
(2020) 12 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition No. 5149 Of 2016

Sayyad Abbas Sayyad Usman

APPELLANT

Vs

Vice Chancellor And Ors

RESPONDENT

Date of Decision : 10-12-2020

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 30, 57, 57(c), 100

Citation : (2020) 12 BOM CK 0030

Hon'ble Judges : Avinash G. Gharote, J

Bench : Single Bench

Advocate : S. R. Charpe, A. R. Patil

Final Decision : Allowed

Judgement

1. Heard Shri Charpe, learned counsel for the petitioner and Shri Patil, learned counsel for the respondents.

2. Rule. Rule made returnable forthwith.

3. The present petition challenges the judgment of the Industrial Court dated 19.12.2015, whereby the claim made by the petitioner for grant of

pensionable benefits, has been rejected, on the ground that the petitioner had not completed the qualifying service for entitlement of pensionary

benefits, under the provisions of Rule 30 and 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (herein after "Pension Rules").

4. Certain facts for deciding the present petition are as under:

A) The petitioner was employed as a Watchman/Choukidar on daily basis with the respondent in the year 1971. In para 1 of the complaint, it has been

specifically averred that the petitioner was working with the respondents continuously as a watchman/ Choukidar, from 1971 to 31/3/2008, which has

been admitted by the respondents in their written statement para 1 thereof, in the following words â??That the contents of this para as regards the

date of joining of the services of the complainant and his date of retirement is a matter of record and hence need no specific replyâ?. Thus this

position in light of the above stands admitted between the parties.

B) It is also not disputed that thereafter by an order dated 18/06/1996, the petitioner was appointed on a regular basis as a Watchman/Choukidar on a temporary permanent establishment, for the same work which he was doing earlier.

C) It is further not disputed that by an order dated 21/06/1996, the petitioner was appointed as a Choukidar / Watchman on probation, which having been completed on 20/06/1998, by an order dated 29/06/1998, the employment of the petitioner was confirmed.

Thus, from 1971, till 31/08/2003 the petitioner continued in the employment of the respondents, continuously, doing the same work, though the

engagement of the petitioner from 1971 till 21/6/1996, was on daily wages.

5. The question raised is, whether the services rendered by the petitioner for the period from 1971 to 1996 as a daily wager, can be considered for the

purpose inclusion in the qualifying service period for holding that the petitioner is entitled to pensionary benefits, under Rule 30, read with Rule 57(c)

and Note 1 of the Pension Rules. For the sake of ready reference, Rule 30 and Rule 57 of the Pension Rules are reproduced as under:

â??Rule 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.â??

[Notes 1 to 3 are not relevant]

â??Rule 57. Nonâ??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 1â?" In cases 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.â??

Note 2- Not relevant (emphasis supplied)

6. A perusal of Rule 30 of the Pension Rules, indicates that it provides for the commencement of qualifying services for the purpose of pension and

for determining whether a person qualifies for grant of pension, the date from which such employee takes charge of the post to which he is first

appointed either substantially or in an officiating or temporary capacity is considered to be the date of commencement. The second proviso to Rule 30

of the Pension Rules further provides that even in case where a temporary Government servant retires on superannuation, after having rendered

temporary service of not less than 10 years, he shall be entitled to grant of pension.

7. However, Rule 57 of the Pension Rules, by providing the incidences of non-pensionable services in clauses (a) to (e), create an exception to Rule

30. Clause (c) of Rule 57 thereof, which presently concerns us, holds that Government servants who are paid from contingencies cannot be said to

have completed qualifying service entitling him to pension, thereby indicating that those persons who are employed in any capacity, but whose payment

is made out of contingency funds, shall not be held to have completed any qualifying service as per Rule 30.

8. It is however material to consider that Note 1 of Rule 57 of the Pension Rules, creates a further exception to Rule 57, by providing that in case of

an employee being paid from contingencies, who is subsequently brought on a regular pensionable establishment by conversion of the post, one-half of

the previous continuous service shall be allowed to be counted for pension.

