

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.918 TO 920 OF 2010

DIST : SATARA

ORIGINAL APPLICATION NO.918 OF 2010

Shri Subhash Balwantrao Gaikwad,)
Ex-Junior Assistant, Working under)
General Manager, District Industries)
Centre, Satara and residing at 18, More)
Colony, Satara 415 002.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Ministry of Industries, Energy &)
Labour Department, Mantralaya,)
Mumbai - 400 032.)
2. The General Manager.)
District Industries Centre, Satara.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.919 OF 2010

Mr. Shivaji Tatu Waydande)
(Since deceased through his legal heirs))



1. Smt. Lata Shivaji Waydande (Wife),)
 2. Deepak Shivaji Waydande (Son),)
 3. Sushil Shivaji Waydande (Son),)
 4. Mrs. Manisha Nitin Kaldive (daughter)
- All residing at R/at 432, Shanivar Peth,)
Satara - 415 002.)...**Applicants**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.920 OF 2010

- Mr. Mohan Parshuram Shinde.)
(Since deceased through his legal heirs)
1. Ajay Mohan Shinde (Son),)
 2. Nilkantha Mohan Shinde (Son),)
 3. Sanjay Mohan Shinde (Son),)
 4. Jayshree Mohan Shinde (daughter))
 5. Rajeshree Mohan Shinde (daughter))
- All residing at R/at 311, Malhar Peth,)
Satara - 415 001.)...**Applicants**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

Shri M. Agavekar, Advocate for Applicants.



**Shri K.B. Bhise with Mrs. A.B. Kololgi, Presenting Officer
for Respondents.**


P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 08.08.2015

JUDGMENT

1. These three Original Applications (OAs) can be disposed of by this common Judgment. The relief herein sought relates to the pensionary benefits in the context *inter-alia* of Rule 67 of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules hereinafter).

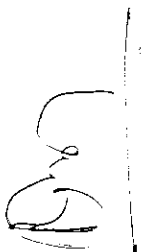
2. The original Applicants in OAs 919/2010 and 920/2010 passed away pending OA and their heirs and LRs have been impleaded hereto. The Applicant Mr. S.B. Gaikwad in OA 918/2010 came to be appointed as Junior Clerk through Zilla Parishad, Satara on 5.7.1963. The deceased original Applicant Mr. S.T. Waydande in OA 919/2010 came to be appointed as a Peon on 20.4.1965 through Z.P. Satara at Government Tanning Centre, Satara. The deceased original Applicant Shri Mohan Shinde in OA 920/2010 came to be appointed as a Skilled Worker on 1.1.1966 through Zilla Parishad, Satara at Government Tanning Centre, Satara. The basic facts are similar, and therefore, I shall now treat the 1st OA



No.918/2010 as a representative OA. However, the conclusions herein drawn and the directions, if any, given would benefit the heirs and LRs of the two deceased original Applicants as well.

3. The Applicant having been appointed on 5.7.1968 as Junior Clerk through Zilla Parishad at the Government Tanning Centre as a State Government employee continued as such till 31st December, 1978. By a G.R. of 25th August, 1978, this Centre at Satara came to be transferred to Maharashtra Small Scale Industries Development Corporation (MSSIDC) with effect from 1.1.1979. Thereafter, it was permanently transferred to Labour Industrial Development Corporation, Maharashtra (LIDCO). With effect from 1.1.1979, all the posts under the said Centre came to be abolished and the services of the employees including those involved herein came to be transferred to the Government. They were treated as retired w.e.f.31.12.1979 and with effect from the next date without any break, they went on the Establishment of LITCO. They retired on various dates and the one in the representative OA retired on 28.2.2006.

4. Then there is a reference to a Circular issued by the Deputy Director of Industries, dated 14.10.1981, which



is at Exh. 'A-2' (Page 7 of the Paper Book (P.B)). That Circular was issued to the Regional Deputy Director of Industries, Pune and Nashik Divisions regarding transfer of the Government Tanning Centre, Satara, as already discussed above. It was mentioned therein that the request of the concerned employees for higher pay scales in accordance with the admissible pay scales for the Z.P. employees could not be granted. The un-numbered Para 2 needs to be reproduced which I do hereby do.

