
(2005) 02 BOM CK 0134
In the Bombay High Court
Case No : Writ Petition No. 6622 of 2004

Jayshree Mhaske

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 100, 101, 101(1), 110(2), 20

Citation : (2005) 6 BomCR 382 : (2005) 3 MhLj 492

Hon'ble Judges : V.C. Daga, J; M.G. Gaikwad, J

Bench : Division Bench

Advocate : Vivek Dhage, for the Appellant; A.V. Gondhalekar, AGP for respondents No. 1 and 3 and A.G. Kanade, for the Respondent

Final Decision : Allowed

Judgement

M.G. Gaikwad, J.—Rule. By consent of parties, Rule made returnable forthwith and the petition is taken up for final hearing and decided finally.

2. Petitioner (the widow of the deceased employee) has preferred this writ petition, challenging the action of the respondents refusing to grant family pension to her and seeking directions to grant family pension to her.

3. Deceased Narayan Tikaram Mhaske was the husband of the petitioner and was appointed as part-time servant (i.e. Washerman) in the Primary Health Centre, Kannad, on fixed pay of Rs. 30/- per month, by an order dated 1st April, 1971. Thereafter, he was taken on regular establishment by order dated 23rd June, 1983 as a Peon in Class-IV category in the pay scale of Rs. 200-3-230-5-255-5-280. Because of his unauthorized absence from duties, a departmental enquiry was initiated against him and he was made to retire compulsorily by order dated 19th May, 1993 passed by the disciplinary authority, the respondent No. 2. His abovesaid absence was also regularised by the said order. It was also directed to accord sanction to his leave and submit a proposal of his pension. When his proposal was pending, he expired on 20th July, 1998.

Thereafter, the present petitioner, the widow of Ex-Employee made representation for grant of family pension as well as for gratuity. By order dated 4th June, 1999, the respondent No. 3 granted gratuity of an amount of Rs. 4,083/-. However, the petitioner's claim for family pension has been refused on the ground that her husband had rendered service less than ten years. She had, therefore, filed writ petition No. 3756/2001 in this court, but it was later on withdrawn by her, with a liberty to make representation to the respondents. Thereafter, the petitioner had made several representations; however, the same were turned down, on the same ground that she is not eligible to receive family pension as per the provisions of Rule 110 of the Maharashtra Civil Services (Pension) Rules, 1982 [hereinafter referred to as "Pension Rules"] as her husband had not rendered the minimum service of ten years. The petitioner has, therefore, preferred the present writ petition, seeking directions to the respondents to grant family pension to her.

4. Learned counsel Shri Vivek Dhage, appearing on behalf of the petitioner made submission that petitioner's husband (deceased employee) was appointed on 1st April, 1971 as a part-time peon and he was brought on regular establishment in 1983, but this period is not counted while deciding the pension claim of deceased employee, which needs to be counted under Rule 57 of the Pension Rules. On the other hand, learned counsel Shri Kanade appearing on behalf of respondent No. 2 made submission that the provisions of Rule 57 are not applicable to the petitioner's case as the said provisions are applicable in case of the part-time employee whose post has been subsequently converted into regular establishment. In view of these rival submissions, only point for our consideration is as to whether deceased employee had rendered qualifying service for the purpose of pension.

5. There is no controversy that the petitioner's husband was appointed as part-time employee in Class-IV category in 1971, vide appointment order dated 1st April, 1971. He was appointed on fixed pay of Rs. 30/- per month. The appointment order also mentions that his services are purely temporary and liable for termination at any time, without notice. In affidavit-in-reply filed on behalf of respondents No. 2 and 4, it is admitted that deceased had worked as a part-time employee from 1-4-1971 to 27-6-1983. It is averred that his salary was paid out of contingency funds. He was appointed as a peon on 28-6-1983 and thereafter, he was compulsorily retired by order dated 19-5-1993. A contention has also been raised that the employee who is removed from service is not entitled for pension and gratuity as per the provisions under Rule 101 of the Pension Rules. This contention is without any merit. The case of the husband of the petitioner does not fall under Sub-rule (1) of Rule 101 of the Pension Rules as he was not removed from service. Order dated 19th May, 1993 passed by respondent No. 2 is clear that Shri Mhaske, the deceased husband of the petitioner was compulsorily retired from the service by way of penalty. The very order gives direction to the subordinates to prepare his pension papers. So, it is not a case that his pension was withheld by the competent authority. Rule 100 is

applicable to his case which deals the cases of grant of pension to the employees who have been compulsorily retired from service. Rule 100 permits grant of pension or gratuity or both at the rate not less than 2/3rd and not more than full pension admissible to him on the date of his compulsory retirement. So, on this count, the authorities are not justified to refuse pension to the deceased.

