
(2026) 01 BOM CK 1336

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 11571 Of 2025

Municipal Council

APPELLANT

Vs

Sayyad Mir Habib Alam Mir Manjur Alam

RESPONDENT

Date of Decision : 13-01-2026

Acts Referred:

Constitution Of India, 1950 — Article 227, 309

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 30, 57

Citation : (2026) 01 BOM CK 1336

Hon'ble Judges : Hiten S. Venegavkar, J

Bench : Single Bench

Advocate : Rahul D. Khadap, S. B. Narwade

Final Decision : Dismissed

Judgement

Hiten S. Venegavkar, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal.
2. Heard the learned Advocate for the Petitioner and the AGP for the State.
3. The Petitioner is the Municipal Council, Beed, and has preferred this Writ Petition under Article 227 of the Constitution of India, challenging the impugned Judgment and Order dated 27th April, 2023 passed by the learned Member, Industrial Court, Aurangabad, in Complaint (ULP) No. 119 of 2014.
4. It is the contention of the Petitioner that Respondent No. 1 was appointed as 'Daily Wage Worker' with the Petitioner initially on 7th September, 1985, and his services came to be terminated on 16th July, 1985. Challenging the order of termination, Complaint (ULP) No. 93 of 1985 was filed before the learned Labour Court at Aurangabad, which was allowed on 24th February 1987, with directions to provide all the benefits of reinstatement, including continuity of service and back wages. After the order of the learned Labour Court, Aurangabad, a seniority

list was prepared wherein the Respondent No. 1 was shown at Sr. No. 116. However, the services of the Respondent No. 1 and similarly situated employees were not regularized and, therefore, again Respondent No. 1 and other employees preferred Complaint (ULP) No. 293 of 1990. The said Complaint was also allowed by order dated 15th September, 1994 thereby directing the petitioner to pay the arrears claimed by the employees including the Respondent No. 1. It is submitted by the Petitioner that, the Respondent No. 1 was working as a Clerk on daily wages as per the Proposal/Letter dated 27th September, 1994, and subsequently the appointment of the Petitioner came to be regularized by an order dated 01st May, 2001, on certain terms and conditions. The Respondent No. 1 after attaining superannuation retired from the services on 3rd April, 2009. Though the Respondent No. 1 retired from the services of the Petitioner on a permanent position, he was deprived of the pensionary benefits under the Maharashtra Civil Services (Pension) Rules, 1982 and, therefore, the Respondent No. 1 approached the Industrial Court, Aurangabad and preferred Complaint (ULP) No. 119 of 2014. Upon hearing the parties, the said Complaint (ULP) came to be allowed with directions to extend the pensionary benefits to Respondent No. 1 after making fixation by considering the temporary service / daily wages services rendered by Respondent No. 1 from 1985 to 2001 as being qualifying service of 10 years as per Rule 30 of the Maharashtra Civil Services (Pension) Rules.

5. Aggrieved by the said order, the Petitioner has approached this Court by way of present petition. The learned Advocate appearing for the Petitioner has invited my attention to the order dated 1st May, 2001 by which the services of the Respondent No. 1 was regularized and he was made permanent employee of the Petitioner. The learned Advocate then refers to Clause 4 of the terms and conditions mentioned in the said order and submits that Clause 4 specifically provides that Respondent No. 1 shall not claim any benefits from past service, both financial or service-related. The learned advocate thus submits that the said condition was accepted by the Respondent No.1 at the time when his services were regularized by the Petitioner. He did not make any grievance in respect of the said terms during the subsistence of his service and, therefore, the Advocate for the Petitioner submitted that the order passed by the learned Member, Industrial Court, Aurangabad, below Complaint (ULP) No. 119 of 2014 is bad in law and requires to be quashed and set aside.

6. There is no dispute over certain facts which are involved in the present petition. Respondent No. 1 undisputedly was appointed on temporary basis as 'Daily Wage Worker' on 07th September, 1985 and since then till he attained his superannuation, he was continued in the services of the Petitioner. The attempt of terminating the services of the Respondent No. 1 was also set aside by the competent Court with specific directions of granting back wages and all service benefits to the Respondent No. 1, which, at least the record does not suggest has ever been challenged by the Petitioner. Secondly, it is an admitted position that while Respondent No. 1 was working as a temporary employee, his services

were regularized in the year 2001, and thereafter, Respondent No. 1 continued as a permanent employee until the date of his superannuation. In the light of the aforesaid admitted positions, perusal of Rule 30 of the Maharashtra Civil Services (Pension) Rules, which reads as under:-

30. Commencement of qualifying service:

Subject to the provisions of these rules, qualifying service of a Government servant 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: Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency.

[Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of superannuation, invalid or, as the case may be, retiring pension; retirement gratuity; and family pension at the same scales as admissible to a permanent Government servant.]

7. The above-referred Rule clearly reads that the pensionary benefits are to be provided to an employee even if the initial appointment of the employee was on a temporary basis and, at the time of his superannuation, the said employee has been regularized by the employer and made permanent. It is not the case of the Petitioner that the initial appointment of the Respondent-employee was hit by Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. Thus, I do not find any irregularity, error or infirmity in the orders passed by the Learned Member, Industrial Court, Aurangabad, dated 27.04.2023, while holding that the Respondent-employee is entitled to pensionary benefits.

8. The other contention that was raised by the Advocate for the Petitioner in respect of the restricting clause mentioned in the order of regularisation/permanency wherein it has been agreed by the Respondent-employee that he will not claim any pecuniary benefits or service benefits on the basis of his past employment rendered with the Petitioner i.e. prior to the order of permanency in the employment. This argument of the Petitioner also requires to be rejected on the simple preposition that when the right to claim pension has been provided under the Maharashtra Civil Services (Pension) Rules enacted by the Legislation, then there can be no waiver of such a statutory right. It is well settled that the pensionary benefit is not a bounty and, therefore, even on the employer's own framing of the condition, it could not be construed to mean that the pensionary counting mandated by the Rules can be forfeited. Therefore, in my considered view, once the Respondent-employee has retired holding a substantive permanent post, the terms and conditions imposed by the employer in the order of regularisation/permanency of service cannot defeat the pension rules. The

Hon'ble Apex Court has repeatedly characterized pension as a right flowing from the rules and have termed specifically that it is not a discretionary payment. Pension has also been recognized as a property and enforceable right having social welfare orientation. Supremacy of statutory rules framed under Article 309 of the Constitution of India is the basis of Indian Service Jurisprudence and, therefore, there cannot be any estoppel/waiver against the statute where the statute confers a mandatory benefit upon the employee.

9. In the present case, there is absolutely no dispute that the services of Respondent No. 1 are regulated under the provisions of the Maharashtra Civil Services Rules, and the pension rules enacted thereunder also apply to the services of the Respondent-employee. Thus, the Petitioner-employer cannot impose conditions upon its employee and claim that the benefits accrued under the statute cannot be provided or granted to its employee merely because one of the conditions in the order of granting permanent appointment in service amounted to waiver of such right.

10. For the aforesaid reasons, the Writ Petition is devoid of any merits. The Writ Petition, therefore, stands dismissed. No order as to costs. Rule is discharged.