



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

WRIT PETITION NO. 5202 OF 2024

Vasanta Mangu Rathod,

Aged about 67 years,

Occupation - Service (Retired)

R/o. Akola Roap Watika Quarter,

Opp. Chawala Petrol Pump,

Near Ashok Watika, Akola,

Tq. and Dist. Akola.

.... **PETITIONER**

// **VERSUS** //

Deputy Conservator of Forest,

Akola Forest Division,

Station Road,

Near District Court, Akola

Tq. and Dist. Akola.

.... **RESPONDENT**

Mr. Rahul Shiralkar, Advocate with Mr. Vipul Bhise,
Advocate for Petitioner.

Mr. B. M. Lonare, Assistant Government Pleader for
Respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 08.05.2025

DATE ON PRONOUNCING THE JUDGMENT : 09.06.2025

JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally
with the consent of learned Counsel appearing for the parties.

2. The Petitioner herein is challenging the order dated 04.07.2024, passed by the learned Labour Court, Akola in Application IDA No.16/2019 and seeking direction against the Respondent to issue all benefit of permanent employee w.e.f. 01.11.1994 and to grant pension and pensionary benefits similar to the permanent employee.

The facts in nutshell are as under :

3. The Petitioner was the workman and the Respondent is the employer as defined under the provisions of Industrial Dispute Act, 1947 (for short the "ID Act"). The Petitioner was working as a 'Forest Workman' in the Division in Akola range since 01.08.1985. The Petitioner was working continuously and without any break as a daily wage employee. The Petitioner has completed more than 240 days of work in a year. As per the Circular dated 18.10.1991, as issued by the State of Maharashtra, the Respondent has paid the bonus to the Petitioner for the year 1990-91. His name is also appearing in the Seniority List of daily wages forest workman working in the Akola Forest Division. There was a Government Circular issued on 31.01.1996, whereby Government took a decision to the effect that the daily wages workman/ employee as working and who have completed the

services of five years or more as on 01.11.1994, should be regularized, should be made permanent in services. The name of the Petitioner/complainant was appearing in the list of daily wage forest workman as forwarded to the Government. However, the Respondent has failed to regularize the services of the Petitioner and regularized the services of the junior employees. Therefore, the Petitioner issued a Notice to the Respondent, however reply was not filed to the said Notice by the Respondent. As no other alternative left, the Petitioner filed a Complaint ULP No.118/2002 under Section 28 read with Item 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the “MRTU and PULP Act”) before the Industrial Court, Akola.

4. The learned Industrial Court, Akola partly allowed the complaint vide its order dated 16.04.2013 and directed the Respondent to regularize the services of the Petitioner on the post of ‘Forest Workman’ and to issue the order of permanency to the Petitioner and to give all benefits of permanent employee w.e.f. 01.11.1994. In spite of these directions, the Respondent have not complied with the order and after several requests, the Respondent issued an order regularizing the services of the

Petitioner w.e.f. 01.06.2012. The Petitioner constrained to issue legal Notice for compliance the order passed by the learned Industrial Court, however, notice was not complied by the Respondent. The Petitioner was required to file a Criminal Complaint bearing (ULP) No.19/2019 before the Labour Court, Akola, the learned Labour Court issued process against the Respondent for offence punishable under Section 14(1) of the MRTU & PULP Act. The Respondent challenged the said order by filing revision bearing Revision ULP No.30/2022 before the learned Industrial Court. The learned Industrial Court rejected the said revision. The Respondent challenged the order dated 16.04.2013, passed by the learned Industrial Court, Akola in Complaint ULP No.118/2002, which was partly allowed the complaint filed by the Petitioner and thereby directing the Respondent to regularize the service of the Petitioner, by filing Writ Petition No.5311/2023. The said writ petition came to be dismissed on merit as well as on the point of delay and latches. Thus, the order passed by the learned Industrial Court, Akola dated 16.04.2013 has attained finality.

5. Thereafter, the Petitioner has filed an Application bearing IDA Case No.16/2019 under Section 33(C)(2) of the ID

Act on 01.10.2019 for recovery of amount from the Respondent before the learned Labour Court, Akola. He also moved an application for directing the Respondent to produce details regarding the salary paid to the regular employee from 01.11.1994 to 01.01.2012. The learned Labour Court allowed the application and directed the Respondent to produce the relevant record. However, it was not produced on the ground that it is bulky record and the application is vague.