9. Thus, conjoint reading of Rule 30, read with Rule 57 (c) and Note 1 of the Pension Rules, indicate that even in a case where an employee is paid

from contingency, by the act of subsequently bringing such employee on regular establishment due to conversion of post, such employee shall be

entitled to one-half of the previous continuous service, to be counted for the purpose of determining the qualifying service for becoming entitled to

pension.

10. There is an additional factor also to be considered, in as much as, in the instant case, the Government Resolution dt.31/5/1990, also substantiates

this position, the relevant portion of which is as under :

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The import of the G.R. dt. 31/5/1990, is clearly in consonance with what has been stated in Note -1, of Rule 57 of the Pension Rules, which has been

adopted by the respondents, as being applicable for its employees.

11. In the present case, it is an admitted position on record, that the petitioner has continuously worked from 1971 till 1996, as daily wagger with the respondents, and has been thereafter employed on probation on a regular post with effect from 21/06/1996 till his retirement in the 2003, having successfully completed the period of probation and would be squarely covered by the dictum of Note-1 of Rule 57 of the Pension Rules. The contention raised by Shri Patil, learned counsel for the respondents that there was no conversion of the post, which is also one of the reasons for the learned Industrial Court to deny the claim of the petitioner is clearly misplaced in light of the Circular dated 31/05/1990, which is quoted in para 15 of the judgment of the learned Industrial Court itself, perusal of which would clearly indicate that a person initially employed on daily wages who is later on appointed on a regular basis, would be entitled for counting half of the services rendered by him a daily wagger, for purposes of qualifying for grant of pension. That apart, the petitioner has worked as a watchman on daily wages since 1971 and upon his being appointed on probation in the year 1996, he continued to work as watchman, which makes it clear that the post on which the petitioner was working as a Watchman was converted into a regular post on which the petitioner was appointed. Thus in view of the above position, the petitioner will clearly be entitled for inclusion of one half, of the services rendered by him, as daily wagger, for the purpose of determining the qualifying service for pension.

12. The above view is also supported by a series of judgments of this Court from:

(i) Parshuram Vithoba Bhandare â?"Vs-- State of Maharashtra, 2001(4) Mh. L. J. 58,7 wherein the learned Division Bench held that a person who

was engaged as a daily wagger but was later on taken in regular employment, in case he was not being paid from the contingency fund of the State,

would be entitled to have 50% of his period of employment on daily wages to be counted for the purpose of determining the qualifying period for

reckoning his entitlement for pension. It is material to note that though the Court had held that the employee was not being paid from the contingency

fund and therefore was entitled for 50% period of his engagement as a daily wagger to be counted for determining his eligibility for pension, the Court

did not consider the effect and import of Note-1 of Rule 57 of the Pension Rules.

(ii) Shivaji Jyotiba Pawar -Vs- State of Maharashtra, W.P. No.2016 /2010 decided

on 21/9/2010, in which the petitioners who were working on work charge basis w.e.f. 30th April 1971 to 29th Oct. 1983 and vide order dt.29/10/1983, were appointed on regular establishment in the newly sanctioned post, were denied pension on their superannuation, on account of they not having completed the qualifying service as contemplated by Rule 30 of the Pension Rules, wherein a learned Division Bench of this Court, considering Note -1 of Rule 57 of the Pension Rules held as under :

8. It can, thus, be seen that the Government servants who are paid from the Contingency, are not entitled for the pensionary benefits. However, perusal of Note (1) would make it clear that, in case of employees who are paid from Contingencies, who are subsequently brought on regular establishment by conversion of posts, one half of the previous continuous services shall be entitled to be counted for the purpose of pensionary benefits. Perusal of the order dt.29th Oct.,1983, would reveal that the petitioners, who were earlier working as Mistri, on Work Charge Establishment, were given appointment by protecting their pay scale and grade, on regular establishment, in the newly sanctioned posts. It can, thus, clearly be seen that even prior to order dt.29th Oct.,1983, the petitioners were working as Mistri and, subsequently, again, after their appointment on regular basis, they were working on the post of Mistri. It is, thus, clear that the posts on which the petitioners were working as Mistri, were converted into regular posts on which the petitioners were appointed. It is, thus, clear that in view of this factual position, the petitioners are entitled to benefit of Note (1) of Rule 57 of the said Rules. The reliance placed by the learned Counsel on the aforesaid judgment of the Division Bench of this Court, cited supra, is well placed. We are unable to accept the contention of the respondents that the posts of the petitioners were not converted, their appointments were fresh on the newly created posts.

