



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

WRIT PETITION NO.6160 OF 2024

Bhagyashree w/o Bhagwansingh Chauhan,
Aged about 56 years,
Occupation – Service,
R/o Radhakrishna Shikshak Colony,
In front of Angoor Bagicha,
Kudwa, District Gondia

...PETITIONER

VERSUS

Municipal Council Gondia,
through its Chief Officer, Gondia,
having its office at Gandhi Pratima,
Gondia, District Gondia

..RESPONDENT

Mr. Kaustubh Deogade, Advocate for the petitioner.

Mr. S.A. Sahu, Advocate h/f Mr. M.I. Dhatri, Advocate for the respondent.

CORAM : SMT. M.S. JAWALKAR AND RAJ D. WAKODE, JJ.

DATED : OCTOBER 16, 2025.

ORAL JUDGMENT (Per : Raj D. Wakode, J.) :

Heard Mr. Kaustubh Deogade, learned Counsel for the petitioner and Mr. S.A. Sahu, learned Counsel for the respondent.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The petitioner has approached this Court seeking directions to the respondent - Municipal Council to consider half of the services of the petitioner rendered on a daily wage basis for determining the pensionable service of the petitioner in compliance of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'the MCS Rules' for short). The undisputed facts arising out of the pleadings of the parties are as follows :

A] The petitioner was appointed on 04/01/1988 as Assistant Teacher by the respondent - Municipal Council, Gondia on a daily wage basis in Ganeshnagar Balak Mandir, Gondia. The copy of the first appointment order dated 04/01/1988 issued by the Chief Officer, Municipal Council, Gondia, is on page No.19, Annexure – 1 of the petition. After having served the respondent - Municipal Council for more than 31 years and 8 months, the services of the petitioner were regularised, and the petitioner was absorbed on the post of Junior Clerk on the establishment of the respondent – Municipal Council vide absorption order dated 27/08/2019. Since then, the petitioner has been working as a permanent employee of the respondent – the Municipal Council and is at the fag end of the service. The petitioner, who is about 56 years old, is about to retire in two years, and apprehending that there is a likelihood that she might be held not entitled to pensionary benefits

at the time of her superannuation, the petitioner has approached this Court.

4. This Court has issued notice to the respondent – the Municipal Council on 15/10/2024, in response to which the respondent – Municipal Council has appeared and filed its reply on 08/07/2025.

5. The respondent – the Municipal Council has mainly opposed the present claim of the petitioner mainly on two grounds that the respondent – the Municipal Council, in compliance of the directions given by the Director of Municipal Administration and in Government Resolution, had imposed condition No.1 in the absorption order dated 27/08/2019, which clearly mandated that the earlier services rendered as a daily wager, will not be counted for any monetary benefits, as well as for service benefits and the service will be counted from the date of absorption. Mr. S.A. Sahu, learned Counsel for the respondent – the Municipal Council, submits that once the petitioner has accepted the aforesaid condition of absorption, she is now bound by the doctrine of *estoppel* and hence cannot claim the benefit of Rule 57 of the MCS Rules.

6. The second ground on which the learned Counsel for the respondent - the Municipal Council had opposed the prayer of the

petitioner that the Municipal Council had no contingency fund, and hence the petitioner was never paid from contingencies, and even otherwise, Note-1 of Rule 57 of the MCS Rules will not be applicable, and hence, accordingly prayed for dismissal of the aforesaid writ petition.

7. We have considered the rival submissions made by both the sides and have perused the record. Admittedly, the petitioner was appointed on a daily wage basis on 04/01/1988 on the establishment of the respondent – Municipal Council. It is also an undisputed fact that the petitioner had rendered more than 31 years of service on a daily wage basis to the respondent – Municipal Council before being regularised on 27/08/2019. The petitioner, as on the date of filing of the petition, is 56 years old and is due to retire in the year 2026. Thus, the petitioner will be rendering 7 years of service as a permanent employee at the time of her superannuation, and thus, the petitioner will not be considered as entitled to pension for want of qualifying service.

