

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6782 OF 2019

Ananda Vishnu Salvi
R/o Phansop, Tal. Ratnagiri,
Nalawdewadi, Dist. Ratnagiri.Petitioner

Versus

1. The Chief Officer,
Ratnagiri Nagarparishad
Ratnagiri.
2. The Director Of Municipal
Administration, Govt.
Administrative Building
Sir Pochkhanwala Marg, Worli
Mumbai- 400 030.
3. Divisional Commissioner
Nagarparishad Administration
Kokan Division,
Navi Mumbai.Respondents

Mr. Bakul Bhosale, Advocate for the Petitioner.

Mr. Rakesh Bhatkar a/w Mr. Mohan Devkule, Advocate for
Respondent No.1.

Mr. B.V. Samant, Additional G.P. a/w Ms. Priyanka B. Chavan,
Advocate for Respondent-State.

CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.

DATE : 24th APRIL, 2025

ORAL JUDGMENT (PER:- RAVINDRA V. GHUGE, J.)

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

2. The Petitioner was appointed as a daily wager by the Ratnagiri Municipal Council, in 1979. This is conceded in paragraph no. 7 of the affidavit-in-reply dated 04.03.2025, filed by Respondent No.2 Directorate of Municipal Administration, Navi Mumbai. The Petitioner along with colleague daily wagers, filed a Complaint (ULP) No. 320 of 1995, before the Industrial Court at Kolhapur. By judgment dated 10.03.2004, the Complaint was allowed.

3. The Municipal Council approached this Court in Writ Petition No.4768 of 2004, which was dismissed by order dated 02.07.2004. The Municipal Council preferred Letters Patent Appeal No.478 of 2004. By order dated 05.04.2005, the appeal was dismissed *in limine*. A Review Petition (St) No.2840 of 2006 was

preferred by the Municipal Council. By order dated 12.09.2006, the appeal Bench observed as under:

“DATED: 12TH SEPTEMBER, 2006

P.C. :

. Mr. C.R. Sonawane, the counsel for the original appellant and Mr. M.S. Topkar, the counsel for the respondent agreed, and in our view fairly, that the direction contained in paragraph 5 of the order dated 5th April, 2005 be modified.

2. We, accordingly, order that the respondent shall be made permanent as lineman/pump operator with effect from 1st January, 1995, but shall not be entitled

:2:

to arrears of wages of permanent employee as a lineman/pump operator upto 17th January, 2001. In other words, the respondent shall be entitled to the wages of permanent employee as a lineman/pump operator with effect from 18th January, 2001.

. Review Petition stands disposed of accordingly.

Sd/-

[R.M. LODHA, J.]

Sd/-

[R.S. MOHITE, J.] ”

4. It is, thus, undisputed that though the Petitioner was working from 1979, the High Court granted him permanency as a Lineman/Pump Operator w.e.f. from 01.01.1995, without arrears of wages payable to a permanent Employee as a Lineman/Pump Operator up to 17.01.2001. From 18.01.2001, he was held to be entitled for the wages at par with the permanent employees.

5. The issue raised in this Petition falls under Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982. Rule 54 reads as under:

“54. Condonation of deficiency and addition in service. Government may, for special reasons to be recorded in writing-

(1) condone a deficiency, which may not ordinarily exceed one year, in the period of service qualifying for pension performed by a Government servant in order to qualify him to receive a Retiring Pension or to receive a pension as distinct from a gratuity; or

(2) make an addition, which may not ordinarily exceed one year, to the period of service qualifying for pension, performed by a retiring Government servant which under the provisions of these rules may be counted for pension.

Note.- The power under sub-rule¹[(1)] shall be exercised only in respect of low-paid Government servants retiring or invalid or compensation pension.”

6. The learned AGP submits on the basis of the affidavit-in-reply dated 04.03.2025, that if the Petitioner was paid from the Contingency Fund under Rule 57, Note 1 of the 1982 Pension Rules, the earlier temporary service equal to 50% would have been added to his tenure of regular service. Since he was paid by the

Municipal Council from the General Fund, he would not be entitled for the advantage of reckoning 50% of the temporary service while calculating the qualifying service for pension.

7. The learned Advocate for the Municipal council relies on the affidavit filed by the Chief Officer of the Municipal Council dated 10.03.2025, contending therein that the Petitioner superannuated on attaining the age of 60 years on 30.09.2004. He falls short of 3 months, in attaining 10 years qualifying service for pension.

8. Rule 110(3) of the Pension Rules, 1982, in our view, would assist the case of the Petitioner. The Petitioner completed 60 years on 30.09.2004. Going by Service Rule 10(7) (Note 1), if a retiring candidate has his birth date on the 1st day of the month, he retires on the last day of the preceding month. If the birth date falls on any day after 1st, he retires on last day of the month in which his birthday falls. Hence, the Petitioner superannuated on 30.09.2004.

9. For ready reference, we are reproducing Rule 110 [Rule 110 (3) would be relevant], as under:

“110. Amount of pension.- ¹*[(1) In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's pay for every completed six monthly period of qualifying service.]*

²*[(2)(a) In case of Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than twenty years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of Rs.67,000 plus admissible grade pay.*

(b) In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of twenty years but after completing qualifying service of ten years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of Rs. 67,000 plus admissible grade pay and in no case the amount of pension shall not be less than Rupees One Thousand Nine Hundred and Thirteen per month.]

(3) In calculating the length of qualifying service, fraction of a year equal to ³[three months] and above shall be treated as a completed one-half year and reckoned as qualifying service.

(4) The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2), shall be expressed in whole rupee and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.

10. Considering the language used in Sub Rule 3 reproduced above, if the Petitioner has worked for 3 months, it

would be treated as having completed half year and would be reckoned as qualifying service. The Petitioner has worked for 9 Years and 9 Months, the fraction of 3 months, i.e, July, August and September would account for 3 months and Sub Rule 3 enables the rounding of the fraction of a year equal to 3 months as having completed half year for the purpose of reckoning qualifying service. In view of the above, we conclude that the Petitioner can be said to have completed 10 years of qualifying service.

11. Hence, **this Writ Petition is partly allowed.** The Petitioner would be entitled for Pension as per the Rules. We direct Respondent No.1 to forward the pension proposal of the Petitioner to Respondent No.2, within a period of 30 from today and should not seek extension of time. The Petitioner would co-operate if it comes to signing any papers or Service Book or necessary records, etc. Let the payment of pension commence within a period of 45 days after the proposal is tendered to Respondent No.2. The Accountant General (AG) will not raise any objection.

12. The learned Advocate for the Petitioner has prayed for interest on the pension ever since his retirement. The learned AGP

and the learned Advocate for the Municipal Council, have vehemently opposed. The learned AGP submits that though the Petitioner was in litigation and the verdict of the appeal Bench of this Court dated 12.09.2006 granted him the deemed date of permanency, the Petitioner slept for 13 years thereafter. She submits that the law should not assist a sleeping litigant and a litigant who causes delay, should not benefit out of his own wrong.

13. Considering the above, we would grant Simple Interest @ 6% per annum w.e.f. 15.04.2019 (for easy calculations), since the Petition was filed on 08.04.2019 and the Petitioner is almost 80 years of age. The interest component would also be calculated and be paid within the timeline as directed hereinabove.

14. Rule is made partly absolute in the above terms. No orders as to costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)