“Further Government has also informed that it has decided that the pay of the employees appointed by the Zilla Parishad should be protected in the corresponding posts & pay scales on their transfer to the state sector. No repatriation order in respect of staff recruited by the Zilla Parishad are necessary. In accordance with the provisions of second proviso to sanction 242 A of the MZP & P.S. Act 1961 (Maharashtra Act No.V of 1962) read with Government notification I & L.D.No. CCT-1063/46888/Ind-II dt. 27-8-70, the services rendered by the persons appointed by the Zilla Parishad, Satara shall be deemed to be service under the State Government.”

A handwritten signature in black ink, appearing to be the initials 'BM', is written above a horizontal line.

5. It is, therefore, very clear that the services rendered by the employees like the present Applicants in Z.P. would be deemed to be service under the State Government.


6. It is the case of the Applicant that though he had been declared as a retired Government servant w.e.f. 31st December, 1978, no pensionary benefits were granted to him, and therefore, he made a complaint to the Lok Ayukta. Pertinently, however, in Para 3 of the Affidavit-in-reply of the 2nd Respondent filed through Smt. M.M. Chavan, In-charge General Manager, DIC, Satara (Para 3), the service rendered by the Applicant under the Z.P. was treated as Government service for which the pension had been made admissible as per the G.R. of 14.6.1979 which is at Exh. 'R-1' (Page 24 of the P.B.). Condition No.3 (viii) from that G.R. is emphasized to buttress the case of the Respondents that, that liability of the Government payable after the final retirement from NITCO. There was a provision therein that for the service rendered under the Corporation, the staff employed by NITCO like the present Applicants should be asked to exercise option as to whether they would like to continue on pension and General Provident Fund Scheme or Contributory Provident



Scheme of the Corporation. According to the Respondents, the Applicant had been granted pension as per the details mentioned in Para 3.1 of the Affidavit-in-reply. Now, in her own way, the deponent of the Affidavit-in-reply accepted the fact that the Applicant had not been given opportunity to exercise the option above referred to. But according to her, the Applicant sought the benefit of Contributory Provident Fund Scheme for which a document is annexed at Exh. 'R-3' (Page 30 of the P.B.). Thereby the NITCO informed the Deputy Director of Industries that they had cleared all the dues of the Applicants and nothing had remained outstanding.

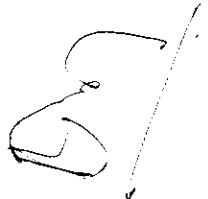
7. I must, however, make it very clear at this stage itself that regardless of whatever order is made hereon, there would be no question of double payment under the same head, if any, and this fact will have to be taken into consideration while working out the admissible and payable dues to the Applicants.

8. The Applicant in Para 5 has referred to the case of what he considers to be similarly placed personnel S/S H.R. Kadam, M.M. Mukane and J.D. Durge. There is also a reference to the case of one Shri L.D. Unavane. Now,



these averments are made in Para 5 of the OA and in Para 2 of the reply, these contents are admitted.

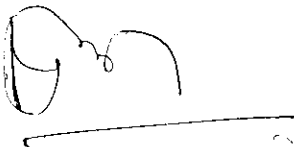
9. In so far as the similarly placed persons aspect of the matter is concerned, an important communication dated 5th February, 2009 is at Exh. 'A-5' (Page 10 of the P.B.). It is addressed by Industries Centre, Bombay to the Government in Industries, Energy and Labour Department. This communication in Marathi at this stage itself needs to be somewhat closely read. It would appear therefrom that the pension matters of the Applicants came to be submitted to the Accountant General for sanction. Certain clarifications were sought by the Accountant General and the same came to be given thereby. The fact with regard to the earlier events upto 1.1.1979 have already been discussed above. It is then mentioned that during that period, in the Tanning Centre, Satara, there were 7 persons out of whom, three came to be appointed through the Government. They were S/S H.R. Kadam, M.M. Mukane and J.D. Durge. Those appointed from the Zilla Parishad were the three employees herein involved and one Shri L.D. Unavane. It was then mentioned that the above referred personnel were asked to give their option as to whether they wanted a lump sum one time amount or the pension as admissible post retirement from NITCO. S/S



H.R. Kadam, M.M. Mukane and J.D. Durge had accepted the first option and taken the benefit of pension also. Now, it needs to be noted that at the time of the arguments, it was clearly admitted as indeed in the Affidavit-in-reply that the NITCO did not take option from the Applicants. The learned Advocate for the Applicants admitted, however, that his clients have taken the benefit from NITCO. Proceeding further in the matter of reading Exh.'A-5', it was clearly mentioned therein that Shri Unavane and the 3 Applicants therein involved were not given the opportunity to give options. It was also clearly admitted that S/S H.R. Kadam, M.M. Mukane and J.D. Durge got the benefit of both the emoluments from NITCO as well as pension. These 3 employees were grouped in Marathi 'अ' of that letter and now let me reproduce a passage in Marathi verbatim.

