

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

WRIT PETITION NO. 5748/2019

Dilip S/o Laxman Katlawar,
Aged about 57 years, Occ: Service,
R/o Mul, Tah. Mul, Dist. Chandrapur.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
Through its Secretary,
Department of E.G.S., Mantralaya, Mumbai.
2. The Commissioner, Nagpur Division, Nagpur.
3. The Collector, Chandrapur, District Chandrapur.

RESPONDENTS

Shri N.R. Saboo, counsel for the petitioner.
Shri A.S. Fulzele, Additional Government Pleader for the respondents.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : MARCH 21, 2023.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner came to be appointed as Muster Assistant on 05.02.1985 with the respondents. His service came to be terminated on 14.07.1988 and being aggrieved the petitioner filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court on 31.07.1993 allowed the said complaint and ordered reinstatement with

continuity and full back wages from 30.06.1988. The services of the petitioner came to be absorbed on 10.06.2003. In the matter of grant of pensionary benefits the petitioner prayed that the services rendered prior to the order of absorption be taken into consideration. He approached the Maharashtra Administrative Tribunal by filing Original Application No.215 of 2011. The Tribunal by the order dated 27.09.2018 did not accept that request and dismissed the original application. Being aggrieved, the present writ petition has been filed.

3. Shri N.R. Saboo, learned counsel for the petitioner has submitted that the issue with regard to grant of pensionary benefits to Muster Assistants has been considered by the Hon'ble Supreme Court in *Shaikh Miya S/o Shaikh Chand Versus State of Maharashtra* [**Civil Appeal No. 6531-6533/2022**] decided on 07.09.2022. It has been held that notwithstanding the date of absorption in service the date for reckoning pensionable service ought to be taken as 31.03.1997. Based on such service, the pensionary benefits can be released. He submits that this decision has been subsequently followed by a Co-ordinate Bench at the Principal Seat in **Writ Petition No. 446 of 2021** [*Md. Khalik Shahbuddin Shaikh & Others Versus The State of Maharashtra & Others*] decided on 01.03.2023. It is thus submitted that the petitioner is entitled for similar relief.

4. The learned Additional Government Pleader for the respondents has relied upon the affidavit-in-reply and has sought to support the judgment of the Tribunal. However, in the light of the subsequent decision of the Hon'ble Supreme Court, he submits that appropriate order be passed.

5. We find that the very same issue as regards entitlement of Muster Assistants to get pensionary benefits has been considered by the Hon'ble Supreme Court in *Shaikh Miya Shaikh Chand* (supra). The relevant date for reckoning the pensionary benefits is taken as 31.03.1997. We find that the petitioner is similarly situated. Though appointed on 05.02.1985, he was directed to be treated as in employment with continuity in service by the Labour Court when the order of termination dated 14.07.1988 was set aside. Notwithstanding the absorption of his services on 10.06.2003 in the light of the aforesaid decision, the petitioner would be entitled to the pensionary benefits by taking into consideration the relevant date as 31.03.1997.

6. Hence, for aforesaid reasons the impugned judgment of the Tribunal in Original Application No. 215 of 2011 dated 27.09.2018 is set aside. It is held that the petitioner is entitled to receive pensionary benefits by considering his entry in service from 31.03.1997. The necessary be done with a period of three months from today.

7. The writ petition is allowed. Rule is made absolute in aforesaid terms. No costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

APTE