(iii) Dr. Panjabrao Krishi Vidyapeeth, Akola and another Vs. Dattopant s/o Lalchandsa Bhavsar in Writ Petition No.7097 of 2014, decided 02.09.2015, in which the petitioners who though initially employed as daily wagers since 1973 were regularised on 30/1/1987 and continued their employment till their respective age of superannuation, but were denied the benefit of pension on account of not having completed the qualifying service, as their employment on daily wages were not taken into consideration, wherein the Court

held that in view of Note-1 of Rule 57 of the Pension Rules, they were entitled to half of the services rendered by them on daily wages to be counted for determination of qualifying service.

(iv) Mahatma Phule Krishi Vidyapeeth -Vs- Ganpat Kisan Karle 2016(4) BCR 79,0 in which after considering the nature of the work performed by

the employees as daily wagers, in the light of Rule 30, Rule 57 r/w Note 1 and Rule 100 of the Pension Rules, it was concluded that the daily wagers,

who were working for years together with the petitioner / University, would be entitled for the pensionary benefits.

(v) Jagjeevan Jaikumar Sanghai (dead) thr. Legal Heirs Asha Jagjeevanrao Sanghai and Another / Parbhani Municipal Corporation, (2018) 4

Mh.L.J.947, where the initial appointment of the petitioner was as Junior Clerk on temporary basis, and on daily wages, in the year 1989 which was

continued on ad-hoc basis without any interruption and without any break and was regularized/ absorbed on the establishment of then Parbhani

Municipal Corporation, under the orders dated 31/8/2001. By an office order dated 27th September, 2001, the petitioner was appointed on permanent

basis as clerk in Class-III and retired on attaining the age of superannuation on 31st July, 2006, but was denied pension, on the ground that the

qualifying service was not completed. The Learned Division Bench held that half of the services of the petitioner rendered between 10th January,

1989 to 31st August, 2001 on daily wages were entitled to be counted for determining the pensionable service of the petitioner.

(vi) Punjabrao S/o Sadashivrao Alone vs Chief Officer Nagar Parishad W.P. No.4265/2016 decided on 12 February, 2019 in which the petitioner who

had joined as a daily wager on 01/02/1989, was granted pay scale of Peon and in May 1997 he was confirmed in service on the said post. On

26/04/2001, an order was passed granting appointment to the petitioner in a sanctioned post of Clerk and in the year 2007, the petitioner superannuated

on completing the age of 58 years. On being denied pension, on the plea of not having rendered qualifying service, and the claim in this regard having

been dismissed by the Industrial Court, while deciding the writ petition, this Court held that not only by a bare reading of Note 1 to Rule 57 of the

Pension Rules, the petitioner is entitled to relief, but the position of law laid down in favour of the employees like the petitioner in the context of the

aforesaid Rule by various decisions made it clear that the petitioner was entitled to include the service rendered by him as a daily wager, for the purpose of his qualifying service under Rule 30 of the Pension Rules.

(vii) Samadhan Rajaram Umak -Vs-- Dr. Punjabrao Deshmukh Kirshi Vidyapeeth, Akola, W.P. No.5883/2018 decided on 25/7/2019, wherein the

Court while considering the case of an employee who was initially employed as a daily wager in 1978 after which his service was regularised on the

vacant post of Laboratory attendant on 14/9/2005, on being denied pensionary benefits on account of the post in question was not converted on a

permanent basis and had not rendered ten years service on permanent basis, by relying on Jagjeevan Jaikumar Sanghai and Mahatma Phule Krishi

Vidyapeeth (supra) held that if the initial appointment was made on daily wages and the services were thereafter regularised, the employee was

entitled to take benefit of Note 1 of Rule 57 of the Pension Rules.

