

(2019) 11 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 14759 Of 2017

Ambrushi Shrirang Chavan And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Maharashtra Civil Services (Leave) Rules, 1981 — Rule 68
Maharashtra Zilla Parishad District Services Rules, 1968 — Rule 4
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 BOM CK 0051

Hon'ble Judges : Sunil P. Deshmukh, J; Vibha Kankanwadi, J

Bench : Division Bench

Advocate : V.G. Salgare, P.N. Kutti, V.M. Vibhute

Final Decision : Allowed

Judgement

Vibha Kankanwadi, J

1) Present petition has been filed invoking constitutional powers of this Court under Article 226 of the Constitution of India to direct the respondents by issuing appropriate writ to pay Leave Salary in respect of Earned Leave at the credit of the petitioners at the time of their retirement on superannuation as provided under Rule 68 of Maharashtra Civil Services (Leave) Rules, 1981.

2) It is not in dispute that, the petitioners are the retired pensioner employees of respondent No.2 - Zilla Parishad. The petitioners have not been granted encashment of the Leave as provided under Maharashtra Civil Services (Leave) Rules though pension is granted to them. All the petitioners were initially appointed on daily wage basis and they were subsequently brought under regular temporary establishment. Thereafter, by passage of time, they were on regular permanent establishment of the respondents No.2 and 3 - Zilla Parishad. The petitioners were working under Rural Water Supply Division and the salaries were paid from the own funds of Zilla Parishad, Osmanabad. Petitioners No.1 to 6 were working as mechanics whereas petitioners No.7 to 9 were working as

electricians, petitioner No.10 was driver and petitioners No.11 to 15 worked as helpers in Water Supply Division, whereas petitioner No.16 is the widow of late Bharat Nivrutti Mehtre who was working as helper.

3) The petitioners have contended that, the respondent No.1 issued circulars and instructions from time to time in respect of service conditions of the mechanics, electricians, drivers and helpers working under Rural Water Supply Scheme run by the Zilla Parishads.

According to the petitioners the various Government Resolutions would make it clear that, the responsibility of the payment of salary and pension as well as pensionary benefits of the employees of the Zilla Parishad, is with the respondents No.2 and 3 - Zilla Parishad. According to the petitioners, the provisions of Maharashtra Civil Services (Pension) Rules 1982 and Maharashtra Civil Services (Leave) Rules 1981, are applicable to the employees under the Zilla Parishads. All the petitioners have retired by superannuation, and therefore, in view of Rule 68 of the Maharashtra Civil Services (Leave) Rules 1981, they are entitled to get encashment of the leave which was to their respective credit. When the said benefit was not allowed to the petitioners, some of the petitioners had approached to the learned Ombudsman (Lokayukta) and Deputy Ombudsman (Upa-Lokayukta), whereupon necessary directions were given by Deputy Ombudsman (Upa-Lokayukta) on 24-03-2017. Those directions have not been implemented and hence the present petition has been fled.

4) The petition has been objected by the State by filing affidavit-in-reply of Mr. Paras Amolakchand Bothra, the Deputy Commissioner (Establishment) in the office of Divisional Commissioner, Aurangabad Division, Aurangabad. It has been contended that, the employees working in the Zilla Parishad are basically appointed from two sources and are of two types, one are appointed as per the Government direction or they are required as per the Government policy decisions, and their expenses on salary and other benefits including the pensionary benefits, would be borne by Government. The second category of employees are, in real sense the Zilla Parishad employees, who are appointed by Zilla Parishad at their expenses from which the salary and other benefits are given to those employees. It is stated that, Government has time and again cleared this fact to the Zilla Parishads through various Government Resolutions. The Government Resolution dated 07-04-2008 is sufficient enough to clarify the position that the Zilla Parishad is required to bear the expenses in respect of salary and other benefits.

5) The affidavit-in-reply of one Hirakant Bankat Sarje, serving as Deputy Engineer, Osmanabad Zilla Parishad, has been fled to resist the petition on behalf of respondents No.2 and 3. He has contended that, Rule 68 of Maharashtra Civil Services (Leave) Rules 1981, is not applicable to the petitioners. Since petitioners were initially appointed on daily wage basis, then brought under regular temporary establishment, and then under regular permanent establishment, were serving under Rural Water Supply Division, therefore, they

are not Government servants. The Government Resolution dated 07-04-2008 in respect of supervision, maintenance and repairs of hand pumps / electrical pumps under the Rural Water Supply Scheme gives three tier system of the scheme, and maintenance and supervision of the said scheme is stated to be with the Zilla Parishad. It is stated that, if Grampanchayat is not contributing as per the expenditure mentioned in the scheme and giving funds to the Zilla Parishad then the Zilla Parishad cannot give any aid to the Grampanchayat. It was decided by general body meeting dated 06-02-2005 that the petitioners will not be entitled to get benefit in respect of encashment of leave on the aforesaid grounds.

