



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

WRIT PETITION NO. 7746 OF 2022

Bhaskar S/o Baliram Lande, Aged 68 years, **Petitioner**
Occ.- Nil, R/o Adarsh Colony, Tq. Akola,
Dist. Akola.

-Versus-

1. The State of Maharashtra, Through its **Respondents**
Secretary, Department of Forest,
Mantralaya, Mumbai-32.
2. Deputy Conservator of Forest, Akola,
Forest Division, Station Road, Akola,
Tq.and Dist. Akola.

Mr. R.V.Shiralkar with Mr.V.B.Bhise, counsel for the petitioner.
Mr. M.K. Pathan, AGP for the respondents-State.

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 28TH JUNE, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

This petition takes exception to the judgment and
order dated 08/09/2022 of the Maharashtra Administrative

Tribunal, Nagpur (MAT) passed in Original Application No.208 of 2020, whereby the petitioner's claim of regular pension and pensionary benefits came to be dismissed.

2. The petitioner was engaged as Labour on daily wages with respondent No.2 from 07/08/1989 and he had worked continuously without any break on the establishment of respondent No.2 till 14/01/2002. Thereafter, the services of the petitioner were terminated. The petitioner had challenged the said termination order by filing complaint under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Labour Court, Akola. The Labour Court, Akola vide its order dated 25/01/2006 allowed the said complaint and the respondents were directed to reinstate the petitioner with continuity of service and back wages for the period from 15/01/2002 till the date of reinstatement. The respondents made unsuccessful attempt of filing revision application before the Industrial Court, Nagpur. In view of the order of Labour Court, the petitioner was reinstated by order dated 04/12/2012, and was appointed as a Forest Labourer under pay scale of

4440-7440 with effect from 01/06/2012. Even, the petitioner was granted permanency by order dated 15/02/2013. The petitioner retired from service on superannuation, on 31/01/2014. When the time came to pay pensionary benefits and back wages, nothing was given to the petitioner. Therefore, the petitioner on 27/01/2015 and 11/03/2015 made representations for regular pension, pensionary benefits and back wages. Since, no development took place, the petitioner approached the MAT vide Original Application No.337 of 2015. The MAT by order dated 28/09/2015, the respondents were directed to decide the representation of the petitioner for grant of back wages and pensionary benefits to the petitioner within two months. Since no development took place, the petitioner moved to the MAT vide Original Application No.206 of 2017. By order dated 17/04/2018, the respondents were directed to release the back wages of the petitioner for the period from 15/01/2002 to 06/08/2010 with a direction that the service of the petitioner shall be treated as continuous service with effect from 15/01/2002. The respondents were directed to decide the entitlement of the petitioner for pension

and pensionary benefits as may be admissible under Rules. After filing the contempt petition before the MAT, the petitioner could get the amount of back wages to the tune of Rs.1,97,534/-. The MAT further directed the respondents to pay the interest and to take decision regarding the pension claim of the petitioner. The respondents paid the interest, but refuse to grant regular pension and other benefits to the petitioner as per Old Pension Scheme by order dated 03/12/2019. The said decision of the respondents was challenged by the petitioner in Original Application No.208 of 2020 before the MAT. By order dated 08/09/2022, the MAT dismissed the application filed by the petitioner. Feeling aggrieved by the said order, the present writ petition came to be filed.

3. The respondent No.2 in its reply has contended that since the petitioner was appointed from 01/06/2012 in Class-IV category in the Forest Department, as per the Government Resolution dated 31/10/2005, the petitioner's case is governed by a New Defined Contributory Pension Scheme. Accordingly, the petitioner was informed by communication dated

03/12/2019. It is contended that the Government Resolution dated 16/10/2012 prescribed certain terms and conditions for regularization of the daily wager/labourers. Accordingly, the service of the daily wager/labourers were regularized. On the date of regularization, new Define Contributory Pension Scheme was in force therefore, the petitioner is not entitled to Old Pension Scheme. It is also one of the contentions that the petitioner has accepted all terms and conditions of the Government Resolution dated 16/10/2012 in which previous service benefits are relinquished by him voluntarily and has executed bond, therefore, the claim of the petitioner is barred by principle of promissory estoppel. The respondents sought rejection of the petition.

4. We have heard learned counsel for the petitioner, Mr. Shiralkar and learned Assistant Government Pleader, Mr. Pathan. We have gone through the orders of MAT, Nagpur.

5. The case in hand has chequered history. It appears that there are various rounds of litigation between the petitioner and the respondents. Be that as it may, but the fact remains that

the Labour Court by its order dated 25/01/2006 had directed the respondents to reinstate the petitioner with continuity of service and back wages for the period from 15/01/2002 till the date of reinstatement. The respondents assailed the said judgment and order before the Industrial Court by filing revision, which came to be dismissed. Not only this, the record shows that when the petitioner third time approached the MAT, the full fledged hearing was conducted. All the contentions, which are raised before this Court with regard to the back wages in view of Government Resolution dated 16/10/2012, have been raised before the MAT and those contentions were repelled by the MAT in earlier round of litigation. The respondents were directed to give the back wages to the petitioner along with interest and also directed to hold that the services of the petitioner shall be treated as continuous service. The respondents were further directed to take a decision as regards the entitlement of the petitioner for pension and pensionary benefits as may be admissible under the Rules. This order has not been challenged by the respondents anywhere and

ironically, the same grounds are raised by the respondent before this Court.

6. The petitioner approached this Court when his another original application filed by him on the refusal to grant benefit of Old Pension Scheme came to be rejected by the MAT. We are also surprised to see that when the MAT by its order dated 17/04/2018 had directed the respondents to treat the earlier service of the petitioner as continuous service, how the MAT held contrary to its own findings in earlier round of litigation in subsequent original application which has been filed by the petitioner on the refusal by the respondents to give pensionary benefits as per the Old Pension Scheme. The Coordinate Bench of the MAT in Original Application no. 206 of 2019 has already held, rather, which is quoted in the impugned judgment that the earlier services of the petitioner shall be treated as continuous while the services of the petitioner treated as continuity in service. Thus, impugned order is in teeth of the decision of the MAT in Original Application No.206 of 2019.

7. Rather, perusal of the impugned judgment and order goes to show that mere decisions cited by the respondents and the petitioner all quoted. No reason whatsoever has been given. The MAT straightway held that the petitioner would not be entitled to any relief. It is trite position of law that the order without reason or a non speaking order is no order in the eyes of law.

8. There are two speaking orders directing the respondents to treat the services of the petitioner as continuous service from the date of his initial appointment, which is undisturbed till now. We find no difficulty in holding that the impugned order of the MAT rejecting the claim of the petitioner governing the earlier order of Coordinate Bench of the Tribunal does not stand. DCPS is applicable to the government employee who are recruited after 01/11/2005. The order dated 25/01/2006 of Labour Court asking to regularized the service, was prior in time, therefore the case of the petitioners will not be governed by the conditions mentioned in Government Resolutions dated 16/10/2012 for regularization but, will be governed by order dated 25/01/2006 of Labour

Court. Needless to mention that if the services of the petitioner are to be counted as continuous service from the year 2002, as held by the Labour Court as well as the MAT in the earlier round of litigation and the same is attained finality, the petitioner is entitled to all the pensionary benefits as per the Maharashtra Civil Services (Pension) Rules, 1982.

9. Resultantly, the petition is allowed. We direct the respondent No.2 to send the pension proposal of the petitioner as per Old Pension Scheme provided under the Maharashtra Civil Services (Pension) Rules, 1982 and release his all pensionary benefits within four weeks.

10. Rule is made absolute in the aforesaid terms. No order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)