



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 444 OF 2014

Wachalabai Nagorao Khandare

VERSUS

The State Of Maharashtra And Another

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Mr. A. G. Dalal, Advocate for the Petitioner

Mr. A. A. A. Khan, AGP for Respondent No. 1

Mr. H. I. Pathan, Advocate for Respondent No. 2

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CORAM : RAVINDRA V. GHUGE &  
R. M. JOSHI, JJ

DATE : MARCH 20, 2024

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J)

1. This is a special drive for taking up pending matters involving issue of pensionary benefits.

2. Rule. Rule made returnable forthwith and heard finally by the consent of parties.

3. The Petitioner is a widow who has preferred this Petition against Municipal Council, Basmatnagar, District Hingoli for seeking pensionary benefits in connection with her deceased husband's service. The Petitioner's husband, admittedly was appointed on daily wages as a Class-IV employee on 31.03.1986. Admittedly, he was regularized in service in the year 2000. The Civil Surgeon of the General Hospital, Hingoli examined

the Petitioner and delivered a report dated 26.03.2004 concluding that the Petitioner is suffering from V A with right hemiparesis (paralysis). As a consequence of the report, the Petitioner was retired on medical grounds on 30.04.2004, when he had 10 more years of service. Admittedly, retirement age of Class-IV employees is 60 years. The husband of the Petitioner died on 13.07.2004. The Petitioner/widow tendered an application on 18.02.2005 seeking retiral benefits and pension.

4. The learned Advocate for the Municipal Council has strenuously opposed this Petition. He relies on the affidavit-in-reply filed by Dr. Shriniwas Pundlikrao Kotwal, Chief Officer, Municipal Council dated 14.01.2015. He submits that as the deceased was a daily wager and was regularized on 07.12.2000, his earlier temporary service cannot be taken into account for considering grant of pensionary benefits. It is conceded that Maharashtra Civil Services (Pension) Rules, 1982 are applicable to the deceased. In fact, it is pleaded that as per Rule 65 of the Maharashtra Civil Services (Pension) Rules, 1982 the deceased was not

entitled for pensionary benefits.

5. The learned Single Judge of this Court has dealt with a similar matter in *Mahatma Phule Krishi Vidyapeeth, Rahuri Vs. Ganpat S/o Kisan Karle, 2016 (3) AIR Bom R 697*. The Court concluded that the past temporary service of an employee can be counted to the extent of 50% to be added to the tenure of regular service, for the purpose of grant of pensionary benefits.

6. We are informed that this judgment is sustained by the Hon'ble Supreme Court. This Court has also passed an order dated 21.01.2019 in Writ Petition No. 12055/2018 (Devai Kishan Jondhale vs. The State of Maharashtra and others) concluding that Rule 57 of the said Rules mandates that half of the temporary service of a regularized employee shall be added to the regular service for the purpose of computing payment of pension.

7. In view of the above, **this Petition is allowed.** The 50% temporary services of the deceased, from 31.03.1986 upto 06.12.2000, shall be added to the

tenure of the regularized service of the deceased from 07.12.2000 till 13.04.2004, when he was retired from service on medical grounds.

8. The Respondent – Municipal Council shall calculate the pensionary benefits from the date of retirement of the deceased i.e., 01.05.2004 onwards and all arrears of pensionary benefits shall be paid to the Petitioner widow within a period of 90 days from today. So also, the Petitioner would be entitled for all service benefits including gratuity, if not paid, provident fund accumulation/statutory benefits as are permissible and the said amount shall be calculated by the Municipal Council and paid to the Petitioner, within 30 days from today. Needless to state, the interest on the gratuity amount shall be @ 10% p.a. which is the prescription in law. Interest on all arrears as may be permissible in law, shall be paid. If there is no provision, the interest shall be @ 6% p.a..

9. Rule is made absolute in the above terms.

(R. M. JOSHI, J)  
Malani

(RAVINDRA V. GHUGE, J)