6) The petitioner No.1 on behalf of all the petitioners had then filed rejoinder taking into consideration the contents of the affidavit-in-reply in which it has been specifically stated that, some similarly situated persons have been granted encashment of leave, and therefore, on the ground of parity also they deserve such benefit.

7) Heard learned Advocate Mr. V. G. Salgare for Petitioners, learned AGP Ms. P. N. Kutti for Respondent No.1, and learned Advocate Mr. V. M. Vibhute for Respondents No.2 and 3. All the learned advocates and learned AGP have made submissions in support of their respective contentions.

8) At the outset it is to be noted that, the petitioners have produced on record the certificate making them permanent which would show that, they were appointed on various dates and then they were made permanent on various dates. Their designations have been mentioned therein. It is not in dispute that, the petitioners are getting pension after their retirement on superannuation and it is as per the Maharashtra Civil Services (Pension) Rules 1982. Now the question is, whether they were governed by Maharashtra Civil Services (Leave) Rules 1981, or not. It has been demonstrated that, by virtue of Rule 4 of Maharashtra Zilla Parishad District Services Rules 1968, the provisions of Maharashtra Civil Services (Leave) Rules 1981, as amended from time to time, are stated to be applicable mutatis mutandis in relations to leave and matters connected therewith to Zilla Parishad employees. Rule 68 of Maharashtra Civil Services (Leave) Rules 1981, provides for cash equivalent to the leave salary in respect of earned leave at the credit and time of retirement on superannuation to a government employee. The conjoint reading therefore of these rules would make it clear that, the petitioners were entitled to get leave encashment. It appears from the documents on record that, a distinction was tried to be made before the learned Deputy Ombudsman (Up-Lokayukta) by the present respondents that, rules governing the employees with Zilla Parishad Public Works Department are equal to that of a government servant, but then those employees which are serving with the zilla Parishad itself, in Rural Water Supply Department, have been deprived of the benefit of encashment. Even the learned Deputy Ombudsman (Up-Lokayukta) in his communication dated 08-03-2017 has specifically observed that, this difference is unjust and discriminatory. It can

be found from the order of confirmation dated 10-06-2003 that, employees by name Mr. S. S. Tekale, Mr. D. K. Chavan, Mr. V. B. Andhare were also working as technicians (;kaf=dh) at the time of their initial appointment, so also some of the petitioners were working similarly to Mr. S. S. Tekale, Mr. D. K. Chavan and Mr. V. B. Andhare. By communication dated 07-09-2017 it appears that, these three employees have been granted encashment of leave benefit at the time of their retirement on superannuation. In affidavit-in-reply on behalf of respondents No.2 and 3, we cannot find any reason given on behalf of the respondents No.2 and 3 regarding this discrimination. There is absolutely no whisper about these documents and the specific point raised by the petitioners that, when they are similarly situated; they have not been granted leave encashment. Therefore, whatever reason has been given and objection has been raised on behalf of the respondents No.2 and 3, cannot withstand within the legal framework. No other reason has also been given by respondents No.2 and 3 stating as to how for those three employees Maharashtra Civil Services (Leave) Rules 1981, were made applicable. Under such circumstance, the petitioners cannot be discriminated. The Government Resolution dated 07-04-2008 does not prohibit applicability of the leave rules to the employees of Zilla Parishad. Only the fact is stated that, it is the responsibility of the Zilla Parishad to collect the amount as stated in the Government Resolution. When other pensionary benefits have been given to the petitioners stating that, it is granted as per Maharashtra Civil Services (Pension) Rules, and for that purpose the petitioners have been treated at par with government employee, then for Leave Rules alone (unless it would have been specifically debarred), it cannot be stated that, the Maharashtra State Civil Services (Leave) Rules 1981, were not applicable to the petitioners. Therefore, the writ petition deserves to be allowed, accordingly it is allowed in terms of prayer Clause 'B'.