

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 923 OF 2017
(Subject – Pensionary Benefits)**

DISTRICT : PARBHANI

Shri Nayeem Ahemad Siddiqui,)
Age : 64 years, Occu. : Nil (Retired),)
R/o : Ekbal Nagar, Near P.D. Jain,)
Medical College, H.N. No. 127,)
Parbhani, Dist. Parbhani,)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
Through its Secretary,)
Urban Development Department,)
Mantralaya, Mumbai.)

2) **The Commissioner and Director**)
Of Municipal Administration,)
Municipal Councils Administration)
Directorate, Worli, Mumbai.)

3) **The Regional Director of**)
Municipal Administration,)
Aurangabad, Tq. & Dist.)
Aurangabad.)

4) **The Chief Executive Officer,**)
Municipal Council, Manwat,)
Dist. Parbhani.)

.. **RESPONDENTS**

APPEARANCE : Shri M.B. Kolpe, Advocate for the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for Respondent Nos. 1 to 3.

: Shri Raviraj Chandak, learned Advocate for
respondent No. 4 (**Absent**).

CORAM : **B.P. PATIL, MEMBER (J).**
RESERVED ON : **08.04.2019.**
PRONOUNCED ON : **12.04.2019.**

ORDER

1. The applicant has challenged the communication dated 23.05.2017 issued by the respondent No. 2 thereby directing the respondent No. 4 to pay the pensionary benefits to the applicant and prayed to quash and set aside the same and also prayed to direct the respondent Nos. 1 to 3 to release the pensionary benefits to him by filing the present Original Application.

2. The applicant was appointed as Overseer in Municipal Council, Manwat and since then, he had continuously worked in the service of Manwat Municipal Council.

3. On 11.01.2007, the Government had issued G.R. and framed the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships State Services (Absorption, Recruitment and Condition of Service) Rules, 2006 (hereinafter referred to "Rules 2006"). As per the said Rules, the employees working under the Municipal Council were given option of

absorption in the State Services. It is contention of the applicant that as per the said Rules 2006, he was absorbed in the Government Service as Engineer Class-A. The Government has prepared the list of the candidates who are absorbed in the service. The applicant's name appears at Sr. No. 31 in the list prepared for Aurangabad Division. It is his contention that as per the said list, all the candidates have to be absorbed in the service. In pursuance of the absorption list dated 02.02.2008, the State has absorbed the applicant as Engineer Grade-I in Municipal Council, Manwat and accordingly, posting was given to him at Municipal Council, Manwat as Engineer Services-A.

4. It is contention of the applicant that on 15.03.2011, the Government has prepared the seniority list of the candidates absorbed and the applicant was at Sr. 30 in the said list. Thereafter, the Government has prepared another seniority list on 02.05.2011 of the Engineer Grade-A category. In the said list, the name of the applicant appears at Sr. No. 2. According to Rule 11 of Rules 2006, it was the duty of the Municipal Council, Manwat to pay pension contribution of the applicant.

5. The applicant retired on 30.06.2012 on attaining the age of superannuation. The respondent No. 4 i.e. the Municipal

Council, Manwat had issued order/letter dated 30.04.2012 relieving the applicant.

6. The applicant has filed W.P. No. 1085/2015 before the Hon'ble High Court of Bombay Bench at Aurangabad, as the respondent No. 4 i.e. Municipal Council, Manwat failed to deposit his pension contribution. The Hon'ble High Court has disposed of the said W.P., as the Municipal Council has deposited the amount towards contributions in respect of pension and leave encashment etc. and informed the respondent No. 2 by the letter dated 14.10.2015. After depositing the pensionary benefits of the applicant, the Municipal Council Manwat requested the respondent Nos. 1 and 2 to sanction the pensionary benefits of the applicant by the communication dated 11.04.2016.

7. It is contention of the applicant that the respondents had not followed the seniority list while giving posting to the employees absorbed in the Government cadre. The posting to the junior employees than the applicant has been given, but the benefits had not been extended to the applicant and thereby made discrimination. It is contention of the applicant that in the year 2008, 59 posts were vacant and available for posting, but the applicant was not given posting on the said post.

8. It is contention of the applicant that on 23.05.2017, the respondent No. 2 had issued the communication to the respondent No. 4 stating that the applicant retired prior to issuance of posting and therefore, it has directed the Municipal Council to pay pensionary benefits to the applicant. By the said letter, the respondent No. 2 denied to grant pensionary benefits to the applicant. Therefore, the applicant has approached this Tribunal by filing the present Original Application and prayed to quash and set aside the impugned order/communication dated 23.05.2017 and prayed to direct the respondent Nos. 1 to 3 to extend the pensionary benefit to him with interest.

9. The respondent No. 2 has resisted the contentions of the applicant by filing his affidavit in reply. He has not denied the fact regarding issuance of G.R. dated 11.01.2007 absorbing the employees of the Municipal Council in the State Cadre. He has denied that the Chief Officer, Manwat has authority of issuance of the appointment letter to the applicant in view of Rules 2006. It has contended that the Chief Officer, Manwat is not the competent authority to give posting to the absorbed employees in the State Cadre and therefore, the order dated 13.06.2008 issued by the Chief Officer, Manwat is not legal one. He has admitted the fact that on 15.03.2011, the Government

has prepared seniority list of the absorbed employee. But he has denied that it is a seniority list. He has denied that on 23.05.2011, a draft seniority list of absorbed employees of Civil Engineers has been prepared. He has admitted the fact that the applicant retired on attaining the age of superannuation. He has denied that the applicant was not posted as per Rule 5(6) of the Rules 2006 and no discrimination has been made on the basis of caste and race while giving appointments. It has contended by the respondent No. 2 that the applicant has filed the vacancy position of the Civil Engineers for the year 2013, but he retired on 30.06.2012 and therefore, the said list produced by the applicant has no relevance. It is his contention that the applicant was not posted as per Rule 5(6) of the Rules 2006, though he was absorbed in view of Rule 5(4) of the said Rules 2006. As he has not given appointment, he is not eligible to get pensionary benefits in view of Rule 10 of the said Rules.

10. It is contention of the respondent No. 2 that the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No. 7865/2014 with W.P. No. 7876/2014** in case of similarly situated person held that the petitioner was absorbed in the Tax and Administrative Services and he was not entitled to get pensionary benefits as per Rules 10 of the Rules

2006, as he was not appointed and posted as per Rules 5(6) of the Rules, 2006. It is contended by him that the applicant was never appointed in the State cadre on any particular post and he never worked on any post of the State Cadre and therefore, he is not entitled to get pensionary benefits from the State Government. Rule 10 and Rule 11 of the Maharashtra Civil Services (Pay) Rules, 1981, provides that the pay fixation of employees will be done only after appointment to the Government service. It is his contention that the applicant after getting order of absorption in the State cadre was not actually appointment or given posting in the State cadre and therefore, no question of getting pay in the State cadre and retirement benefits does not arise. The respondent No. 2 has rightly rejected the claim of the applicant by the communication dated 23.05.2017. It is his contention that there is no illegality in the impugned order/communication and therefore, he prayed to reject the present Original Application.

11. The respondent No. 3 has resisted the contentions of the applicant by filing his affidavit in reply. It is contended by him that the applicant was retired before giving him appointment in the State cadre and therefore, pensionary benefits cannot be extended to him. It is his contention that the pensionary benefits

have to be paid by the Municipal Council and therefore, he prayed to reject the present Original Application.

12. The respondent No. 4 has filed his affidavit in reply and contended that the employees worked under the Municipal Council have been absorbed in the State cadre in view of the G.R. dated 11.01.2007. It is his contention that the applicant was absorbed in the Government service as per the G.R. dated 11.01.2007. As per the order passed by the respondent No. 2, the applicant was given posting as Junior Engineer-A in the office of Municipal Council, Manwat and he worked there till the date of retirement. It is his contention that the applicant is solely under the control of respondent Nos. 1 to 3 and the respondent No. 4 has no authority/power to issue posting order to the applicant. It is his contention that as the applicant was not absorbed in the Government service as per the guidelines issued by the Government of Maharashtra, no question of granting pensionary benefits to the applicant by the Municipal Council, Manwat arises. It is his contention that the respondent No. 2, who is the competent authority to grant benefits to the applicant, has given posting to the applicant. It is his contention that the Municipal Council has already deposited the pension contribution with the Government. In addition to that

considering the services rendered by the applicant and as he has not received full and final pensionary benefits, the Municipal Council, Manwat had given Rs. 22000/- per month to the applicant w.e.f. 01.07.2012 as time gap arrangement against his pension, gratuity and leave encashment.

13. It is contention of the respondent No. 4 that the decision rendered by the Hon'ble High Court of Bombay, Bench at Aurangabad in W.P. No. 7876/2014 is not applicable in the instant case the Government had not posted the present applicant, though the post of Junior Engineer was vacant at the relevant time. There was failure on the part of the Government cannot be attributed to the Municipal Council.

14. I have heard Shri M.B. Kolpe, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent Nos. 1 to 3. Shri Raviraj Chandak, learned Advocate for respondent No. 4, **absent**.

15. Learned Advocate for the applicant has submitted that the applicant has been absorbed in the Government service in view of the provisions of G.R. dated 11.01.2007 w.e.f. 01.01.2008. The Municipal Council, Manwat has issued order in that regard on 13.06.2008 and accordingly, the applicant worked

as Junior Engineer-A till his retirement i.e. till 30.06.2012. He has submitted that as per the provisions of Rule 10 and Rule 11 of the Rules, 2006, the respondent Nos. 1 to 3 are liable to pay the pensionary benefits to the applicant, but they have not paid the pensionary benefits to the applicant. He has submitted that the respondent No. 4 had not deposited the pension contribution of the applicant as per the Rule 11 of the Rules 2006 with the Government and therefore, he filed W.P. No. 1085/2015 before the Hon'ble High Court of Bombay, Bench at Aurangabad. During pendency of the said W.P., the respondent No. 4 has deposited the said amount with the Government and therefore, the said W.P. came to be disposed of. He has submitted that since the date of absorption the applicant is the Government servant, therefore, he is entitled to get pensionary benefits. But the respondent No. 2 rejected his claim by the communication dated 23.05.2017 on the ground that he was not appointed and posted in the State cadre in view of the Rules 2006 and directed the respondent No. 4 to pay pensionary benefits to the applicant.

16. Learned Advocate for the applicant has submitted that several posts were vacant in the cadre of Junior Engineer –A in the year 2008, but he respondent Nos. 1 to 3 had avoided to give posting to the applicant after absorption. He has submitted

that the applicant has been appointed by the respondents, but no posting was given to him before his retirement and the juniors to the applicant had been appointed. The act of the respondents is discriminating.

17. Learned Advocate for the applicant has attracted my attention towards Rule 5(b) of the Rules 2006. He has submitted that the applicant has submitted his option according to the said Rule and accordingly, the Government published the list of the employees absorbed in the State cadre. He has submitted that the name of the applicant appeared in the said list and it shows that the applicant was absorbed in the State cadre and therefore, the respondent Nos. 1 to 3 are liable to pay the pensionary benefits to him, as he being a Government servant.

18. Learned Presenting Officer has submitted that the applicant has been absorbed in the State cadre in view of the Rules 2006. She has submitted that the list of absorbed employees as mentioned in the said Rules has been prepared by the Government. But no appointment was given to the applicant in the State Cadre on any particular post and he never worked on any post in the State cadre and therefore, he is not entitled to get pensionary benefits from the Government in view of the

provisions of Rules 10 and 11 of the Maharashtra Civil Services (Pay) Rules, 1981. She has submitted that as per the Rules 2006, the absorption authority has been constituted and absorption authority is empowered to examine eligibility of the employee as per criteria and forward the name of eligible employee to the Director for inclusion in the list of eligible Existing Employees. Thereafter, appointment shall be made by the Appointing Authority as per seniority. But no such appointment order has been issued to the applicant by the Appointing Authority. She has submitted that the applicant has placed reliance on the order issued by the Municipal Council, Manwat appointing the applicant on the post of Junior Engineer Grade-A dated 13.06.2008. She has submitted that the Chief Officer, Municipal Council, Manwat is not the appointing authority to appoint the applicant in the State cadre in view of the provisions of Rules 2006 and therefore, the said order cannot be termed as appointment order of the applicant appointing him in the State cadre. Therefore, it does not confer status on the applicant as the Government servant. She has submitted that the applicant is retired before his appointment in the State cadre and therefore, he is not entitled to get pensionary benefits and therefore, the respondent No. 2 has rightly informed the respondent No. 4 by

impugned communication to grant pensionary benefits to the applicant from the funds of Municipal Council. She has submitted that there is no illegality in the impugned communication and therefore, she has prayed to dismiss the present Original Application.

19. Learned Presenting Officer has submitted that the identical issue has been dealt with and decided by the Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 7865/2014** in case of **Bandopant Kishanrao Pathak Vs. The State of Maharashtra and Ors.** with **W.P. No. 7876/2014** in case of **Vishnu Shrinivasrao Khalikar Vs. The State of Maharashtra and Ors.** decided on 28.04.2016 and it has been held that unless employees from the list of eligible existing employees is absorbed by invoking Rule 6 in the Services cannot seeks benefits of sub-rule (10) of the said Rule. It has been further observed that the petitioners were not appointed in the service on particular posts for want of vacancies and therefore, they cannot seek the benefit of Rule 10 of the Rules, 2006.

20. I have gone through the record. On perusal of the record, it reveals that the applicant is claiming that he is appointed in Engineering Services Group-A on the basis of the

order issued by the Chief Officer, Municipal Council, Manwat on 13.06.2008, which shows that the Chief Officer, Municipal Council, Manwat issued the order appointing the applicant on the post of Engineering Services-A on the basis of the letter of Director, Municipal Administration, Mumbai dated 02.02.2008. The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships State Services (Absorption, Recruitment and Condition of Service) Rules, 2006, provides Rules regarding the absorption of the Municipal Council employees in the State Cadre. Rule 2(1)(a) of the Rules, 2006 defines the "Absorbed Employee", while Rule 2(1)(b) defines "Absorption Authority". Rule 2(1)(e) of the Rules, 2006 defines the "Appointing Authority" and according to the said rule, Appointing Authority means the Director of Municipal Administration.

The G.R. dated 15.03.2011 provides that the respondent No. 2 i.e. the Commissioner and Director of Municipal Administration, Mumbai is the appointing authority in view of the Rule 2(1)(e) of the Rules, 2006.

21. Rule 5 of the Rules, 2006 provides provisions regarding the Absorption of Existing Employees in the State Services. Rule 5 (3) of the Rules, 2006 provides that the Absorption Authority shall examine the eligibility of each Existing

Employee as per the criteria laid down above, and where found eligible shall forward the same to the Director for inclusion in the list of eligible Existing Employees. Rule 5(4) of the Rules, 2006 provides that a list of eligible Existing Employees who have opted for absorption shall be prepared by the Director. In view of Rule 5(6) of the Rules, 2006, the vacancies in the Service, as and when they occur, shall be filled by appointment of an Existing Employee whose name appear in the list prepared as per sub rule (4) above and the said appointment shall be strictly based on the seniority in the above list, and will continue till the above said list is exhausted.

22. Rule 6 of the Rules, 2006 provides provisions regarding the "Constitution of Absorption Authority".

23. On going through the said provisions, it is crystal clear that in view of Rule 2(1)(e) of the Rules 2006, the respondent No. 2 is the appointing authority. On perusal of the documents, it reveals that the applicant has been absorbed in the State cadre in view of the G.R. dated 11.01.2007 w.e.f. 01.01.2008. His name has been incorporated in the list of the absorbed candidate as provided under Rule 5 of the Rules, 2006 by the Absorption Authority, but no appointment has been given

to him by the appointing authority i.e. the respondent No. 2 till his retirement. The respondent No. 4 is not the appointing authority in view of the said Rule. Therefore, the order issued by the respondent No. 4 giving appointment to the applicant on 13.06.2008 (Annexure A-3, page no. 43 of paper book of O.A.) cannot be said to be legal and therefore, the applicant cannot claim that he has been duly appointed in the State Cadre in view of the provisions of the said Rule. The applicant has never been appointed in the State cadre or on any particular post till his retirement in view of the said rules and he never worked on the said post and therefore, he is not entitled to get pensionary benefits, as he was not the Government servant in view of the provisions of Rules 10 and 11 of the Maharashtra Civil Services (Pay) Rules, 1981. The respondent No. 2 has rightly informed the respondent No. 4 in that regard by the impugned communication and refused to grant pensionary benefits. Therefore, I found no illegality in the impugned communication.

24. The Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad has dealt with the similar issue in cases of similarly situated persons while deciding W.P. No. 7865/2014 in case of **Bandopant Kishanrao Pathak Vs. The State of Maharashtra and Ors.** with W.P. No. 7876/2014 in case of

Vishnu Shrinivasrao Khalikar Vs. The State of Maharashtra

and Ors. on 28.04.2016. The Hon'ble High Court has considered the provisions of the Rules, 2006 and observed as follows:-

“7] We have considered the submissions of the learned counsel appearing for the parties at length. With their able assistance, perused the pleadings in the Petition, annexures thereto, replies filed by the respondents, the Notification dated 11th January, 2007 and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships State Services [Absorption, Recruitment and Conditions of Service] Rules, 2006. In the said Rules, 2006, Rule 2, clauses (a) and (b) define 'Absorbed Employee' and 'Absorption Authority' respectively. Clauses (a) and (b) of Rule 2 of the said Rules, 2006, read thus:

(a) "Absorbed Employee" means an Existing Employee in the service of any Municipal Council absorbed in any Grade of any Service in accordance with these Rules;

(b) "Absorption Authority" means an authority constituted under Rule 6;

The scheme of Rule 5 of the said Rules, 2006, provides for absorption of existing employees of Municipal Council. Rule 5 (1) lays down the eligibility criteria of the existing employees of the Municipal Council, who can be considered for absorption in the State Services. Sub-rule (2) of Rule 5 of the said Rules,

2006, gives option to the employee to be absorbed in the State Services. Sub-rule (3) of Rule 5 of the said Rules, 2006, states that, the Absorption Authority shall examine the eligibility of each Existing Employee as per the criteria laid down in sub rule (1) and (2) and if such employee is found eligible, his / her name should be forwarded to the Director for inclusion in the list of eligible Existing Employees. The list of such eligible existing employees, who have opted for absorption shall be prepared by the Director, in view of sub-rule (4) of Rule 5 of the said Rules, 2006. Sub-rule (5) of Rule 5 of the said Rules, 2006, reads thus:

(5) The inter se seniority of eligible Existing Employees in each Grade of each Service in which they are to be absorbed shall be determined on the basis of the period of continuous service rendered by them in the scale of pay equivalent to or higher than the scale of pay of the Grade on which they are to be absorbed.

Sub-rule (6) of Rule 5 of the said Rules, 2006, reads thus:

(6) The vacancies in the Service, as and when they occur, shall be filled by appointment of an Existing Employee whose name appear in the list prepared as per sub rule (4) above. The appointment shall be strictly based on

the seniority in the above list, will continue till the above list is exhausted.

8] *Rule 6 of the said Rules, 2006, provides for constitution of Absorption Authority.*

9] *In the present case, sub-rule (6) of Rule 5 of the said Rules, 2006, is relevant. Admittedly, in case of the petitioners, they 7865.2014WP.odt were not appointed on any post in the State Services by invoking sub-rule (6) of the said Rules, 2006. According to the learned AGP appearing for the respondent - State, there were no vacancies in the State Services to appoint / absorb the petitioners. Therefore, unless employee from the list of eligible existing employees is absorbed by invoking Rule 6 in the Services, he cannot seek benefit of sub-rule (10) of the said Rules. It is only when the employee from the eligible existing employees is actually appointed on any vacant post in the State Service, he is entitled to draw pension under Rule 10 of the said Rules, 2006. As already observed, admittedly, the petitioners were not appointed in the service on particular posts for want of vacancies. Therefore, they cannot seek the benefit of Rule 10 of the said Rules, 2006. The petitioners are already receiving pension from the respondent Municipal Council.....”*

(Quoted from page Nos. 117 to 122 of paper book of O.A.)

I have no dispute regarding the settled legal principles laid down by the Hon'ble High Court in the above cited decision. Said decision is most appropriately applicable in the instant case. The case of the applicant is squarely covered by the decision rendered by the Hon'ble High Court. Therefore, the applicant is not entitled to get pensionary benefits in view of the Rule 10 of the Rules, 2006, as he had never been appointed in the State services on particular post for want of vacancies and he never worked on any post in the State cadre. Therefore, the respondent No. 2 has rightly rejected the claim of the applicant and informed the respondent No. 4 to give pensionary benefits to the applicant. There is no illegality in the impugned order and therefore, no interference is called for in the impugned order/communication dated 23.05.2017. There is no merit in the present Original Application. Consequently, the Original Application deserves to be dismissed.

25. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 12.04.2019.

(B.P. PATIL)
MEMBER (J)

KPB S.B. O.A. No. 923 of 2017 BPP 2019 Pensionary benefits.