

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

Misc. Civil Application No. 160 of 2021

in

Writ Petition No. 4126 of 2018

[Ramu S/o Chafa Jadhav (dead) through L.Rs Babulal R. Jadhav and ors. **..vs..** State of Maharashtra,
through Secretary, Social Welfare Department and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. T. Harkare, Advocate for the applicants/petitioner
Mr. N. S. Rao, AGP for the respondents 1 and 2
Mr. Anand Parchure, Advocate for respondents 4 and 5

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

DATED : 27-4-2023

Heard.

2. Mr. Ramu Jadhav is the original review applicant.

3. Review is sought of the judgment dated 7-10-2019 in Writ Petition 4126 of 2018 whereby the contention of Mr. Ramu Jadhav that he is entitled to pension is rejected on the assumption that the qualifying service for pension is 30 years.

4. Unfortunately, Mr. Ramu Jadhav has expired during the pendency of the review application and his legal heirs are pursuing the quest for justice.

5. Mr. Ramu Jadhav claimed that he was a permanent Government servant and was appointed as Cook on 3-7-1978 and was posted at Medshi, Taluka Washim. On 3-8-1990, he was transferred to Aagargaon, District Nagpur. It appears that Mr. Ramu Jadhav approached the Industrial Court against the transfer, which challenge was rejected. It further appears that although Mr. Ramu Jadhav did not join at the transferred place, no departmental action was initiated much less termination order issued. Mr. Ramu Jadhav, during his lifetime, believed that the relationship of employee-employer did not snap, and for the purpose of qualifying service, the entire tenure from the date of appointment in the year 1978 to the date of superannuation 31-3-2000 shall be the qualifying service.

6. The coordinate Bench held that since the petitioner was not granted leave of absence from 3-8-1990 till 31-3-2000, and there was no

regularization or condonation of break, the petitioner did not fulfill 30 years of qualifying service. The coordinate Bench proceeded on the assumption that Rule 65 read with the preceding Rule of the Maharashtra Civil Services (Pension) Rules, 1982 shall govern the situation.

7. Learned counsel for the applicants/petitioner Mr. Harkare would submit that the fundamental premise on which the judgment is based is contrary to statutory provision and the error is writ large on the face of the record in as much as even if it is assumed that the period of absence shall have to be excluded, the qualifying service is 10 years, which Mr. Ramu Jadhav did complete.

8. While we are not inclined to make any positive observation at this stage, since we propose to allow the review application and restore the petition to file, we may observe that *prima facie* the submission has formidable substance.

9. We recall the judgment dated 7-10-2019 and restore Writ Petition 4126/2018 to file. Let the writ petition be listed for final hearing on 8-6-2023.

10. The application is disposed of.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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