

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.647/2015.

(S.B.)

Smt. Damayanti wd/o Shriram Duratkar,
Aged about 65 years,
Occ-Household,
R/o Ram Nagar, Kandli (Paratwada),
Tq. Achalpur, Distt. Amravati.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Forests,
Mantralaya, Mumbai-32.
2. The Chief Conservator of Forests,
Amravati, Distt. Amravati.
3. The Deputy Conservator of Forests,
East Melghat Forest Division, Chikhaldara,
Distt. Amravati.
4. The Accountant General (A & E)-II, (M.S.),
Civil Lines, Nagpur-440 001.
5. The Additional Principal Chief Conservator of Forests,
(Human Rights, Management & Admn.),
(M.S.), Van Bhavan, Ramgiri Road,
Civil Lines, Nagpur-1.

Respondents.

Shri G.K. Bhusari, the learned counsel for the applicant.

Shri A.M. Khadatkar, the Ld. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 19th day of January 2018).

Heard Shri G.K. Bhusari, the learned counsel for the applicant and Shri A.M. Khadatkar, the learned P.O. for the respondents.

2. The applicant Smt. Damayanti wd/o Shriram Duratkar in this O.A. is a widow of deceased Shriram Duratkar who was serving as Van Majur in the office of the respondents. However, for the purpose of convenience, the deceased employee Shriram Duratkar shall hereinafter referred to as ~~deceased Shriram~~.

3. According to the applicant, her husband deceased Shriram was appointed as daily wager vide order dated 29.4.1978 and his services were regularized as Van Majur w.e.f. 1.11.1994. He got retired on superannuation on 31.5.2004. He has, therefore, completed total service of 16 years, 6 months and 9 days i.e. more than 10 years. As per the provisions of Maharashtra Civil Services (Pension) Rules, 1982 (In short ~~Pension Rules~~), commencement of qualifying service is from the date the employee takes charge of the post. He was first appointed either substantively or in an officiating or temporary capacity and, therefore, the entire service of 16 years, 6 months and 9 days of

deceased Shriram i.e. from 29.4.1978 should have been considered for pension.

4. According to the applicant, deceased Shriram requested the respondent authorities to grant him pension by condoning deficiency, if any in the service. His case was recommended by the Deputy Conservator of Forests, Chikhaldara to the Chief Conservator of Forests, Amravati vide letter dated 31.3.2006. However, vide communications dated 9.11.2009 and 26.11.2009, the deceased Shriram's claim was rejected by respondent No.1, as the Finance Department of Govt. of Maharashtra was not in agreement for condoning the shortfall of service. The relevant communication whereby his claim was rejected is as under:-

श्री श्री करणी आता शासनाने या कायान्याचे दि. ३०.९.२००९ चे पत्रास अनुलून संदर्भ . ५ चे शासन पत्र दि. ९.११.२००९ चे पत्रावये कळविले आहे की, "महाराष्ट्र नागरिक सेवा (जवृषी वेतन) नियम १९८२ या नियम ५४ (१) (२) या तरतुदांनुसार विशेष करणे लेखी नमूद करून १ वर्षांच्या मयादेपयस शासकाय कमळायांच्या अहत्ताकार सेवेतील कमतरता मापत करता येते. क्वा यांच्या सेवेमध्ये भर घालता येते. तथापि या नियमांच्या तरतुदांवा वापर अपवादात्मक परिस्थितीत केला जाणे आढोत आहे. या नियमांच्या तरतुदांवा वचार शायतो णता जवृषी वेतनावर क्वा भरपाई जवृषी वेतनावर सेवा जवृषी होणाया लघुवेतन शासकाय कमळायांच्या बाबतीत सवसाधारणपणे केला जातो. एकर सतर नियमांचा वापर सरसकट न करता अपवादात्मक ण करणे आढोत आहे. या णांच्या गुणवोनुसार शासनाकडून ण घेतला जातो. ७७ आधिसंय वनमजूर व २ वनरक यांच्या अहत्ताकार सेवेत महाराष्ट्र नागरिक सेवा (जवृषी वेतन) नियम १९८२ या नियम ५४ (१) (२) नुसार सेवेत भर घालण्याच्या णतावास व वभागाने सहमती दशावल नसयाने सतर णतावास या वभागाची सहमती नाह" असे कळविले आहे. णून या बाबतचा णताव

शासनतरावर अमाय करयात आला आहे. तर यामाणे संबंधितास आपले तरावन कळवयात यावे.”

5. The applicant has, therefore, claimed that both the orders i.e. dated 9.11.2009 and 26.11.2009, be quashed and set aside and the respondents be directed to consider the entire service of the deceased Shriram for counting qualifying service so as to get pensionery benefits.

6. Respondent Nos. 2, 3 and 5 have filed their affidavits-in-reply and admitted that the deceased Shriram's case was recommended by respondent No.2 for grant of pensionery benefits by condoning the shortfall of nine months qualifying service for pensionery benefits. However, no special reason was mentioned for condoning qualifying service. As per the policy of the Government in respect of Rule 54 of the Pension Rules for condonation of delay only exceptional circumstances are to be considered. The deceased Shriram did not fulfill the condition under Rule 54 of the Pension Rules. He was working as a Labourer from 21.1.1978 to 31.10.1994 on daily wages and, therefore, this service cannot be counted for pensionery benefits. The applicant was absorbed w.e.f. 1.11.1994 as Van Majur, Group-D vide order dated 31.1.1996.

7. The respondent No.4 has also filed reply affidavit.

8. The learned counsel for the applicant invited my attention to the recommendation letter dated 31.3.2006 sent by the Deputy Conservator of Forests, East Melghat Forest Division, Chikhaldara to the Chief Conservator of Forests, Amravati. It seems that the deceased Shriram was absorbed in Government service on regular basis as Van Majur and got retired on 31.1.2004 on attaining the age of 60 years. As per Rule 10 (2) of the Pension Rules, a Government servant has to complete not less than 10 years of service for getting pension. The deceased Shriram was short of nine months of service, since he had completed total service of 9 years and 3 months till the date of his retirement after absorption. The Deputy Conservator of Forests, East Melghat Forest Division, Chikhaldara therefore recommended the case of the applicant as per the provisions of Rule 54 (2) of the Pension Rules and requested the competent authority to condone the shortfall and to grant pension to him. It seems that the said recommendation has reached to the Government. The Govt. of Maharashtra in the Department of Revenue and Forests intimated that the claim of the applicant does not fall as an exceptional case and that the Rule 54 (1) and (2) of the Pension Rules cannot be exercised lightly and each case is to be considered on its own merits. It was further intimated that the Finance Department has not given its consent for grant of pension to the applicant and to condone the

deficiency as per Rule 54 (2) of the Pension Rules. This was intimated to the applicant vide letter dated 9.11.2009 (Annexure A-6). In view of the aforesaid decision, final decision was intimated to the deceased Shriram, as already stated, vide communication dated 26.11.2009 (Annexure A-7).

9. The learned counsel for the applicant further invited my attention to some cases wherein the deficiencies in respect of other employees have been condoned by the Government. This information was received by the deceased Shriram under the Right to Information Act as per letter dated 19.4.2014 (Annexure A-9, Page 26 of the O.A.) and as per Annexure A-10 is the list of eight employees, whose deficiency period has been condoned as per Rule 54 (2) of the Pension Rules. From the said list, it seems that the deficiency of various employees for getting pension has been condoned as under:-

अ.प .	नाव	एकूण सेवा कालावधी			अहसाकारण सेवेत भर घालण्यास माग्यता देण्यात आलेला कालावधी.
		वर्ष	माहने	दिवस	
१	पी. सोनू कृसान नैताम, से.नी. वनमजूर	९	३	२८	८ माहने २ दिवस.
२	पीमती कळमा आशालू गडदासवार, से.नी. वनमजूर	९	२	०	१० माहने
३	पीमती नागुबाई बाजीराव इण्टम, से.नी.वनमजूर	९	१	०	११ माहने
४	पीमती गौबाई हामंतू गेडाम, से.नी.वनमजूर	९	१	०	११ माहने

५	पीमती सोमबाई दशरथ कोरत, से.नी.वनमजूर	९	१	०	११ माहने
६	पी. देवाजी लामन ढपाकस, से.नी.वनमजूर	९	२	०	१० माहने
७	पीमती दुगाबाई रामलू भूपेलाखार, से.नी.वनमजूर	९	३	२८	८ माहने २ ढवस
८	पी. आदुल मज्जीद शेख, से.नी.वनमजूर	९	०	०	१ वषा

10. The learned counsel for the applicant has also placed reliance on record one order issued by the Government dated 13.9.2012 (Annexure A-11, Page 28 of the O.A.), from which it seems that the deficiency of one month and two months respectively in respect of one Shri Mahule and Shri Bansod for getting pension as per Rule 54 (2) of the Pension Rules has been condoned by the Government. Perusal of both these orders clearly shows that no specific reason has been given while condoning the deficiency for clearing qualifying service for getting pension in respect of these employees. It is not known as to why the Finance Department gave its sanction while condoning the deficiency of service period in respect of those employees and not consenting for the same in respect of the applicant's husband.

11. It is material to note that the deceased Shriram has worked as daily wager from 19.4.1978 till his services were regularized as Van Majur on 1.11.1994. Till his retirement on 31.1.2004, the deceased Shriram has served for almost 16 years, 6 months and 9

days with the Government and, therefore, in the interest of justice, deficiency in the service, as required for getting pension under Rule 30 of the Pension Rules, should have been condoned.

12. The learned counsel for the applicant has also placed reliance on Rule 30 of the Pension Rules. The relevant rule reads as under:-

30. Commencement of qualifying service.-Subject to the provisions of these rules, qualifying service of a Govt. 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.+

13. From the aforesaid rule, it is clear that even the service of the employee when he was first appointed either substantively or in an officiating or temporary capacity can be considered for giving retiral benefits to the employee. In the present case, as already stated, the deceased Shriram has completed more than 16 years of service in the Government department and there is a deficiency of just nine months so as to complete ten years of continuous service in the permanent capacity as a Govt. servant and, therefore, the respondent authorities ought to have considered the his case, as they have considered in the cases of other employees vide order dated

16.12.2005 (Annexure A-10) and dated 13.9.2012 (Annexure A-11) and should not have discriminated the deceased Shriram. It is material to note that the applicant's husband has died and is survived by his widow who was aged about 65 years at the time of filing an application and considering this aspect, I feel that this is a fit case where the deceased Shriram Duratkar should have been considered fit for grant of benefit under Rule 54 of the Pension Rules, 1982. One of the material aspects in this case which is required to be noted which is not brought to the notice of this Tribunal unfortunately by the Advocates of either of the parties. The claim of the deceased employee was rejected by respondent No.1 vide communication dated 9.11.2009 and thereafter on 26.11.2009 as per Annexure A-6 and A-7 and the deceased employee Shriram Duratkar died on 21.1.2014. The deceased employee Shriram Duratkar has not filed this O.A. But the O.A. has been filed by his widow i.e. the present applicant. It seems that against the orders passed by respondent No.1 on 9.11.2009 and 26.11.2009, appeal was filed before the Lokayukta and the Lokayukta rejected the claim of the deceased Shriram on the ground that the applicant's claim was rejected by the Government. This was informed to the deceased Shriram by the Lokayukta office vide communication dated 24.12.2013 i.e. Annexure A-8 page No.25 of the O.A. Thereafter the applicant's son sought information under the Right to

Information Act as regards the employees whose deficiency in period for getting pension was condoned and after getting that information, this O.A. was filed. Considering this fact, it is made clear that the deceased employee Shriram Duratkar will not get arrears of pension, if the deficiency and the delay is condoned, the applicant who is widow of deceased employee Shriram Duratkar will, however, be entitled to claim family pension in case deficiency is condoned.

14. In view of discussion in foregoing paras, I proceed to pass the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned orders dated 9.11.2009 (A.6) and 26.11.2009 (A.7) issued by the respondents are quashed and set aside.
- (iii) No order as to costs.

Dt. 19.1.2018.

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