



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4488 OF 2023

PETITIONER :-
(Ori. Respondent)

Nagpur Municipal Corporation, Civil
Lines Nagpur, through its Commissioner
of Municipal Corporation, District
Nagpur.

(On RA)

..VERSUS..

RESPONDENTS :-
(Ori. Petitioners)

- 1) Bhimrao S/o Tukaram Meshram, aged about 58 years, Occupation : Service, R/o Plot No.90, Near Hanuman Mandir, Umargaon, Kalmana, Nagpur.
- 2) Suresh S/o Mahadeorao Pote, aged about 62 years, Occupation: Service, R/o 18, Sarswati Nagar, Near Chirag Ice Factory, Wathoda Layout, Wathoda, Nagpur.
- 3) Chandra W/o Sajatrao Kannake, aged about 58 years, Occupation: Service, R/o Ashok Nagar, Gond Mohola, Dr. Ambedkar Marg, Nagpur.
- 4) Jaganath S/o Tukaram Itankar, aged about 61 years, Occupation: Service, R/o Plot No.2136/A13, Near Railway Station, Bhandewadi, Nagpur.
- 5) Suresh S/o Pundalik Kature, aged about 60 years, Occupation: Service, Plot No.122, Hanuman Temple, Bidgaon, Nagpur.

- 6) Fulchand S/o Harichand Jamgade, aged about 54 years, Occupation: Service, R/o House No.93, Titur Road, Bhandewadi, Nagpur.
 - 7) Munkunda S/o Kondbaji Ambone, Aged about 53 years, Occupation: Service, R/o House No.2283/A, Old Basti Wathoda, Bezenbagh, Nagpur.
 - 8) Pramod S/o Pandurang Ganthade, Aged about 53 years, Occupation: Service, R/o Behind Anil Beer Bar, Hiwari Lay out, Shastri Nagar, Bagdganj, Nagpur.
 - 9) Dharmravi S/o Gulabrao Gaigawali, aged about 54 years, Occupation: Service, R/o Near Water Tank, Plot No.64, Raut Nagar, Nagpur.
 - 10) Someshwar S/o Tukaram Katore, aged about 56 years, Occupation: Service, R/o Bidgaon, Tq. Kamptee, Dist. Nagpur.
- (ALL ON RA)

WITH
WRIT PETITION NO.4955 OF 2023

PETITIONER :- Nagpur Municipal Corporation, Nagpur,
Through its Commissioner, Civil Line,
Nagpur – 440001

... Original Respondent No.2

..VERSUS..

RESPONDENTS :- 1) Premchand S/o Mahadevrao Timane,
aged about 55 years, Occ :- Labour, R/o
Nandagiri Road, Near Lal Bahadur

Shashtri Garden, Kumbhar Pura, Galli
No.1, Pachpaoli, Nagpur – 440017

... Original Complainant

- 2) The State of Maharashtra,
Through its Secretary, Nagar Vikas
Vibhag, Mantralay, Vistar Bhawan,
Mumbai – 400032

... Original Respondent No.1

WITH
WRIT PETITION NO.5846 OF 2023

PETITIONER :- Nagpur Municipal Corporation, Nagpur,
Through its Commissioner, Civil Line,
Nagpur – 440001

... Original Respondent No.2

..VERSUS..

RESPONDENTS :- 1) Devidas S/o Vyankatrao Bhivgade, aged
about 56 years, Occupation: Labour, R/o
Near Nimje House, House No.1978/A,
Binaki Joshipura Road, Nagpur – 440017

... Original Complainant

- 2) The State of Maharashtra,
Through its Secretary, Nagar Vikas
Vibhag, Mantralay, Vistar Bhawan,
Mumbai – 400032

... Original Respondent No.1

WITH
WRIT PETITION NO.5187 OF 2023

PETITIONER :- Nagpur Municipal Corporation, Civil
(Ori. Respondent) Lines, Nagpur, through its Commissioner
of Municipal Corporation, District
Nagpur

..VERSUS..

RESPONDENTS :-
(Ori. Petitioners)

- 1) Baliram S/o Jago Shende, aged about 58 years, Occupation: Service, R/o Juni Kamptee, Post Godegaon, Tah. Parshivani, Dist. Nagpur
- 2) Sampat S/o Gautuji Saire, aged about 50 years, Occupation: Service, R/o Juni Kamptee, House No.218, Post. Godegaon, Tah. Parshivani, Dist. Nagpur
- 3) Kishor S/o Madhavrao Lambat, aged about 52 years, Occupation: Service, R/o Jaripatka, Behind Bara Kholi, Nagpur
- 4) Shekhar S/o Shriram Ramteke, aged about 51 years, Occupation: Service, R/o Pili River, Near I.G.M. Convent, Post Uppalwadi, Tah. & Dist. Nagpur
- 5) Pradeep S/o Dashrath Kanfade, aged about 55 years, Occupation: Service, R/o Post Khairy, Ward No.1, Near Annuttar Boudh Vihar, Khairy, Tah. Kamptee, Dist. Nagpur
- 6) Gajanan/Kailas S/o Wamanrao Dhande, aged about 50 years, Occupation: Service, R/o Near Ganesh Mandir, 2095, Pardi Police Station, Bhandara Road, Nagpur
- 7) Anil S/o Chandrakant Jagtap, aged about 60 years, Occupation: Service, R/o Behind Green Lawn, Gonhisim, Bahadura, Nagpur

(ALL ON RA)

WITH
WRIT PETITION NO.4961 OF 2023

PETITIONER
(Ori. Respondent)

:- Nagpur Municipal Corporation, Civil Lines, Nagpur, through its Commissioner of Municipal Corporation, District Nagpur

..VERSUS..

