
(2001) 08 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No. 2661 of 1999

Parshuram Vithoba Bhandare

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 18-08-2001

Acts Referred:

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

Citation : (2001) 4 ALLMR 471 : (2002) 2 BomCR 740 : (2001) 4 MhLj 587

Hon'ble Judges : V.G. Palshikar, J;S.A. Bobde, J

Bench : Division Bench

Advocate : N.V. Bandiwadekar, for the Appellant; R.D. Rane, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

V.G. Palshikar, J.—By this petition the petitioner seeks a writ of mandamus directing the respondents to consider the case of the petitioner for grant of family pension on his retirement on superannuation.

2. The facts which are not disputed are in a very narrow compass, that the petitioner was recruited as a daily wager in 1964. In 1980 a post of labour supervisor on the establishment of respondent No. 2 was sanctioned. On 13-9-1983 the petitioner was appointed permanently on that post. It is not in dispute, as will be seen from the averments made in para 2 of the affidavit in reply, that the petitioner was made permanent in the cadre of supervisor on 13-9-1980. Thus the petitioner was undisputedly working as a labour supervisor from 13-9-1980 though he was working as a daily wager since 1964.

3. The petitioner was denied the pensionary benefits. Relying on the provisions of Rule 57 of the Maharashtra Civil Service (Pension) Rules, 1982, according to which the petitioner has not completed 10 years of qualifying service as labour supervisor and therefore according to the Government as required by Rule 57 he is not entitled to any terminal benefits.

4. The petitioner's original application for this relief before the Maharashtra Administrative Tribunal was also rejected by the Tribunal agreeing with the contention of the State that Rule 57 did not permit the grant of any such benefit of pension to the petitioner. Unfortunately the factual position that the petitioner served for more than 10 years continuously as a labour supervisor which was a permanent sanctioned post with the Government, was not taken into consideration. The provision of Rule 30 of the Pension Rules and those of Rule 57 were also considered in the proper perspective by the Tribunal and which resulted the Tribunal rejecting the application of the petitioner requiring the petitioner to move before this Court for exercising its jurisdiction under Articles 226 and 227 of the Constitution of India.

5. The denial of pensionary benefits by the State to its employees on flimsy ground is not a phenomena any more for various reasons, most of which are flimsy, and the pensionary benefits are denied by the State to its employees. It would therefore be necessary in the circumstances, to examine the provisions of the Pension Rules in proper perspective. Rule 30 of the Pension Rules is a basic Rule on entitlement, which spells out who are entitled to the pensionary benefits like family pension in the service of Government of Maharashtra, 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 10 years, or voluntary after the completion of 20 years of qualifying service, shall be eligible for grant of superannuation. Invalid or, as the case may be, Retiring Pension: Retirement Guaranty; and family Pension at the same scale as admissible to permanent Government Servant.)

Exception.---The rules regarding grant of terminal benefits to temporary Government servant (except those mentioned in the second proviso) who retire being confirmed in any post in Government service are embodied in Appendix II.

Note 1. If a Government servant is holding a temporary post when the permanent post on which he holds a lien is abolished in the circumstance described in Rule 81 or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service.

Note 2. In case of employee of former Indian States who have been absorbed in Government service previous pensionable service rendered by them under the same State should it immediately followed by Government service be taken into account for purposes of pension on his final retirement from Government service. Pensionable service rendered under different States should be taken into account for purpose of pension provided that the employees were transferred or sent on deputation from one State to another under a written agreement between the Governments of the States concerned.

(The term "immediately" appearing in Note 2 above includes a break in service if it does not exceed six months, between the date on which the service was terminated and the date of his re-employment in service).

The question whether the previous service in Indian States is pensionable or not should be determined in accordance with these Rules as if those Rules were applicable to that service.

Note 3. See Rule 57."

6. Rule 57 spells out the exception of the general Rule that every employee who has a particular length of service to his credit is entitled to the pensionary benefits. Rule 57 reads as under:

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 the 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.

7. Relying on the first note to Rule 57 above, that the petitioner was denied

pensionary benefit by the State and the denial was approved by the Maharashtra Administrative Tribunal, in our opinion, both are wrong. A reading of Rule 30 clearly shows that the petitioner is entitled to the pensionary benefits. A reading of Rule 57 proves that the petitioner's case is not covered by the exceptions mentioned in that Rule 57. It is nowhere the case of Government of Maharashtra that the salary of the petitioner paid to him as daily wages from 1964 to 1980 was drawn from the contingency fund of the State and it is only when the salary or wages paid to the employees are drawn from contingency fund that the exception is made in relation to the case of grant of terminal benefits. This factual and legal aspect was not taken into consideration either by the State or Tribunal resulting in miscarriage of justice and denial of valuable right to the petitioner. The petitioner having completed more than 10 years of continuous service as labour supervisor and as his salary at any point of time was not drawn from the contingency fund, was always entitled to the pension. The petitioner is therefore liable to succeed. In the result the petition succeeds and is allowed. Rule is made absolute.

8. The respondents are directed to take up consideration of the case of the petitioner for grant of pension and finalize the same within three months from the date of receipt of this order and consider payment of pension thereafter immediately.

There is no order as to costs.