



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3592 OF 2010

1. Ramesh s/o. Laxman Suryawanshi,
Age: 64 years, Occu.: Retired,
R/o. Sutargalli, Jamner, Tq. Jamner,
District Jalgaon.
2. Wamanrao s/o. Vithalrao Dalal
Age: 59 years, Occu.: Retired,
R/o. Madhuban Colony, Jamner,
Taluka Jamner, District Jalgaon.
3. Sudhakar s/o. Narayan Patil
Age: 63 years, Occu.: Retired,
R/o. Rambharosenagar, Jamner,
Taluka Jamner, District Jalgaon.
4. Ramdas s/o Chango Masurkar,
Age: 62 years, Occu.: Retired,
R/o. Shastrinagar, Jamner,
Taluka Jamner, District Jalgaon.
5. Krishna s/o. Dhondu Mahajan
Age: 62 years, Occu.: Retired,
R/o. Near Mohan Bhuwan, Jamner,
Taluka Jamner, District Jalgaon.
6. Ramesh s/o. Trimbak Mahajan
Age: 61 years, Occu.: Retired,
R/o. Maligalli, Jamner,
Taluka Jamner, District. Jalgaon.
7. Motiram s/o Vithoba Mali
Age: 59 years, Occu.: Retired,
R/o. Vivekanandnagar,
Taluka Jamner, District Jalgaon.
8. Majidkhan s/o Abbaskhan Pathan
Age: 59 years, Occu.: Retired,
R/o. Athawadibazar, Near Watertank,
Taluka Jamner, District Jalgaon.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032.
2. Commissioner and Director,
Municipal Council Administrative
Directorate, Government Pariwahan
Seva Bukoding, 3rd Floor,
Sar Pochkhanwala Road, Worli,
Mumbai.
3. Deputy Director of Municipal Council
Administrative Directorate,
Govt. Pariwahan Seva Building,
3rd Floor, Sar Pochkhanawala Road,
Worli, Mumbai.
4. The District Collector, Jalgaon.
5. Municipal Commissioner,
Municipal Corporation, Jalgaon.
6. Chief Officer,
Municipal Council, Jamner,
District, Jalgaon.
7. The Chief Accounts Officer,
Municipal Corporation, Jalgaon.

.. RESPONDENTS

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WITH

WRIT PETITION NO.7344 OF 2012

Abrarkhan s/o Houjdarkhan Pathan
Age: 61 years, Occu.: Retired,
R/o. At Post. Bhadgaon, Tq. Bhadgaon,
District Jalgaon.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary,

Urban Development Department,
Mantralaya, Mumbai-400 032.

2. Commissioner and Director,
Municipal Council Administrative
Directorate, Government Pariwahan
Seva Bukoding, 3rd Floor,
Sar Pochkhanwala Road, Worli,
Mumbai.
3. Deputy Director of Municipal Council
Administrative Directorate,
Govt. Pariwahan Seva Building,
3rd Floor, Sar Pochkhanawala Road,
Worli, Mumbai.
4. The District Collector, Jalgaon.
5. Municipal Commissioner,
Municipal Corporation, Jalgaon.
6. Chief Officer,
Municipal Council, Bhadgaon,
District, Jalgaon.
7. The Chief Accounts Officer,
Municipal Corporation, Jalgaon.

.. RESPONDENTS

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Mr. M. R. Kulkarni, Advocate for the petitioners in both the petitions.
Mr. N. S. Tekale, AGP for respondent Nos.1 to 4 in both the matters.
Mr. P. V. Gole h/f Mr. V. D. Gunale, Advocate for respondent No.5.
Mr. Sudhir B. Akhade h/f Mr. M. S. Deshmukh, Advocate for
respondent No.7.
Mr. D. B. Thoke, Advocate for respondent No.6 (Through V.C.) in Writ
Petition No.7344 of 2012.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : JANUARY 16, 2024.

JUDGMENT (Per Smt. Justice Vibha Kankanwadi, J.) :-

. In both the petitions, the issue involved is similar and, therefore, taken up together for disposal.

2. Rule was issued in both the matters on 18.09.2012 and 11.02.2014 respectively and both the matters were tagged together by order dated 11.02.2014.