13. There are a series of judgments on this point by all Benches, reiterating the above position of law and it is not necessary to quote all of them. What

is necessary to be pointed out is that the present respondent no.1, was also a party in Dattopant s/o Lalchandsa Bhavsar (supra) and thus was aware

of the legal position, in this regard, inspite of which, it continued to litigate in the present petition. This can only be said to demonstrate the total apathy

and indifference of the institutions like the respondent no.1, to the plight of their employees and the tendency to force its employees into litigation,

when a small conscious act of deciding according to the law, of which they are already aware, would render a great relief to its employees, who

would be saved not only the cost and expenses of litigation but also the time, efforts and man hours spent on such litigation and not only this, the saving

on this count would also enure to the benefit of such institutions. It is because of such a callous attitude that the Courts too, are overburdened with

avoidable litigation and spend substantial time in deciding such claims, which time and energy could have been better spent on deserving cases, which

are languishing for years together for paucity of time. The time therefore has come for these institutions to have an introspection in this regard and to

take appropriate steps to curtail litigation by adhering to the dictum in consonance with the plain language of the law and the judicial pronouncements

and applying them to the matters in which they are parties, thereby taking a

conscious decision as to whether to proceed with such litigation or not.

Perhaps the time has come for the Courts, to impose exemplary penal costs on such institutions, who inspite of being aware of the legal position and

that the lis to which it is a party, is covered by the judicial pronouncement, still continue with the litigation, fully knowing well, the fate of it.

14. Mr. Arun Patil, learned Counsel for the respondents, raises a further plea that the claim made by the petitioner was barred by limitation as the

petitioner had retired in 2003 and the proceedings before the Industrial Court came to be filed in 2010. In the complaint itself, the petitioner in para 9

has specifically averred that he had been orally agitating his claim for grant of pension with the respondents since 2003, which not having been

acceded to the present complaint came to be filed, after the notice dt.18/12/2008, having been falsely denied by the respondents by their reply dated

4/1/2010. The complaint in para 5 makes a mention of the earlier litigation being required to be initiated by the petitioner in the year 2004 before the

Assistant Labour Commissioner, Akola, vide PGA-150/2004, which came to be decided in his favour on 22/9/2005, which was challenged by the

respondents in PGA /Appeal 9/2006, which came to be decided in favour of the petitioner on 18/12/2009, whereupon, the issue being finalised, the

notice claiming pension was issued on 18/12/2009. Thus considering the above, it cannot be said that the complaint was barred by limitation.

15. Even otherwise, it does not augur well for the respondent no.1 institution to make the petitioner or its employees to run from pillar to post, for years

together and so also to initiate litigation, for claiming what they are entitled for their dues. Again perhaps, the time has come to for such Institutions

and so also all Employers to initiate a process to fix the responsibility for the cost and interest payable by it, due to decisions being awarded in favour

of employees, on account of judicial dictums, governing the field, not being adhered to.

16. The learned Industrial Court, has not considered the settled view in this regard, as indicated above, due to which the impugned judgment cannot be

sustained in law, as applicable to the facts of the present matter. The petition therefore succeeds and the judgment as passed by the learned Industrial

Court, Akola, in Complaint ULP No.16/2010, dated 19/12/2015, is hereby quashed and set aside and the complaint as filed by the petitioner is hereby

allowed. The respondents are further directed to prepare the pension papers of the petitioner and forward them to the appropriate authorities, within a period of 2 months from the date of this judgment and also to ensure that the papers thereafter are processed and the petitioner is paid his legitimate claim, within six months of the date of forwarding the pension proposal. Rule is made absolute in the above terms. No costs.