

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

WRIT PETITION NO.1114/2022

1. Smt. Sudhabai Wd/o Shambhu Bawankule,
aged about 55 Yrs., Occ. Household.
2. Himanshu S/o Shambhu Bawankule,
aged about 15 Yrs., Occ. Student (Minor),
through his Natural Guardian mother.

Both R/o Kurza Ward, Bramhapuri,
Dist. Chandrapur.

... Petitioners

- Versus -

1. Municipal Council, Bramhapuri,
through its Chief Officer,
Dist. Chandrapur.
2. Director of Municipal Administration,
Government Transport Service Building,
Sirpochkhanwala Marg, Worli, Mumbai.
3. Additional Director of Municipal
Administration and Additional Divisional
Commissioner, Old Secretariat Building,
GPO Chouk, Civil Lines, Nagpur.
4. State of Maharashtra, through its
Secretary, Department of Urban
Development, Mantralaya,
Mumbai-32.

... Respondents

Mr. Prakash D. Meghe, Counsel for the Petitioners.
Mr. R.J. Kankale, Counsel for Respondent No.1.
Mr. S.M. Ukey, Additional Government Pleader for Respondents 2 to 4.

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

DATE : 10.3.2023

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

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

Heard finally by consent of learned counsel for the parties.

2. Facts lie in an extremely narrow compass and by now are not broadly in dispute.

3. The husband of petitioner 1 and the father of petitioner 2 Mr. Shambhu Bawankule was an employee of respondent 1 Municipal Council, Bramhapuri.

4. Mr. Shambhu Bawankule approached the Industrial Court in Complaint (ULP) No.99/1996 seeking permanency as Peon.

5. The learned Industrial Court decided the complaint vide judgment dated 28.2.2000 and operative part of the judgment reads thus:-

“Complaint is allowed.

It is hereby declared that the respondent has engaged and is engaging in unfair labour practice covered under Items 6 and 9 of Schedule IV of the Act.

Respondent is directed to make the complainant permanent as Peon from the date of this order and extend all benefits of permanent employee to him.

No order as to costs.”

6. It is common ground that the judgment of the Industrial Court granting Mr. Shambhu Bawankule permanency from 28.2.2000 has assumed finality.

7. Mr. Shambhu Bawankule expired on 14.2.2020. In the interregnum, Mr. Shambhu Bawankule stood superannuated from 31.3.2011.

8. It does not appear to be in dispute that notwithstanding the judgment of the Industrial Court which conferred permanency on Mr. Shambhu Bawankule, the retiral dues were not paid. Similarly, petitioners were not extended benefit of family pension.

9. It appears that after Mr. Shambhu Bawankule retired he had preferred a representation seeking the financial benefits consequentially flowing from the judgment of the Industrial Court. We may further note that Mr. Shambhu Bawankule also approached the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947. However, the claim in the proceedings under Section 33C(2) was restricted to the alleged shortfall in the emolument from the date of the order of the Industrial Court conferring permanency till the date of the superannuation. We are further informed by the learned counsel for the parties that the learned Labour Court has allowed the

claim and Writ Petition 4833/2105 preferred by respondent 1 assailing the said decision is pending.

10 Be that as it may, the pendency of Writ Petition 4833/2015 is not of any significance in the present matter. The grievance in the present matter is that although Mr. Shambhu Bawankule rendered service from 1995 to 2011, and he was entitled to pension in view of the provisions of Rule 110 of the Maharashtra Civil Services (Pension) Rules having completed the qualifying service, Mr. Shambhu Bawankule did not receive pension and as a sequitur petitioner 1 is not receiving the family pension, which we find to be prima facie unjustified.

11. The other grievance is that gratuity and the leave encashment amount is not paid.

12. Insofar as the determination and the fixation of the pension and the retiral dues and the leave encashment, we find it

appropriate that the same shall be considered by respondent 1 on the touchstone of the judgment of the Industrial Court which has assumed finality, and the observations made by us herein.

13. We expect the petitioners to produce copy of this order and appear before the Chief Officer on 28.3.2023 and within next four weeks the Chief Officer shall take an appropriate decision. The benefits, flowing from the determination and fixation, if any, shall be released in favour of petitioner 1 / petitioners within eight weeks.

14. The petition is partly allowed in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)