6. Another point canvassed on behalf of respondents No. 2 and 4, supporting their action of refusal of pension to the deceased or family pension to the petitioner, is that deceased had not rendered qualifying service or a pensionable service. They have placed reliance on the provisions of Rule 110(2) of the Pension Rules. Under Sub-rule (2) of Rule 110, a Government servant who has completed qualifying service of ten years, is entitled to a pension proportionate to the amount of pension admissible under Clause (a). Rule 30 defines the "qualifying service" and lays down that it shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. It is thus clear that the Government servant is entitled to retiring pension if he has rendered at-least ten years qualifying service. In the present case, only point for consideration is as to whether service rendered by the deceased as a part-time employee of class-IV category is to be counted for the purpose of pension or not. Learned counsel for the petitioner drew our attention to Rule 57 in support of the petitioner's claim. Respondents also relied on the same Rule and contended that as the payment of salary of the deceased was made out of contingency funds, the part-time service rendered by the deceased cannot be counted for the purpose of determining the qualifying service. Rule 57 specifies the services which are non-pensionable services. Clause (a) excludes the cases of Government servants who are paid from contingencies. However, Note No. 1 of the said Rule is relevant for the petitioner's case, which runs as under.

"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."

7. Petitioner's husband was appointed as a part-time servant vide order dated 1st April, 1971 on a fixed pay of Rs. 30/- per month. This order does not speak that the amount of Rs. 30/- which was being paid to him, was a honorarium, but same is described as his fixed pay. The order further speaks that his services are purely temporary, and liable for termination without notice. So, he was a part-time temporary Government servant. There is no dispute that subsequently, he was brought on regular establishment. Respondents did not produce on record the order by which he was brought on regular establishment. However, they have produced relevant entry from the service-book, which states that he has been promoted from part-time employee to Peon, by order dated 23rd June, 1983 in the regular pay scale stated above. No document is produced on record to show that payment was made to him out of contingent funds. The entry in the service-book makes mention that he was promoted. Note No. 1 deals the cases of

employees who were brought on regular pensionable establishment by conversion of their posts. Here in the present case, the petitioner's husband is shown to have been promoted and posted as a Peon. So, from this order, inference can be drawn that he was in regular employment on substantive post. There was no break in his services since his appointment on 1st April, 1971. Even if it is accepted that as a part-time employee, he was paid out of contingent funds, the fact remains that he was brought on regular establishment in 1983 by way of promotion. So, his case is covered by Note No. 1 of Rule 57 of the Pension Rules and the services rendered by him before he was brought on regular establishment needs to be counted while computing his qualifying service.

There appears no specific provision under the Pension Rules which deals the cases of part-time employees. Present petitioner's husband was appointed in 1971 as a part-time class-IV worker and he was promoted and brought on regular establishment by order dated 28-6-1993. In view of this order of promotion, it can be inferred that he was holding a substantive post. If his case is viewed by this angle in view of Rule 20 as he was brought to a post for which these Pension Rules apply, his service shall be subject to pension rules. His past service rendered as part-time employee on substantive post needs to be taken into consideration in view of Note (1) of Rule 57 of the Pension Rules. The respondents admitted that he was on regular establishment from 28-6-1983 to 20-11-1990 and had completed total service of seven years, four months and twenty two days. Subsequently, he was retired compulsorily in 1993 and his absence was also regularised and two weeks' period was ordered to be treated as leave and remaining period should be treated as an unauthorised absence. He has rendered about twelve years of service as part-time employee on substantive post. One half of such service needs to be taken into consideration in view of Note (1) of Rule 57 of Pension Rules for the purpose of determination of qualifying service. By addition of such service with regular service, the total service will be more than thirteen years. So, deceased employee was entitled to receive pension as his qualifying service would have been more than ten years.

8. In view of the above facts and relevant Rules, it is clear that deceased was entitled to retiring pension under Rule 100 of the Pension Rules, which covers the cases of grant of retirement pension to Government servants who have been compulsorily retired. As the deceased husband of the petitioner was entitled to the pension, the petitioner is entitled to receive family pension. So, the decision of the authorities that the deceased was not entitled to the retiring pension and the petitioner also is not entitled to family pension, is not justified and needs to be set aside by giving directions to the respondents to grant family pension to the petitioner considering the service rendered by her deceased husband from 1st April, 1971 onwards till he was brought on regular establishment by order dated 23rd June, 1983.

9. In the result, Writ Petition is allowed. The respondents are hereby directed to grant family pension to the petitioner giving benefits of Rule 57 and Rule 100 of

Pension Rules within a period of three months from today and also to pay arrears, if any with interest as per the Rules.

Rule is made absolute in above terms.