
(1996) 02 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 665 of 1994

Mankandey Ayalawar

APPELLANT

Vs

Zilla Parishad, Chandrapur and Others

RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:

Citation : (1996) 02 BOM CK 0060

Hon'ble Judges : V.P. Tipnis, J;R.K. Bhatta, J

Bench : Division Bench

Judgement

V.P. Tipnis, J.—Rule returnable forthwith. Shri Mishra, the learned Counsel waives service of rule on behalf of respondent nos. 1 and 2, and Mrs. Jog, the learned Assistant Government Pleader, waives service of rule on behalf of respondent no. 3. By consent of parties, heard forthwith.

2. The petitioner was appointed as Ayurved Vaidya by Janpad Sabha by order dated 5th December 1958 and in fact, he assumed charge of the post on 24th December, 1958. He was posted at village Dhanora, District, Chandrapur. He worked as such till 16th July, 1965 and thereafter came to be transferred to village Chichpali, January 1969. It appears that Zilla Parishad and Panchayat Samiti of Chandrapur were Established on 1st May 1962 and the services of all employees of Janpad Sabha were transferred to Zilla Parishad. Upon reaching the age of superannuation, respondent no. 1, namely, Zilla Parishad, Chandrapur passed an order dated 14th January 1969 directing him to hand over the charge of his post to one Parandkar on or before 22nd January, 1969. The said order is annexed at Annexure "B" to the petition. The order purports to have been signed by the Chief Executive Officer, Zilla Parishad, Chandrapur.

3. It is also mentioned that as no suitable candidate was available for appointment to the post of Ayurved Vaidya, in the public interest, respondent no. 1 Zilla Parishad by subsequent orders on 5th March 1969, 6th April 1970, 5th August 1970 and 10th June 1971 re-employed and extended the services of the petitioner and petitioner was in fact, relieved on 9th March 1972. It is the

assertion of petitioner that even excluding the period of his re-employment and sub-sequent extensions, as he took charge on 24th December, 1958 and he was retired by an order dated 14th January 1969, he has worked for a period of about ten years and one month.

4. It is an agreed position before us that even a temporary servant, who has put in ten years" service, is entitled to pensionary benefits like retiring pension, retirement gratuity and family pension at the same scales as admissible to a permanent Government Servant under Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982. It appears that after retirement, petitioner applied for grant of pension to the Block Development Officer, Panchayat Samiti, Chandrapur and some communication from the said Block Development Officer was also addressed to Chief Executive Officer, Zilla Parishad, Chandrapur. The said letter, which is annexed at Annexure "C", clearly shows that as back as on 18th December 1972, the Block Development Officer had submitted the pension case in duplicate of the petitioner with all documents. The documents, which number 19 with service book filled and enclosed as per the list, were forwarded for sanction immediately. Thereafter, the petitioner visited the office of Zilla Parishad from time to time, but without any success. Thereafter, on 20th February 1989, he again made a written application, which was responded to by the Zilla Parishad and for the first time, it was revealed in the letter dated 29th April 1989 that petitioner assumed charge on 24th December 1958; he was 48 years old when he joined the service; as per his date of birth, he completed 58 years on 21st January 1968 and as such, he has completed service of only 9 years and 27 days and as he has not completed 10 years, he is not entitled to pensionary benefits. The only reason given was that he has not completed 10 years of service. It is also mentioned in the said letter that period after re-employment of persons, who had already retired, shall not be counted as a qualifying service for the purpose of pension. It appears that thereafter petitioner approached time and again to the Authorities including Lok Ayukta, but without any success. Ultimately, petitioner has filed the present petition for grant of pensionary benefits on 3rd March, 1994.

5. The respondents no. 1 and 2 have filed their submissions. Their main contention appears to be that petitioner has kept quiet from 1989 and there is inordinate delay on the part of the petitioner in filing the present petition. It is stated that he was paid his gratuity of Rs. 1776/- as back as on 15th June 1973 and, therefore, petition should not be entertained after such delay. It is specifically contended that petitioner joined service on 24th December 1958 and he in fact, retired on 14th January 1969 by the order, which is Already annexed to the petition. However, it is contended that as per office record, the petitioner"s date of birth was 22nd January 1910 and thus, he reached the age of superannuation on 21st January 1968 and the period of service will have to be calculated only with reference to the said date of 21st January 1968. It is contended that petitioner"s original service book was lost and a duplicate book was directed to be prepared. Such book was prepared and submitted on 31st

August 1990, but the same was returned as date of birth of petitioner was shown as 22nd January 1911. It is asserted that petitioner never produced the original certificate regarding his date of birth. On the basis that his date of birth is 22nd January 1911, it is contended that he was over 47 years of age at the time of joining of services and for condonation of over age, some papers were sent to the Commissioner, Nagpur. However, petitioner did not comply with the requisition of submitting the required documents. Even before Lok Ayukta, proceedings were held and respondents were directed to verify the school Leaving Certificate of the petitioner. It is asserted that Lok Ayukta on the basis of material pointed out, rejected the application of the petitioner holding that his service is of nine years, six months and six days and as such, less than ten years.

6. Undoubtedly, there appears to be some dispute about exact date of birth of the petitioner. However, we are not at all impressed by the said fact inasmuch as petitioner assumed his duty on 24th December 1958 and he was retired by the Competent Officer of Zilla Parishad by letter dated 14th January 1969. Thus, he has clearly completed more than ten years" valid service. The original documents were also sent by the Block Development Officer with the service book as early as on 18th December 1972 and admittedly the original service book is lost from the custody of Zilla Parishad. Under these circumstances and in view of the admitted position that petitioner did serve Zilla Parishad for more than ten years, we find it extremely unfair and unjust to deny the benefit of pensionary benefits to petitioner on the ground that on subsequent scrutiny much after the petitioner has retired, his date of birth is found by the Zilla Parishad to be otherwise and on such calculation, his service is only for a period of nine years, six months and few days. On the basis of material on record, we are satisfied that petitioner has completed valid service for a period of more than ten years and we see no good reason why he should be denied the pensionary benefits. We also do not find any substance in the objection of the Zilla Parishad regarding delay and Teaches on the part of the petitioner. One has only to imagine the plight of old man of 85 years constantly agitating for his entitlement without success. Secondly, such delay and Teaches by itself should never be a ground to deny just and proper relief. We do not find how Zilla Parishad is prejudicially affected by the delay. In fact, if at all the pension, which is rightly due to the petitioner not having been paid, money remained in the coffers of Zilla Parishad. In the facts and circumstances of the case, we do not find any prejudice at all that is likely to be caused to the interest of Zilla Parishad. On consideration of entire material before us, we are of the clear view that petitioner is entitled to pensionary benefits, he having completed more than ten years" valid service with the Zilla Parishad.

7. Under the aforesaid circumstances, we allow the petition and direct that Zilla Parishad, Chandrapur shall process the case of the petitioner for grant of pension and all other pensionary benefits to which he is entitled in accordance with rules on the basis, that petitioner has completed ten years" qualifying service. We direct that appropriate orders determining various entitlements of the petitioner shall be passed by the Zilla Parishad, Chandrapur on or before 30th April, 1996.

We further direct that all arrears payable to petitioner according to such orders upto 30th April 1996, shall be paid to the petitioner on or before 31st May, 1996. We further direct that pension payable to the petitioner thereafter shall be regularly paid in accordance with rules. We specifically direct that Chief Executive Officer, Zilla Parishad, Chandrapur shall personally ensure that aforesaid orders are implemented without any default.

8. Rule made absolute in the aforesaid terms. There shall be no order as to costs.