3. Heard learned Advocate Mr. M. R. Kulkarni for petitioners in both the writ petitions, learned AGP Mr. N. S. Tekale for respondent Nos.1 to 4 in both the petitions, learned Advocate Mr. P. V. Gole holding for learned Advocate Mr. V. D. Gunale for respondent No.5 in both the petitions, learned Advocate Mr. Sudhir B. Akhade h/f Mr. M. S. Deshmukh for respondent No.7 in both the matters, learned Advocate Mr. D. B. Thoke (Through V. C.) for respondent No.6 in Writ Petition No.7344 of 2012.

4. The petitioners in Writ Petition No.3592 of 2010 were in service of erstwhile Grampanchayat, Jamner, District Jalgaon on different posts on the basis of their qualification. The list of their post and date of appointment has been given in the petition. The Government of Maharashtra issued resolution dated 28.10.2002 converting the Grampanchayat, Jamner into Municipal Council. The Commissioner as

well as Director, Municipal Council Administration, Directorate, Mumbai gave sanction to 136 posts by order dated 22.07.2005 as per the reviewed aakrutibandh, out of which 126 employees of erstwhile Grampanchayat were absorbed under the Municipal Council under certain terms and conditions. It was stated in condition No.2 that the seniority would be counted from the date on which they became permanent in the Grampanchayat. As per condition No.2, in order dated 22.07.2005 their services were made entitled for the pension, assured progressive scheme and other benefits from the date of their allotment under the Municipal Council, Jamner. The petitioners thereafter retired on their respective days of retirement, lastly some out of them were retired on 31.05.2009. It is said that they have not completed the service for pensionary benefits from the date of their allotment to the Municipal Council, Jamner from Grampanchayat, Jamner. It is said that they have been deprived of from the benefits of pension and other benefits. Time and again they had made representation, however, it was turned down by respondent No.3 by order dated 19.03.2008. Thereafter they had made representation to the Hon'ble Lok Aayukta, who had not considered their representation. It has been then contended that by Government Resolution dated 11.09.1987 jurisdiction of Jalgaon Municipal Council was extended and the Grampanchayat areas of Nimkhedi / Khedi / Meharan and Pimprale were included in the jurisdiction of Municipal Council. Thereafter on

30.04.1993, the President, Jalgaon Municipal Corporation decided to count the services of the employees rendered under the erstwhile Grampanchayat for the purpose of pensionary benefits. In fact, the petitioners are similarly situated, and, therefore, they should be extended with the benefits. The petitioners therefore have prayed for quashing the letter dated 19.03.2008 issued by respondent No.3 and holding them entitled for the pensionary benefits along with the admissible benefits to them and arrears thereof.

5. The petitioner in Writ Petition No.7344 of 2012 was the employee of erstwhile Grampanchayat, Bhadgaon. By Government Resolution dated 31.08.2009, the said Grampanchayat was converted to Municipal Council. Similarly, the posts were sanctioned under order dated 29.04.2010 by the Commissioner as well as Director, Municipal Council Administration Directorate, Mumbai. The petitioner was absorbed in view of Government Resolution dated 11.02.2011. The similar condition was put to him. The petitioner has also retired and he has also stated that he had not rendered the services required for pensionary benefits from the date of his allotment to Municipal Council, Bhadgaon. He is also claiming that likewise the employees of Grampanchayat Nimkhedi, Khedi, Meharan and Pimprale were given benefits and other pensionary benefits by the Jalgaon Municipal Corporation, he also ought to have been given the benefits. This

petitioner is also praying the similar relief as stated in Writ Petition No.3592 of 2010.

6. The affidavit-in-reply has been given on behalf of respondent Nos.2, 3 and 4 by one Bhikanrao Tanku Baviskar in Writ Petition No.3592 of 2010. The factual aspects are not denied, however, it is said that it was specifically mentioned in condition No.2 of Government Resolution dated 22.07.2005 that the services of the petitioners will be counted from 28.10.2002 i.e. the date on which the Municipal Council came into existence and the conversion of the Grampanchayat to Municipal Council has been made. The petitioners never challenge the Government Resolution dated 28.10.2002 or order dated 22.07.2005. In fact, they had accepted the terms and conditions imposed by the authorities at the time of merger of their services in Municipal Council, Jamner. Therefore, in view of said condition No.2 and the fact that all the petitioners have not put eligible service i.e. 10 years prior to their retirement in their employment with Municipal Council, Jamner, they are not entitled to the pensionary benefits and other benefits, if any.

