 whereby it was decided to absorb the employees who were working on daily wages prior to 10th March, 1993. The name of the petitioner was forwarded to the post of clerk and after obtaining the approval he was appointed in the service by order issued by the respondent no.2 on 20th September, 2002 and in the said order there is a specific clause to the effect that the complainant will not claim any monetary benefit services rendered in the past on daily wages. Therefore, if the appointment of the petitioner is considered from 20th September, 2002, he does not complete the qualifying service and in that case his service would be of six years and eleven months and eleven days.

5. The learned Industrial Court considering the date of appointment of the petitioner as on 20th September, 2002 and condition in the order of appointment that the petitioner will not claim any pensionary benefits of his service rendered in past on daily wages, dismissed the complaint by making following observations:

18. Admittedly, the complainant has not completed qualifying 10 years service to get the pension as a regular worker, therefore, the question of paying any pension by the respondents to complainant does not arise. As I said above, the complainant accepted the condition of appointment at the time of regularisation in 2002 without any protest, nor challenges the said order dated 20.09.2022 before any appropriate Authority, therefore, the complainant miserably fails to show any unfair labour practice on the part of the respondents. The various citations relied by the complainant will not be helpful to the case of complainant for the simple reason that the cited cases are, there was no any condition in the appointment order inspite of this fact the temporary services was not considered for the purpose of pension, but in the case in hand, the complainant accepted the order of appointment, in which, it is specifically mentioned in condition No.8, that no any benefit of earlier service period will consider the purpose of pension. This condition is accepted by the complainant without any protest. Moreover, the complainant has not challenged the decision of Government before any Appropriate Forum, therefore, the principle of estoppel is applicable to the case of complainant. I draw my finding on Issue No.1 accordingly.

6. The Division Bench of this Court had an opportunity to deal with the similar issue in the case of Kantaram Govindrao Shejwal Vs. State of Maharashtra and others in Writ Petition No. 9134 of 2016, wherein the Division Bench of this Court vide judgment dated 7th December, 2018 as held thus:

“12. Note 1 of Rule 57 of the Rules 1982 provides that 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 be counted for pension. The petitioner it appears was paid his emoluments from the contingency while working on daily wages. The regularisation order nowhere provides that the earlier service rendered by the petitioner on daily wages is excluded or is brought outside the purview of Note 1 of Rule 57 of the Rules 1982. The respondents are harping upon Clause 8 of the order dated 25.10.2001. The said Clause is in a regional language and the same reads thus

“8. मागील रोजंदारीवरील सेवा कोणत्याही आर्थिक व सेवा विषयक लाभासाठी ग्राह्य धरण्यात येणार नाही.”

13. The said clause nowhere states that Note 1, Rule – 57 of the Rules 1982 would not be applicable, so also, the regularisation order also does not lay down any exception from considering the services rendered on daily wages for pensionable purpose as provided in Note 1, Rule 57 of the Rules 1982. Reading the Rules 1982, it is manifest that the services rendered by the petitioner on daily wages shall be counted as half for the purpose of pension.”

7. In the teeth of above referred observations, I have no hesitation to hold that learned Industrial Court has committed error in relying upon the condition in appointment order and not considering the Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. In that view of the matter, the impugned judgment and order dated 12th January, 2018 needs to be quashed and set aside. Accordingly, I pass the following order.

i. Writ petition is allowed;

ii. The judgment and order dated 12th January, 2018 passed by learned Industrial Court in Complaint No.93 of 2010 is hereby quashed and set aside and the complaint in terms of prayer clauses nos.(i) and (ii) is allowed;

iii. It is expected that the respondents shall proceed with the matter to take necessary steps for payment of full pensionary benefits to the petitioner within a reasonable period which shall not more than two months from the date of order.

Rule is made absolute in above terms.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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