8. Rule 57 of the MCS Rules clearly grants protection to such daily wage employees who served their employers for several years on a daily wage basis before getting regularised towards the fag end of their service and are ultimately deprived of their statutory rights of pension for want of qualifying service. Note 1 appended to Rule 57 of the MCS

Rules provides that in the cases of employees paid from contingencies who were subsequently brought on a regular pensionable establishment by conversion of their post, one-half of their previous continuous service rendered on a daily wage basis shall be allowed to count for the pension.

Rule 57 of the MCS Rules is extracted below for reference :

“Rule 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.*

Note1.- 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.”

9. The perusal of the aforesaid Rule 57 and Note-1 of the MCS Rules clearly entitles the petitioner for counting half of the services of the petitioner rendered between 04/01/1988 to 27/08/2019 for determining the pensionable service.

10. So far as the first contention raised by Mr. S.A. Sahu, learned Counsel for the respondent – Municipal Council opposing the aforesaid claim of the petitioner that the petitioner is bound by the doctrine of *estoppel*, and she had accepted condition No.1 in the absorption order dated 27/08/2019 at page No.51 Annexure-11 of the petition. The aforesaid condition reads that the earlier services rendered as a daily wager will not be counted for any monetary benefits, as well as other service benefits, and the services will be counted from the date of regularisation. However, the aforesaid contention of Mr. S.A. Sahu is legally unsustainable in the eyes of the law because there cannot be any *estoppel* against the statutory provision. A Division Bench of this Court in ***Writ Petition No.815/2011 (Syed Afzaluddin Ustad s/o Abdul Samad Vs. The State of Maharashtra and ors.) decided on 24/08/2011*** has held that there cannot be any *estoppel* against any statutory provision.

11. In view of the above, the first contention raised by the respondent – the Municipal Council, deserves to be rejected.

12. So far as the next contention of the respondent – the Municipal Council is concerned, the provisions of Rule 57 of the MCS Rules are not applicable in the facts of the present case because the petitioner was working on a daily wage basis in the establishment of the Municipal Council, and the payment of the petitioner for her service as the daily wagger was not paid from the contingency fund.

13. The respondent - the Municipal Council in paragraph No.5 of its reply had specifically admitted that there is no such concept of a contingency fund so far as the Municipal Council is concerned, and no such account is maintained by the Municipal Council. In view of the aforesaid admission, it is clear that the Municipal Council do not have contingency fund, and hence, there was no question of the petitioner being paid from the contingency fund. The fact remains that the Municipal Council does not have its own rules framed for governing the service conditions of its employees. The respondent – the Municipal Council, in paragraph No.6 of its reply, has specifically admitted that the Municipal Council has adopted the Maharashtra Civil Services (Pension) Rules,

and they do not have their own rules; therefore, the word 'contingency fund' used in the MCS Rules for the State Government employees cannot be made applicable to the employees of the Municipal Council, which does not have its contingency funds.

14. In view of the above, the second contention raised by the Municipal Council deserves to be rejected by this Court.

15. In view of the aforesaid analysis, we propose to allow the present writ petition and direct the respondent - Municipal Council to consider half of the services rendered by the petitioner on daily wage basis for the purposes of determining the pensionable service of the petitioner. Accordingly, we pass the following order:

(i) The writ petition is allowed in terms of prayer clause (A1).

(ii) The respondent - Municipal Council, Gondia is directed to consider half of the services of the petitioner rendered between 04/01/1988 to 27/08/2019 as entitled to be counted for determining the pensionable service of the petitioner in compliance of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 at the time of her superannuation.

16. In view of the above, the writ petition stands disposed of.

17. Rule made absolute in the aforesaid terms. No costs.

(RAJ D. WAKODE, J.)

(SMT. M.S. JAWALKAR, J.)

**Divya*