

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.576/2018. (S.B.)

Smt. Shakuntalabai M. Charde,
Aged about 61 years,
R/o Wardha, Tq & Dist. Wardha.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Principal Secretary,
Department of Food & Civil Supplies and
Consumer Protection,
Mantralaya, Mumbai-400 032.
- 2) The Collector,
Wardha.
- 3) The Tehsildar,
Wardha. Distt. Wardha.

Respondents

Shri M.R. Rajgure, the learned counsel for the applicant.
Shri A.M. Khadatkhar, the learned P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

ORAL ORDER

(Passed on this 13th day of February 2019.)

Heard Shri M.R. Rajgure, the learned counsel for the applicant and Shri A.M. Khadatkar, the learned P.O. for the respondents.

2. The learned P.O. has filed reply affidavit on behalf of respondent No.2, it is taken on record and a copy thereof is supplied to the learned counsel for the applicant.

3. The applicant Smt. Shakuntalabai M. Charde has retired as a Sweeper on 31.3.2014. From the record, it seems that the applicant rendered her service from 10.8.1986 to 30.6.1991 i.e. for 4 years and 20 days. Thereafter from 1.7.1991 to 7.5.1994 i.e. for 2 years and 10 months and thereafter from 7.5.1994 to 2.5.2005 i.e. for 10 years and 11 months on daily wage basis as a Sweeper. Thus, it seems that she has served for a continuous period of 18 years tentatively on the post on daily wage basis as a Sweeper. Subsequently, the applicant approached the Industrial Court by filing Complaint (ULPN) No.174/2005 at Nagpur. The Industrial Court, vide order dated 9.9.2011 was pleased to direct the respondents to give permanency to the applicant in service on the post of Sweeper from the date of filing of the complaint i.e. from 6.6.2005 with all consequential benefits arising therefrom.

4. Against the order passed by the Industrial Court, Nagpur, the Tehsildar, Wardha preferred W.P.No. 5062/2013 before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur and in the said Writ Petition, vide order dated 18.10.2016, the order of Industrial Court was confirmed. Subsequently, order was issued on 6.6.2017 whereby the applicant's services have been regularized and the applicant was posted as Sweeper on regular establishment w.e.f. 6.6.2005. Thereafter the applicant got retired on superannuation on 31.3.2014.

5. The learned counsel for the applicant submits that as per Rules 54 and 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short, Pension Rules), earlier continuous service on temporary establishment of the applicant should have been considered for counting pensionable service. Same has, however, not been considered and the applicant has been denied pensionary benefits.

6. The respondents have tried to justify the order.

7. The learned counsel for the applicant invited my attention to the representation filed by the applicant for grant of pension by adding daily wage service as qualifying service. A copy of the said representation is dated 9.4.2018 and the same is at page

Nos. 70 to 74 (both inclusive). The said representation has not yet been considered.

8. The learned counsel for the applicant also placed reliance on the judgment reported in **2005 (2) Bombay Law Cases-356 in case of Jayshree Narayan Mhaske V/s State of Maharashtra and others in W.P. No. 6622/2004 delivered by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad dated 9.2.2005**, wherein earlier regular service has been counted for the purpose of pension.

9. The learned counsel for the applicant submits that the application can be disposed of if directions are issued to the respondent No.1 i.e. the Govt. by giving directions to take a decision on the representation filed by the applicant dated 9.4.2018 within a stipulated period. Ld. P.O. also agrees for the same. In view thereof, O.A. stands disposed of with following directions:-

ORDER

- (i) The respondent No.1 is directed to take a decision on the representation filed by the applicant dated 9.4.2018 (A-17) within a period of three months from the date of this order.
- (ii) The respondent authorities shall take into consideration all aspects in the representation, so also Rules 54 and 57 of the Pension Rules,

1982 and also the judgment of the Hon'ble High Court reported in **2005 (2) Bombay Law Cases-356 in case of Jayshree Narayan Mhaske V/s State of Maharashtra and others in W.P. No. 6622/2004 delivered by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad dated 9.2.2005** and shall pass necessary order.

- (iii) Such a decision shall be communicated to the applicant in writing.
- (iv) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

Dt. 13.2.2019.
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