



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

WRIT PETITION NO.71 OF 2025

Gajanan s/o Ramaji Harode .. Petitioner

..Versus..

State of Maharashtra and others .. Respondents

.....
Mr. R.D. Wakode, Advocate for Petitioner.

Ms. S.S. Jachak, AGP for Respondent Nos.1 to 3/State.

Mr. M.I. Dhatrak, Advocate for Respondent No.4.

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CORAM : ALOK ARADHE, CJ. AND
NITIN W. SAMBRE, J.

DATE : 25th FEBRUARY, 2025.

ORAL ORDER (PER : CHIEF JUSTICE) :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.
2. In this writ petition, the petitioner *inter alia* seeks a direction to the Municipal Council, Pauni to consider half of the services rendered by the petitioner between the period from 17.6.1986 to 16.7.2018 as a daily wage worker for the purposes of counting the pensionable service of the petitioner, in view of mandate contained in Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules'). The petitioner also seeks a

direction to the Municipal Council, Pauni to grant the arrears of pension within a period of six months. In order to appreciate the grievance of the petitioner, relevant facts need mention, which are stated supra :

FACTS

3. The petitioner was appointed as daily wage employee on 17.6.1986 on the post of Fireman by the Municipal Council, Gondia. The petitioner served the Municipal Council, Gondia for several years and subsequently his services were regularized by an order dated 11.7.2018. Thereafter, the petitioner rendered five years and two months services as a permanent employee of Municipal Council, Pauni and superannuated on 30.9.2023.

4. The petitioner submitted a representation dated 26.6.2023 seeking pension on the ground that 50% of his service rendered on daily wage basis from 17.6.1986 to 16.7.2018 is eligible to be counted towards the pensionable service in view of mandate contained in Rule 57 of the Rules. However, the said representation was rejected by the Municipal Council. Hence, this writ petition.

5. Learned counsel for the petitioner submitted that the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 have been adopted by the Municipal Council and Rule 57 deals with non-pensionable service.

6. It is submitted that Note-1 appended to Rule 57 of the Rules provides that 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 the pension. It is therefore contended that in view of Note-1 appended to Rule 57 of the Rules, fifty percent services rendered by the petitioner between 17.6.1986 to 16.7.2018 deserve to be counted for the purposes of pension. It is urged that the petitioner has been deprived of his statutory rights on legally untenable grounds.

7. Learned counsel for the petitioner has also referred to the Government Resolution, dated 31.8.2023 and has contended that even the State Government now has adopted the policy of counting the past services of the daily wage workers for the purposes of grant of pension.

8. On the other hand, learned Additional Government Pleader, submits that the Government Resolution dated 31.8.2023 was issued only in case of eight Junior Engineers of different Municipal Councils and, therefore, does not apply to the case of the petitioner.

9. On the other hand, learned counsel for respondent no.4, has invited our attention to order dated 11.7.2018 by which the services of the petitioner were regularized and it has been pointed out that in view of Condition No.1 of the order which provides that the

past services of the petitioner shall not be counted for the purposes of pension, the petitioner is not entitled to the relief, as sought for, by him in the petition. It is also contended that the payment to the petitioner has not been made from the contingency fund and, therefore, the petitioner is not entitled to claim the benefit of Note-1 of Rule 57 of the Rules.

10. By way of rejoinder submission, learned counsel for the petitioner submits that the issue with regard to estoppel is no longer *res integra*, as Division Bench of this Court has taken a view that there cannot be any estoppel against the statutory provision. In support of aforesaid submission, reference has been made to the decision of Division Bench of this Court in ***Syed Afzaluddin Ustad s/o Abdul Samad .vs. The State of Maharashtra and others, dated 24th August, 2011, rendered in Writ Petition No.815/2011.*** It is also pointed out by the petitioner that the payment of salary has not been made to the petitioner from contingency fund is factually incorrect, as the respondent no.4 itself in para 5 of the affidavit-in-reply, has admitted that it does not have any contingency fund.

11. We have considered the rival submissions made on both sides and have perused the record.

12. Admittedly, the services of the petitioner were regularized on 11.7.2018. Prior to superannuation, the petitioner has rendered a service of five years and two months as a permanent employee.

Rule 57 of the Rules is extracted below for the facility of 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.*

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."

13. Thus, it is evident that in case an employee, who is paid from contingency, is 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 the purposes of pension. From the perusal of Para 5 of affidavit-in-reply filed on behalf of respondent no.4, it is evident that the petitioner has been paid the salary from the municipal fund. Therefore, the mandate contained in Note-1 of Rule 57 of the Rules applies to the case of the petitioner. Therefore, one-half of the services of the petitioner rendered on daily wages deserve to be counted for the purposes of pension.

14. Insofar as the contention as drawn on behalf of respondent no.4-Municipal Council that the claim of the petitioner is barred by estoppel is concerned, suffice it to say that there cannot be any estoppel against the statutory provision. A Division Bench of this Court in **Syed Afzaluddin Ustad** (supra), has taken a similar view with which we concur. Therefore, the aforesaid submission deserves to be repelled. Similarly, the another contention that the petitioner was not paid from the contingency fund is also factually incorrect, in view of the stand taken by the counsel itself in paragraph 5 of the affidavit-in-reply.

15. In view of preceding analysis, the respondent no.4 is directed to consider one-half of the services rendered by the

petitioner between the period from 17.6.1986 to 16.7.2018 for the purposes of determining the pensionable service of the petitioner in compliance with Rule 57 of the Rules. The aforesaid exercise shall be completed within a period of three months from today.

16. Needless to state that the amount of arrears due to the petitioner on the count of pension shall be paid to him within a period of four months from the date of determination of the claim of the petitioner for pension.

17. Accordingly the writ petition is disposed of. Rule is made absolute in the above terms.

(NITIN W. SAMBRE, J.)

(CHIEF JUSTICE)

Gulande