



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

WRIT PETITION NO.3566 of 2024

Abdul Rashid Abdul Gaffur Vs. State of Maharashtra and others

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

Court's or Judge's order

Mr. Chaitanya Kulkarni, Advocate for petitioner.
Mr. D.P.Thakare, Addl. G.P. for respondent no.1.

CORAM : NITIN W. SAMBRE & MRS. VRUSHALI V. JOSHI, JJ.
DATE : NOVEMBER 19, 2024.

1. Heard.
2. Drawing support from Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982, which reads thus:

"57. Non-pensionable service:- As exceptions to Rule 30, the following are not in pensionable service:-

(a) Government servants who are paid for work done for Government but whose whole-time is not retained for the public service,

(b) Government servants who are not in receipt of pay but are remunerated by honoraria,

(c) Government servants who are paid from contingencies,

(d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable.

(e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.

Note 1- In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.

Note2- In the case of persons who were holding the posts of attendants prior to 1st April, 1966, one-half of their previous continuous service as attendants, shall be allowed to count for pension".

3. The contentions of the learned counsel for the petitioner are that he was in the employment of the respondent-Municipal Council since 1977 on daily wages. According to him, his services were regularized, vide order dated 30th November, 2000 and as such on regular establishment, he has discharged his duties from 02.05.2001 to 31.05.2009.

4. Drawing support from the aforesaid Rule, it is his contention that half of the services of the petitioner from 1977 till 1st May 2001 should have been considered for calculating promotional benefits and in that eventuality, the impugned decision dated 17th October, 2023 goes contrary to the mandate provided under the aforesaid Rule 53 of the Maharashtra Civil Services (Pension) Rules, 1982.

5. Issue notice of final disposal to the respondents, returnable on 8th January, 2025.

6. Mr. D.P. Thakare, learned Additional Government Pleader waives notice for respondent no.1.

7. We direct the Chief Officer of the respondent no.2-Municipal council to file his affidavit on or before the returnable date.

(MRS.VRUSHALI V. JOSHI, J.) (NITIN W.SAMBRE, J.)