7. The main point on which the learned Advocate for the petitioners argued the matter was the discrimination between the petitioners who were absorbed in Municipal Council and the absorptions of the Grampanchayat employees from Nimkhedi, Khedi, Meharan and Pimprale to Municipal Council, Jalgaon or Municipal Corporation,

Jalgaon. Though certain employees from those four Grampanchayats had not put required service where they were absorbed, yet they have been held to be eligible for pension and other benefits. He further submitted that by a circular dated 10.02.1987 by the Government, it was observed that the Nagarpalika's can grant pensionary benefits with retrospective effect from 15.06.1966. He submits that it was as per Section 80 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "the Act") governed by-laws to be made regulating certain conditions of service. Therefore, in view of Section 80 of the Act as well as the said circular, the petitioners are entitled to get the benefits and there cannot be a discrimination on the said point.

8. Per contra, the learned AGP representing respondent Nos.1 to 4 vehemently submitted that the condition No.2 was very much clear and on the said conditions, the petitioners were absorbed. Their absorption has not been challenged on the ground that it is taking away certain rights from them. Further, there are no by-laws framed. The circular dated 10.02.1987 cannot be made applicable here, when the condition No.2 in the order of absorption was never challenged.

9. The first and the foremost fact to be noted is that when once an employee accepts the terms of employment, then there would be little scope left for interpretation in respect of those service conditions. The

facts are clear in both the matters. There were Grampanchayats earlier at Jamner and Bhadgaon. Thereafter, Municipal Councils were established by respondent No.1 - State and it was decided to absorb the employees, who were in the employment of erstwhile Grampanchayat. By order dated 22.07.2005 and 29.04.2010, the posts were sanctioned, but at the same time conditions were imposed. The conditions are similar. Condition No.2 runs thus :-

"२) ग्रामपंचायतीकडून नगरपरिषदेकडे वर्ग झालेल्या कर्मचा—यांची सेवा, नगरपरिषदेच्या स्थापनेच्या दिनांकापासून निवृत्तीवेतन आश्वासित प्रगती योजना तसेच इतर सर्व लाभांसाठी ग्राह्य धरण्यात येत आहे."

English translation of the above-said condition No.2 is as under :-

"2) The service of the employees transferred from the Gram Panchayat to the Municipal Council is being taken into account for the Pension Assured Progression Scheme and all other benefits from the date of establishment of the Municipal Council."

(Translated by Senior Translator and Interpreter,
High Court of Bombay, Bench at Aurangabad)

10. It was clearly stated that the seniority of the absorbed employees would be counted from the date on which they became permanent in the Grampanchayat, but as regards pension, ACP and other benefits are concerned, it would be from the date of

establishment of the Nagar Parishad. As regards Petitioners in Writ Petition No.3592 of 2010, they had ample opportunity to challenge the said condition No.2 before their retirement. Petitioner No.1 appears to have retired on 30.04.2004, which was even prior to order dated 22.07.2005. The others have retired thereafter in 2005, 2006, 2007 and 2009 respectively. The Writ Petition No.3592 of 2010 has been filed on 14.04.2010. This shows that they accepted the absorption, though they were knowing condition No.2 from order dated 22.07.2005. Almost similar is the case in respect of another petitioner in companion matter. The order of absorption is dated 11.02.2011 with similar condition No.2. The petitioner retired on 31.05.2012 i.e. almost one year three months from the order of absorption. The learned Advocate for the petitioner could not point out as to how the Government Resolution dated 11.02.2011 is ultravires, illegal and bad in law. Merely because the Jalgaon Municipal Corporation has absorbed the employees of other Grampanchayat and granted pensionary benefits, it will not automatically said that the petitioners should also receive the same treatment. It is a contract of service which depends upon the contract as well as the rules and regulations governing a particular employment. It cannot be said that the act of respondent Nos.1 to 4 is arbitrary. It is for the employer to put the service conditions. When it was accepted by the petitioners, then petitioners cannot now agitate against the said order.

11. It is not pointed out that by-laws have been prepared after the councils came into existence. If that circular dated 10.02.1987 is still in existence, then immediately after the order of absorption, the petitioners could have challenged the respective orders, but the petitioners allowed themselves to retire on the basis of the same order. Therefore, they cannot challenge only one of the clause of the said order. The Jalgaon Municipal Corporation might be having specific by-laws and after adopting due procedure, it would have been decided by the authorities therein to extend pensionary benefits to those employees, who came to be absorbed from the erstwhile Grampanchayats. Therefore, there is absolutely no violation of Article 14 of the Constitution of India by discriminating one class of person/employee from another class.

12. For the reasons stated above, no case is made out for exercising constitutional powers of this Court. Therefore, both the writ petitions stand dismissed.

13. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm