

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH : NAGPUR**  
**ORIGINAL APPLICATION NO. 208/2020**

Bhaskar S/o Baliram Lande,  
 Aged 66 years, Occ : Nil,  
 R/o Adarsh Colony, Tq. Akola,  
 District : Akola.

.....**Applicant.**

**-Versus -**

1. The State of Maharashtra,  
 Through its Secretary,  
 Department of Forest, Mantralaya, Mumbai- 32

2. Deputy Conservator of Forest,  
 Akola, Forest Division Station Road,  
 Akola, Tq. and District : Akola.

.....**Respondents.**

**1.Shri Vipul Bhise**

... Adv. for the applicant

**2.Shri M.I. Khan**

.... Presenting Officer for the Respondents.

**CORAM : HON. M.A. LOVEKAR ; MEMBER ( J )**

**DATED : 08/09/2022**

**Date of Reserving for judgment : 26/08/2022**

**Date of Pronouncement of judgment : 08/09/2022**

**JUDGMENT**

**( Delivered on this 8<sup>th</sup> September, 2022 )**

Heard Shri V.B. Bhise, Id. Counsel for the applicant and  
 Shri M.I.Khan, Id. Presenting Officer for the Respondents.

2. Case of the applicant is as follows :-

From 07/08/1989 to 14/01/2022, the applicant worked as a Daily Wager on the establishment of Respondent No. 2 without break. He challenged the order of his termination dtd.15/01/2002 before the Labour Court, Akola. By judgment dtd.25/01/2006 ( Annex.A-1) his reinstatement with continuity of service and back wages was directed. The Industrial Court confirmed this order. By order dtd.04/12/2012 ( Annex.A-2), Respondent No.2 appointed the applicant as a Forest Labourer w.e.f. 01/06/2012. Thereafter, by order dtd.15/02/2013 (Annex.A-3) permanency was granted to him. The applicant retired on superannuation on 31/01/2014. His representations (Annex.A-4 collectively) for grant of regular pension, pensionary benefits and back wages were not decided by Respondent No.2 Therefore, he filed O.A. No.337/2015 in this Tribunal. It was disposed of by Judgment dtd.28/09/2015(Annex.A-5) by directing the Respondents to decide representation of the applicant dtd.11/03/2015. However, grievance of the applicant remained unredressed. Hence, he filed O.A. No.206/2017 in this Tribunal. It was partly allowed on 19/04/2018 (Annex.A-6) in the following terms :-

**“ ORDER**

- ( i ) The O.A. is partly allowed.
- (ii) The respondents are directed to release the back wages of the applicant for the period from 15.1.2002 till 6.8.2010, i.e. till the date of his reinstatement as per the order of the Labour Court, Akola in U.L.P. Complaint Case No.11/2002 on 25.1.2006.
- (iii) All the arrears shall be paid to the applicant within a period of three months from the date of receipt of this order, failing which, the applicant will be eligible to claim interest on the said amount as per admissible rates.
- iv) The applicant's services shall be treated as continuous service w.e.f. 15.1.2002.
- (v) On the basis of the order passed by the Labour Court, Akola in U.L.P. Complaint Case No.11/2002 on 25.1.2006, services of the applicant shall be treated as continued in service and the respondents shall take a decision as regards entitlement of the applicant for pension and pensionary benefits as may be admissible under the rules.
- (vi) No order as to costs.”

By communication dtd.03/12/2019(Annex.A-9) , the applicant was informed as follows :-

*“ आपणास या कार्यालयाचे आदेश क्रमांक 650 दिनांक 01.06.2012 पासून वनमजुर या पदावर कायम करण्यात आले असल्याने शासन निर्णय क्र. अनियो-1005/126/सेवा-4, दिनांक 1 नोव्हेंबर 2005 नंतर शासकीय सेवेत रुजू होणा-या कर्मचा-यास जुनी पेंशन योजना बंद करून नविन अंशदान पेंशन योजना सुरु झाली आहे. त्यानुसार आपणांस सेवानिवृत्तीनंतर जुनी पेंशन व सेवा-नि-उपदान अनुज्ञेय नाही. परंतु आपणांस देय असलेले गटविमा योजना व अर्जित रजा रोखीकरणाचे लाभ यापूर्वीच देण्यात आलेले आहे.*

*मा. प्रशासकीय न्यायाधिकरण, नागपुर येथे वरीलप्रमाणे जमा करण्यांत आलेली रक्कम रु.1,97,534/- वर व्याज रु.21491/- ही मा. न्यायाधिकरण, नागपुर येथे जमा करणेबाबतची तजविज ठेवण्यांत येत आहे."*

By order dtd.13/12/2019 (Annex.A-10), liberty was given to the applicant to withdraw the amount deposited by the respondents under the Pension Scheme. On the basis of aforesaid facts, the applicant has raised the following points :-

- 1) The respondent no.2 failed to consider the fact that in the light of the provision of Rule-30 read with Note-1 to Rule 57 of the said Rules the petitioner was entitled to the benefits of his previous service. In view of above on the services of the applicant being regularized on 1.6.2012, the half of the period of service rendered earlier by the applicant was liable to be taken into consideration as per Note-1 of Rule 57 for being held entitled for grant of pension and pensionary benefits.
- 2) The respondent no.2 failed to consider the fact that the applicant initially was appointed on daily wages and the services of the applicant were thereafter regularized. Therefore in view of Note-1 of Rule 57 of Maharashtra Civil Services (Pension) Rules, 1982, half of the earlier service rendered prior to such absorption has been taken into account for considering the period of qualifying service.
- 3) The respondent no.2 failed to consider the fact that both the Labour Court as well as this Hon'ble Tribunal has granted continuity in service to the applicant by an order dated 25.1.2006 and 17.4.2018 and the same has attained finality. Therefore the

petitioner is entitled to get the benefit of Note-1 of Rule 57 of Maharashtra Civil Services( Pension) Rules, 1982.

Hence, this O.A. is for the following reliefs :-

1. Quash and set aside the order dated 3.12.2019 in Case No.Section-4/Estt-1/Court Case/1718/2019-20 passed by the respondent no.2, in the interest of justice;
2. Direct the respondents to grant regular pension and all pensionary benefits in terms of Note-1 of Rule 57 of Maharashtra Civil Services (Pension) Rules, 1982 w.e.f. 31.1.2014 i.e. from the date of superannuation of the applicant;
3. Direct the respondents to pay interest @ 9% per annum to the applicant from the date of his superannuation i.e. 31.1.2014 till its actual realization.

3. Reply of Respondent No. 2 is at pages 72 to 94, in which following grounds are raised :-

- 1) By G.R. dtd.16/10/2012(Annex.R-1) sanction was accorded to create 5089 posts to accommodate Daily wagers in Forest Department by making them permanent in Govt. service.
- 2) One of the conditions of such appointment was as under :-  
*“ त्यांना दि. 1.06.2012 रोजी प्रचलित सेवानिवृत्ती वेतन व महाराष्ट्र नागरी सेवेच्या तरतुदी लागू राहतील.”*
- 3) In the order of appointment dtd.04/12/2012(Annex.R-2), it was

inter-alia stated :-

*“आपली नियुक्ती ही तात्पुरत्या स्वरूपात अधिसंख्य पदावर करण्यात येत आहे”*

4) On 31/10/2005, G.R.(Annex.A-5) was issued. It's heading is :-

“राज्य शासनाच्या सेवेत 1 नोव्हेंबर 2005 रोजी किंवा त्यानंतर नियुक्त होणा-या कर्मचा-यांसाठी नवीन अंशदान निवृत्तिवेतन योजना लागू करण्याबाबत. ”

It stated :-

**“ निर्णय**

2. (अ) शासनाने आता असा निर्णय घेतला आहे की, शासन सेवेत 1 नोव्हेंबर 2005 रोजी किंवा त्यानंतर नियुक्त होणा-या कर्मचा-यांसाठी, सध्या अस्तित्वात असलेल्या निवृत्तिवेतन योजनेऐवजी, केंद्र शासनाच्या धर्तीवर, नवीन “ परिभाषित अंशदान निवृत्तिवेतन योजना” (Defined Contribution Pension Scheme) , खाली नमूद केल्यानुसार, लागू करण्यात येईल.

(ब) शासनाने असाही निर्णय घेतला आहे की, वरील नवीन परिभाषित अंशदान निवृत्तिवेतन योजनेच्या अंमलबजावणीच्या प्रयोजनार्थ हे राज्य शासन केंद्र शासनाच्या, वर उल्लेखिण्यात आलेल्या, नवीन परिभाषित अंशदान निवृत्तिवेतन योजनेमध्ये सहभागी होईल.

(क) शासनाने असाही निर्णय घेतला आहे की,

(i)सध्या अस्तित्वात असलेली निवृत्तिवेतन योजना (म्हणजे महाराष्ट्र नागरी सेवा (निवृत्तिवेतनाचे अंशराशीकरण ) नियम,1984 )

आणि

(ii)सध्या अस्तित्वात असलेली सर्वसाधारण भविष्य निर्वाह निधी योजना, यांच्या तरतुदी, शासन सेवेत 1 नोव्हेंबर 2005 रोजी किंवा त्यानंतर नियुक्त होणा-या कर्मचा-यांना लागू होणार नाहीत.”

4. In his Re-joinder at pages 114 to 118, the applicant has contended that it cannot be automatically inferred that the applicant had voluntarily accepted terms and conditions in the G.R. dtd.16/10/2012 & no term or

condition which is opposed to statutory rights /statutory provisions can be allowed to be legally agitated.

5. In support of his case, the applicant has relied on the following rulings :-

( 1 ) **Parshuram Vithoba Bhandare –Vs- State of Maharashtra**

**and Another (2001(4)Mh.L.J.587).** In this case inter-alia Rules 30 & 57 of the Maharashtra Civil Services( Pension) Rules, 1982, which read as under, were considered :-

**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 Guarantee ; and Family Pension at the same scale as admissible to permanent Government servant.]”

Exception – The rules regarding grant of terminal benefits to temporary Government servants who retire without being confirmed in any post in Government service are embodied in Appendix II.

**Rule 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 1<sup>st</sup> April,1966, one-half of their previous continuous service as Attendants, shall be allowed to count for pension.”

It was held –



*“ 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.”*

(2) **Dattatraya Ramchandra Phadnis and others –vs- State of Maharashtra (2003(3)Mh.L.J. 691).** In this case, it is observed :-

***“Our attention has been invited to Rule 30 of the Pension Rules which states that the qualifying service of a government servant shall commence from the date he takes charge of the post 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 lien or certificate of permanency. ”***

6. The learned Presenting Officer, on the other hand, has relied on **Dwarkabai w/o Namdeo Jagtap and others (2016(2) Mh.L.J.,446).** In this case, it is observed :-

*“ It is for the first time by Government Resolution dated 31-1-1996, the sanction is accorded for creation of 8038 posts of Van Mazdoor all over the State, and the persons working as daily wagers continuously for a minimum period of 240 days during the last five years prior to the date of issuance of the Government Resolution dated 1-11-1994, are regularized in service. It is from that date the complaints took charge of the posts of Van Mazdoor created for the first time. Though the complainants were working as daily wagers Van Mazdoor prior to 1-11-1994, they were not holding any posts. Hence, commencement of their qualifying service in terms of rule 30 reproduced above, shall be w.e.f. 1-11-1994 that is the date on which the complainants were appointed to hold the posts of Van Mazdoor. Undisputedly, none of the complainants have completed ten years of qualifying service from 1-11-1994. Hence, they are not entitled to pension.*

*In the decision of the Division Bench of this Court in Parshuram Vithoba Bhandare’s case the complainant was recruited as daily wager in the year 1964. On 13-9-1980 the post of Labour Supervisor was sanctioned on the establishment of the employer i.e. the State Government. The complainant in the said decision was appointed permanently as Labour Supervisor on 13-9-1983. The complainant therefore, worked on a substantive post which was created on 13-9-1980 though on temporary basis upto 13-9-1983, when he was made permanent. In the light of this factual position, the Division Bench of this Court has held that in terms of Rule 30 of the Pension Rules, the complainant was entitled to pensionary benefits, and in the absence of the pleadings and proof by the State Government to the effect that the salary of the complainant was paid as daily wager from 1964 to 1980, the entire service rendered by the petitioner-complainant was required to be counted as qualifying service.*

***The specific finding is recorded that the complainant in the said decision had completed more than ten years of continuous service as Labour Supervisor, and his salary was at no point of time drawn from the contingency fund.”***

7. The Presenting Officer has further relied on **The Rajasthan Rajya Vidyut Utpadan Nigam Limited, Kota- vs- Shri Karam Singh** ( Judgment of the Hon. Supreme Court dtd.07/09/2016 In Civil Appeal Nos.8807-8808 of 2016.)

In this case, it is held :-

***“ While it is correct that the workman may have been entitled to regular pay scale from 1<sup>st</sup> April 1983 grant of the same would have to be linked to the availability of a post carrying that pay-scale . As the same became available from 1<sup>st</sup> April, 1989, from which date regularization was granted, the High Court, according to us, could not have granted the benefit of regular pay-scale from 1<sup>st</sup> April,1983. In that view of the matter, we interfere with the order of the High Court insofar as grant of regular pay scale is concerned and hold that the respondent workman is entitled to the benefit of regular pay-scale as well as regularization with effect from 1<sup>st</sup> April, 1989.”***

8. The rulings relied upon by the respondents squarely apply to the facts of the case in hand. In one of these rulings viz. **Dwarkabai w/o Namdeo Jagtap and others** (supra) the ruling relied upon by the applicant viz. **Parshuram Vithoba Bhandare** (supra) has been considered and distinguished.

9. It was also pointed out by the Presenting Officer that while partly allowing O.A. No.206/2017, decision as regards entitlement of the applicant for pension and pensionary benefits was left to be taken by the respondents.

10. For the reasons discussed hereinabove, the impugned communication dtd.03/12/2019 (Annex.A-9) cannot be faulted and the applicant would not be entitled to any relief.

11. The O.A. is accordingly dismissed with no order as to costs.

**( M.A. Lovekar )**  
**Member ( J )**

**Dated** :- 08/09/2022

Skt.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Smt. S.K. Thombre.