6. It is the contention of the Respondent that as per Government Resolution dated 16.10.2012, all the employees, who have completed 240 days in preceding 5 years shall be given benefit of regularization in service on terms and conditions mentioned in the said Resolution. One of the contentions was that the employee shall withdraw the complaint, if any, filed by him for regularization of the service. Further he shall submit an affidavit in that regard and shall not claim any benefit prior to 01.06.2012, since when he has made permanent in the services. As affidavit was submitted by the Petitioner and has accepted all the terms and conditions of the said decision, his services were regularized on 01.06.2012. It is further contention of the Respondent that order of Industrial Court passed on 16.04.2013,

and the Petitioner was regularized w.e.f. 01.06.2012. It is the contention of the Respondent that once he has accepted the benefit of permanency w.e.f. 01..06.2012, he has no right to claim permanency w.e.f. 01.11.1994.

7. Learned Counsel for the Petitioner relied on Judgment in ***Writ Petition No.1482/2023*** (*State of Maharashtra and Others Vs. Mehrunisa w/o. Chand Khan*) with connected matters, decided on **05.02.2025**, wherein this Court in similar set of facts in para 9 held as under :

“9. If the Government chooses to utilize such condition for depriving the employees, who had extended almost life’s service, the Industrial Court or the Labour Court, as the case may be, is equipped enough with the provision under Section 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 to examine the condition on the touchstone of ingredients of unfair labour practice.”

The Respondent could not have regularized the services by imposing onerous conditions of not extending benefit of service for pensionary relief or the back wages. The order passed by the learned Industrial Court has confirmed by this Court, therefore, there is no question of any undertaking given by

the Petitioner herein waiving his claim specifically when the writ petition challenging the said order came to be confirmed vide order dated 28.08.2023, that means whatever contentions raised by the Respondent herein about execution of same undertaking has no effect.

8. Learned Counsel for the Petitioner also placed reliance on ***Writ Petition No.12848/2022*** (*The Chief Executive Officer, Vita Nagar Parishad, Vita Vs. Tanaji Ramchandra Kadam*) along with connected matters, decided on ***18.07.2023***, this Court in the said judgment referred and relied on the judgment of ***Parshuram Vithoba Bhandare Vs. State of Maharashtra and Anr., 2001(4) Mh.L.J. 587***, wherein the Division Bench observed as under :

“7. Relying on the first note to Rule 57 above, that the petitioner was denied pensionary benefit by the State and the denial was approved by the Maharashtra Administrative Tribunal, in our opinion, both are wrong. A reading of Rule 30 clearly shows that the petitioner is entitled to the pensionary benefits. A reading of Rule 57 proves that the petitioner’s case is not covered by the exceptions mentioned in that Rule 57. It is nowhere the case of Government of Maharashtra that the salary of the petitioner paid to him as daily wages from 1964 to 1980 was drawn from the contingency fund of the State and it is only when the salary or wages paid to the employees are drawn from contingency fund that the

exception is made in relation to the case of grant of terminal benefits. This factual and legal aspect was not taken into consideration either by the State or Tribunal resulting in miscarriage of justice and denial of valuable right to the petitioner. The petitioner having completed more than 10 years of continuous service as labour supervisor and as his salary at any point of time was not drawn from the contingency fund, was always entitled to the pension. The petitioner is therefore liable to succeed. In the result, the petition succeeds and is allowed. Rule is made absolute”.

This Court in para 26 of Writ Petition No.12848/2022 also held as under :

“26. The endeavour on the part of the petitioner to wriggle out of the liability to pay the pension, banking upon the settlement arrived at between the parties, in an earlier proceeding where-under it was stipulated that the respondents’ past service rendered on daily wage basis would not be counted for any financial or benefits, does not merit acceptance. If a case is clearly covered by the prescription in the pension rules, there can be no waiver of the right to receive pension. It is trite pension is not a bounty. Secondly, even if the conditions, subject to which the respondents were appointed to the permanent post are taken at part, yet they cannot be construed to hold that the respondents had agreed to forgo the services rendered as daily wager even for pensioner benefits”.

9. Heard both the parties at length. Perused the impugned order and documents placed on record and considered the citations placed on record by the parties.

10. I have perused the impugned order. It appears that learned Labour Court has not appreciated the facts in its proper perspective. The order dated 16.04.2013 passed by the learned Industrial Court regarding regularization and direction of giving all benefits to employee w.e.f. 01.11.1994, which has attained finality. There is no further question of establishing the claim of the Petitioner, in fact, if there is any error in calculating the amount, it is duty of the Labour Court to call for exact salary paid to the regular employee on the post the Petitioner was holding. Moreover, it appears that in spite of order of the Industrial Court, it was confirmed by this Court, the Respondent deliberately applied the Government Resolution dated 16.10.2012 to deprive the Petitioner from his legal right. As per Rule 57, Note-1 of the Maharashtra Civil Services (Pension) Rules, 1982, an employee is entitled to one-half of their previous continuous service as daily wager for determining pensionable service. For the sake of brevity,

Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982

reads as under :

“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 cases 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.*

Note 2- *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.*

11. Admittedly, the Petitioner was working as a Forest Workman in the Division in Akola range since the date 01.08.1985. In view of order passed by learned Industrial Court in Complaint ULP No.118/2002, the Respondent was directed to regularize the services of the Complainant/Petitioner on the post of Forest Workman and was further directed to issue the order of permanency to the complainant and to give all benefits of permanent employee w.e.f. 01.11.1994. Challenge to this order in Writ Petition No.5311/2023 is also rejected on 28.08.2023. This Court rejected the petition filed by the Respondent on the ground of delay and laches and also on merit. This Court considered the observations made by the Industrial Court, Akola in para 15, which reads as under :

“15. At the very outset, it is to be noted that the respondent has failed to lead the evidence, failed to depose their contentions on oath and further failed to produce positive evidence in support of their contentions. On the other hand, the seniority list Exh.16 supports the contentions of the complainant and disclosed that the

complainant is working since October, 1982. The respondent has not much disputed the receipt of the bonus by the complainant in the year 1990-91. The document at Sr. No.4 filed along with list Exh.U-8, disclosed the grant of bonus to the workers for the year 1990-91, who have continuously worked for 240 days in the year and further disclosed the name of the complainant at Sr. No.7 in the list as attached. As already discussed, the respondent is not disputing the fact that the complaint is working as a daily wage employee and only claimed that the complainant has not worked continuously for 240 days in the year 1990-91. The respondent has failed to lead the evidence, failed to produce rebuttal evidence. In that case, the evidence produced by the complainant is required to be accepted and thus sufficient to hold that the complainant has worked continuously”.

12. There is no question of suppression of any fact by the Petitioner. The Respondent was not precluded from placing such undertaking or anything on which they were relying before the Industrial Court. As such, it appears that all efforts are being made to deprive the Petitioner from his legal dues. The impugned order passed by the learned Labour Court, Akola in Application IDA No.16/2019, dated 04.07.2024 is patently erroneous and non application of mind. The learned Labour Court ought to have

considered all these aspects including order passed by this Court in above referred writ petition.

13. As such, the order passed by learned Labour Court, Akola is liable to be quashed and set aside. The Petitioner is entitled for the arrears since the date of confirmation by the Industrial Court and also entitled to consider his half of the service as daily wage employee for pension. Hence, I proceed to pass the following order :

- (i) The Writ Petition stands **allowed** with costs of **Rs.5,000/-** (Rs. Five Thousand only).
- (ii) The order dated 04.07.2024, passed by the Labour Court, Akola in Application IDA No.16/2019 is hereby quashed and set aside.
- (iii) The Respondent is directed to issue all the benefits of permanent employee to the Petitioner w.e.f. 01.11.1994, in view of the order dated 16.04.2013 in Complaint ULP No.118/2002 passed by the learned Industrial Court, Akola.

- (iv) The Respondent is further directed to release the pensionary benefits in view of Rule 57 of Maharashtra Civil Services (Pension) Rules, 1982 and determined his pensionable service as per the said rule.
- (v) All these exercise shall be completed by the Respondent within a period of four months.

The Writ Petition stands disposed of in the above terms. Pending application(s), if any, stand(s) disposed of.

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

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