“वरील (अ) तसेच (ब) मधील नमुद केलेल्या सर्व कर्मचा-यांना (म्हणजे शासकीय नियुक्त ३ कर्मचारी व जिल्हा परिषद नियुक्त ४ कर्मचारी दिनांक ०९.०९.१९७१ पासून लिडकॉमने त्याच पदावर पुढे सामावून घेतले. यामुळे (अ) मधील शासकीय नियुक्त कर्मचा-यांना सेवानिवृत्तीचे लाभ व सेवानिवृत्ती नंतर सेवा सुरु राहिल्याने वेतनाचा लाभ असे दोन्ही फायदे मिळालेले आहेत. वरील प्रमाणे शासकीय कर्मचा-यांना मिळालेल्या दुहेरी लाभा प्रमाणे त्यांनाही लाभ मिळावा असे जिल्हा परिषदेकडून नियुक्त झालेल्या कर्मचा-यांपैकी १) श्री. मो. प.शिंदे, कुशल कामगार यांनी मा. लोकआयुक्त, मुंबई यांच्याकडे दिनांक. २६.०९.१९९० च्या पत्राने अर्ज केला होता.”

The said letter then concluded as follows (in Marathi):




“या प्रकरणी १) श्री. एम.पी.शिंदे, कुशल कामगार २) श्री. एस.बी.गायकवाड, लिपिक ३) श्री. एस.टी. वायदंडे, शिपाई या जिल्हा परिषद नियुक्त कर्मचा-यांना दिनांक १४.०६.१९७९ च्या शासन निर्णयामध्ये विकल्प देण्याची संधी देण्यात आलेली नव्हती. तथापि, जिल्हा परिषदेकडून नियुक्त झालेल्या १) श्री. एल.डी.उनवणे, तांत्रिक सहाय्यक हे लिडकॉमकडून, सेवानिवृत्त झाल्यानंतर महालेखापाल, मुंबई यांचेकडून मासिक सेवानिवृत्ती वेतन मंजूर करण्यात आलेले आहे (प्रत जोडली आहे). त्याप्रमाणे सर्वश्री श्री. एम.पी.शिंदे, कुशल कामगार, एस.बी.गायकवाड, लिपिक, एस. टी. वायदंडे, शिपाई या कर्मचा-यांना ते लिडकॉमच्या सेवेतून सेवानिवृत्त झालेल्या लगतच्या तारखेपासून सेवानिवृत्तीमूळे मिळणा-या ठोक रक्कमेऐवजी मासिक निवृत्ती वेतन मिळण्यासाठी कर्मचा-यांकडून विकल्प घेण्याबाबत शासनाने मंजूरी देणे आवश्यक आहे. शासनाने सदर कर्मचा-यांकडून आता विकल्प घेण्याबाबत आदेश निर्गमित केल्यास सदर कर्मचा-यांना ठोक रक्कमे ऐवजी मासिक निवृत्तीवेतन अनुज्ञेय होईल. अन्यथा सदर कर्मचा-यांना निवृत्तीवेतना ऐवजी ठोक रक्कम अनुज्ञेय आहे. हे कर्मचारी गट-क मधील असले तरीही विकल्प मंजूर करणे ही बाब विकास आयुक्त (उद्योग) यांचे अधिकारात नसलेने या प्रकरणी शासनाने महालेखापाल, मुंबई यांना कळवणे आवश्यक असल्याने याबाबत महालेखापाल मुंबई यांना कळवणे आवश्यक असल्याने याबाबत महालेखापाल मुंबई यांचे दिनांक २९.०९.२००७ चे पत्रानुसार शासनाचा निर्णय महालेखापाल मुंबई यांना कळवणेत याचा ही विनंती.”

10. The above discussion, therefore, would make it very clear that S/S H.R. Kadam, M.M. Mukane and J.D. Durge were similarly placed, but they were given both the benefits. If the record is anything to go by, it is absolutely clear that the Applicants will have to be placed at par with them. There is nothing to place the Applicants at a disadvantageous position because post 1981, all of them should be at par.

11. Now, having entered this factual finding, I may to the extent necessary now refer to Rule 67 of the Pension Rules. The relevant sub-rule is Rule 67(1)(d).

“67(1)(d) : The pro rata pension, gratuity, etc., admissible in respect of the service rendered under Government would be disbursable either from the earliest date from which the Government servant could have been retired voluntarily under the rules applicable to him or from the date of absorption in the concerned organization, whichever is later.”

12. In the present context, the Applicants after completing 20 years service would have retired on 4.7.1988 and if the date of absorption is taken into consideration, that date would have been 1.1.1979. In the prayer clause, apart from the declaration, etc. what in effect is sought is to the entitlement of pensionary benefits from 1.1.1979 or 5.7.1988. Now, the last three words of this particular clause are, “whichever is later”, which would mean that the entitlement should be from 5.7.1988. That is the prayer of the Applicants also though in alternative. However, Mr. Agavekar, the learned Advocate for the Applicants referred me to **Vasant G. Chandan Vs. State of Maharashtra, 1996 II CLR 1053 (SC)**. That was also a case that went to the Hon'ble Supreme Court from our State. The employee concerned was a Peon-cum-Watchman, who was initially

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appointed on 1st April, 1957 in Hyderabad Agricultural Committee and post reorganization, he joined the services of Krishi Utpadan Bajar Committee, Jalna and retired on 1.4.1991 after 35 years of service. His qualifying service was computed from 1st October, 1969 while he claimed it from 1st April, 1957. The only reason why that was denied to him was that he started contributing towards Provident Fund from that particular date. There was a pension scheme which governed the matter of pension in that particular matter. Clause 23 thereof was quoted in Para 3 of the Judgment by the Hon'ble Apex Court. The two dates from which the later one was made applicable was the date, he took charge of the post of first appointment or the date, the employer started deducting the Provident Fund contribution. Very pertinently, it would appear in that case, the PF contribution would have started only in 1969 on account of transfer of service above discussed. It was held by Their Lordships that as between the two by reading later as earlier, the more beneficial of the two courses of action should be adopted.


13. Now, here, we are governed by the Rules framed under the proviso to Article 309 of the Constitution of India and on the peculiar facts hereof, as already discussed above, the Applicant has received the one time emoluments



from NITCO as well and most importantly, here even the Applicant, may be because of that very reason or whatever has claimed the benefits either from 1988 or 1979. In that view of the matter, therefore, applying the principles in letter and spirit of **Vasant Chandan** (supra) to the present matter, the strict interpretation and reading the word, "later as later will have to be made". After-all, in these matters, the governing instrument which is the Pension Rules herein was the scheme in **Vasant Chandan** (supra) are decisive. They will have to be construed in the light of the prayer clause though in alternative.

14. Mr. Agavekar also referred me to **Dr. Uma Agarwal Vs. State of UP, 1999 (2) L & N 651 SC** where Their Lordships were pleased to severely deprecate practice of needless delay in the matter of granting pensionary benefits to the retired employees and laid down the need to grant interest on the unpaid amount in the event of needless protraction in the pensionary benefits.

15. Having discussed the various aspects herein involved, I find that, it appears that as far as Mr. Unavne is concerned, his pensionary matter has been cleared by the Principal Accountant General, Maharashtra. A document in that behalf is at Exh. 'R-2' (Page 28, dated 3.3.2016).



16. The upshot, therefore, is that the Applicant as well as the deceased Applicants would be entitled to the relief with effect from the date, they would have completed 20 years of service from their first appointment in Zilla Parishad. The Respondents are directed to re-work out the case of the Applicant Shri S.B. Gaikwad and the deceased Applicants S/S S.P. Waydande and M.P. Shinde and at that time take into consideration also the effect of the amount, if any, already paid by NITCO to the said Applicants and its effect, if any. Compliance within three months from today. The OAs are allowed in these terms with no orders as to cost.

Sd/-
(R.B. Malik)
Member-J
08.08.2015

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08.08.16

Mumbai
Date : 08.08.2015
Dictation taken by :
S.K. Wamanse.