

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

WRIT PETITION NO.3182/2012

Ramesh Bhaiyyaji Gasamwar,
aged about 61 Yrs., R/o Ramaleshwar
Ward, Ramtek, Tah. Ramtek,
Dist. Nagpur.

... Petitioner

- Versus -

1. The State of Maharashtra,
through its Secretary, Department
of Urban Development, Mantralaya,
Mumbai.
2. The Commissioner/Director,
Directorate of Municipal Administration,
Mumbai.
3. The Regional Director,
Department of Municipal Administration,
Nagpur Region, Nagpur.
4. The Chief Officer, Municipal Council,
Ramtek, Dist. Nagpur.

... Respondents

Mr. Soumitra S. Paliwal, Advocate for the Petitioner.
Mr. M.K. Pathan, Assistant Government Pleader for Respondents
1 to 3.
Mr. R.B. Khan, counsel for respondent 4.

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

DATE : 26.4.2023

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

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

Heard finally by consent of learned counsel for the parties.

2. Petitioner was working on the establishment of the Municipal Council, Ramtek. He was appointed on 18.1.1971 on daily wage, and worked intermittently till 1974. He was thereafter appointed as a Gardner on daily wages w.e.f. 2.2.1981 and worked on the said post continuously till 4.7.1987. It does not appear to be in dispute that the petitioner was absorbed and regularized as a Gardner w.e.f. 4.7.1987.

3. It further appears that as on the date of absorption / regular appointment the petitioner had crossed the upper age limit. The Municipal Council forwarded the proposal to the State

Government for relaxation of the age condition. While the proposal was pending, the petitioner was placed in the senior grade pay-scale w.e.f. 7.7.1999.

4. In view of the inaction of the authority in respect of the proposal submitted seeking relaxation of age, the petitioner approached the High Court in Writ Petition 1796/1988 which was disposed of by order dated 30.8.2002. The High Court directed the State Government to decide the issue of relaxation of age. According to the petitioner, the Regional Director of Municipal Administration - respondent 3 herein did recommend that the age condition be relaxed, and such recommendatory proposal was forwarded to the Commissioner / Director of Municipal Administration - respondent 2 herein.

5. In the meanwhile, since the Municipal Council was required to obtain sanction to the regularization of the petitioner, such sanction was granted by the State Government to the

petitioner and other daily wagers who were working on the establishment of the Municipal Council before 10.3.1993.

6. The State Government issued Government Resolution dated 16.5.2005. The said Government Resolution provided that employees of the Municipal Council who were absorbed in regular service before 10.3.1993 and after 30.6.1986 be granted benefit of regular service w.e.f. 6.5.2000.

7. Insofar as the pending proposal seeking relaxation of age, the Municipal Council issued communication dated 25.5.2009 informing the Regional Director of Municipal Administration that the appointment of the petitioner was on a vacant post. The petitioner superannuated on 30.4.2010 and he received the provisional pension till 16.3.2011, which was withdrawn according to the petitioner, abruptly.

8. Petitioner contends that several representations were made to the respondents and the Lokayukta. Finally respondent

4 informed the petitioner vide communication dated 10.5.2011 that he is not entitled to pension since the proposal seeking relaxation of the age limit is not sanctioned, and that since his services are counted w.e.f. 6.5.2000, the qualifying period for pension is 9 years 11 months and 24 days.

9. Next relevant development is that vide order dated 21.10.2011 respondent 3 approved the proposal for relaxation of the age condition. However, the relaxation of age did not redress the grievance of the petitioner inasmuch as according to the respondents qualifying service for pension fell short or deficit by 6 days.

10. The petitioner contends that his qualifying service must be reckoned w.e.f. 7.7.1987 which is the date on which the petitioner was appointed or absorbed in regular service. In the alternative, the submission is that even if the qualifying service is reckoned w.e.f. 6.5.2000 in accordance with the resolution which

is impugned in the petition, the State Government ought to have exercised power under rule 54 of the Maharashtra Civil Services (Pension) Rules and bye-law 9 of the Municipal Council Model Bye-laws (Pension and other benefits) and ought to have condoned the deficit of 6 days.

11. One significant development is that the present petition was disposed of by order dated 27.2.2013. The High Court noted that since the petitioner was made aware that the regularization is subject to the understanding that the benefit of service rendered prior to 6.5.2000 shall not be claimed, anterior service shall not be considered for the purpose of determining the qualifying service. However, the High Court permitted the petitioner to prefer the representation seeking the condonation of deficit service of 6 days, for the purpose of pension.

12. The petitioner preferred Miscellaneous Civil Application 596/2022 which was allowed by order dated

9.2.2023. We noted that certain decisions *inter alia* the decision in the case of Syed Afzaluddin Samad V/s. State of Maharashtra (Writ Petition 815/20211, decided on 24.8.2011) were not brought to the notice of the coordinate Bench. We further observed that the coordinate Bench was probably not invited to delve deeper in the aspect of waiver or estoppel. We further permitted the petitioner to amend the petition and incorporate challenge to the order of rejection of the representation seeking condonation of 6 days deficit in the qualifying service, inasmuch as after the disposal of the writ petition, such representation was made and was rejected by the State Government.

13. It is common ground that the issue which was initially agitated, and with some vehemence, was that the State Government could not have imposed a condition that the employee shall not claim any benefit arising from the service rendered anterior to the date of effect of the regularization order. The submission was that such a condition is vulnerable and

violative of the constitutional philosophy inasmuch as the condition is unconscionable. Submissions were advanced on the touchstone of Article 14, and the provisions of Section 23 of the Indian Contract Act, 1872. In response learned Additional Government Pleader Mr. Pathan submitted that there is nothing inherently wrong in the condition imposed and that it is always open to the State Government, in exercise of its executive power and keeping in mind several considerations including the financial implications, to restrict the benefit of the regularization order.

14. Interesting as the question is, we are not required to delve deeper inasmuch as the petitioner is not pressing that line of submission any further and submits that the petitioner shall be satisfied if the order of rejection of the representation seeking condonation of deficit of 6 days, is set aside.

15. It is common ground that there is a power to condone the deficit in qualifying service. Considering that the petitioner

was brought on the regular establishment by the Municipal Council in the year 1987, in our considered view, there cannot be a more deserving case on facts and in law, for condoning the deficit of 6 days in qualifying service.

16. In fairness to Mr. Pathan we note that he has vehemently opposed the prayer to direct condonation of the shortfall or deficit in qualifying service by 6 days. The submission is that the exercise of power is an exercise in the realm of discretion and writ Court must be slow to interfere. While we appreciate the submission of Mr. Pathan in principle, in the glaring facts of the case, we cannot be a mute spectator. We are more than satisfied that 6 days deficit in the qualifying service must be condoned. We direct accordingly.

17. The order of rejection of the representation seeking condonation of 6 days deficit in the qualifying service, is set aside.

18. We direct that 6 days deficit in the qualifying service be condoned.

19. Needless to observe, the petitioner shall be entitled to other consequential reliefs, which may be extended / released to the petitioner within next 12 weeks.

20. Petition is partly allowed in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)