RESPONDENTS
(Ori. Petitioners)

- 1) Ajay S/o Domaji Kambade, aged about 58 years, Occupation: Service, R/o B/H Tarangan Mangal Karyalaya Quarter 2/60 Raje Raghujji Nagar, Housing Board Collony, Hanuman Nagar, Nagpur
- 2) Atul S/o Madhukar Papadkar, aged about 59 years, Occupation: Service, R/o Raje Raghujji Nagar, Quarter 6/14, Nagpur
- 3) Manohar S/o Manik Pachbudhe, aged about 53 years, Occupation: Service, R/o Plot No.15, Near Hanuman Mandir, Bidgaon, Nagpur

(ALL ON RA)

WITH
WRIT PETITION NO.5836 OF 2023

PETITIONER

:- Nagpur Municipal Corporation, Nagpur, Through its Commissioner, Civil Line, Nagpur – 440001

... Original Respondent No.2

..VERSUS..

RESPONDENTS

- 1) Bhimrao S/o Mahadevrao Khobragade, aged about 54 years, Occ :- Labour, R/o. Near Budhavihar, Plot No.744/70, Jagruti Nagar, Shantinagar, Nagpur – 440002

... Original Complainant

- 2) The State of Maharashtra,
Through its Secretary, Nagar Vikas
Vibhag, Mantralay, Vistar Bhawan,
Mumbai – 400032

... Original Respondent No.1

Mr. J.B. Kasat, Advocate for Petitioner.

Mr. H.D. Dubey, Advocate for respondents/State.

Mr. S.G. Ingole, Adv. with Mr. Syed Sufiyan, Adv. for Respondents.

CORAM : ROHIT W. JOSHI, J.

DATE OF RESERVING THE JUDGMENT: 13.10.2025

DATE OF PRONOUNCING THE JUDGMENT: 26.03.2026

1. Heard.

2. Since all the cases involve identical dispute with respect to claim of pension, all these petitions are being decided by common judgment. The facts of Complaint (ULP) No.25 of 2021 are taken into consideration for adjudication.

3. **Rule.** Rule is made returnable forthwith. Heard finally with consent of learned counsel for the respective parties.

4. The present petition is filed challenging the judgment and order dated 05.12.2022, passed by the learned Member,

Industrial Court No.1, Nagpur, in Complaint (ULP) No.25 of 2021.

The petitioner is the employer of the respondents. The parties will be referred as “NMC” and “the employees” respectively hereinafter.

5. All the employees had filed Complaint (ULP) No.25 of 2021 claiming that they were appointed as daily wagers in the Garden and Water Department of NMC, their initial appointments being made between the years 1991 to 1996 and that subsequently they were granted benefit of permanency in the months of June, July and November, 2006. Their contention is that their services are governed by Model Standing Orders framed under the Maharashtra Industrial Relations Act, 1946 and that upon completion of 240 days of service in a calendar year, they are entitled to the benefit of permanency in service. The employees therefore prayed that as against the dates of regularization/permanency granted in the year 2006, the same should be granted to them from the date on which each of them completed 240 days of service and that the contractual service of 240 days should also be counted for the purpose of payment of gratuity and pension.

6. The petitioner/NMC opposed the complaint by filing reply. The said complaint came to be partly allowed vide judgment

and order dated 05.12.2022. Perusal of Paragraph Nos.13 and 15 of the judgment by the learned Industrial Court will demonstrate that it has categorically held that the claim of the employees for grant of permanency upon completion of 240 days of service cannot be entertained, since order of permanency granted in the year 2006 is accepted by them and no grievance is raised in that regard. The directions for counting service after completion of 240 days of service is for the purpose of calculation of pension and gratuity. The learned Industrial Court has directed the NMC to fix the date on which each employee completed 240 days of service in a calendar year and to treat the same as the date of entry in service for the purpose of computation of pension and gratuity. It is held that the employees will be entitled to the benefit of pension upon completion of 240 days of service. This order is challenged by NMC in the present petition.

7. As regards gratuity, perusal of order dated 19.07.2023 passed in the present petition will demonstrate that the NMC has accepted that employees will be entitled for the benefit of gratuity even for the contractual period of employment.

8. As regards entitlement of regularization in service upon completion of 240 days of service, this Court has taken a view vide judgment dated 22.12.2025 in Writ Petition No.496 of 2023 (Subhash Sukhdev Sahare ..vs.. NMC and another) and other connected petitions that, in the absence of sanctioned post, the daily wagers/contractual employees appointed by NMC are not entitled to claim regularization in service upon completion of 240 days of service, as per clause 4(c) of the Model Standing Orders (hereinafter referred to as “MSO”).

9. The dispute between the parties is now restricted to pensionary benefits. Perusal of paragraph-3 of the petition further indicates that, according to NMC, the employees will be governed by the New Pension Scheme i.e. the Defined Contribution Pension Scheme (DCPS) and that they cannot claim the benefit of the Old Pension Scheme. As against this, the contention of the employees is that they are entitled to seek pension under the Old Pension Scheme since their initial appointments are prior to the introduction of the New Pension Scheme. The contention of the employees is that although their services are regularized in the year 2006 after the introduction of the New Pension Scheme, since they were in

employment, although as daily wagers, prior to the introduction of the New Pension Scheme, they will be governed by the Old Pension Scheme and that service rendered prior to the date of regularization will also have to be taken into consideration for the purpose of computation of pension.

10. Applicability of MCS (Pension) Rules, 1982 to establishment of NMC qua employees who are appointed in service prior to 01.11.2005 for the purpose of pension is not in dispute. Both parties have placed reliance on Rules 30 and 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as “MCS (Pension) Rules, 1982”) in support of their respective submissions. Whereas, the contention of complainants is that service rendered as daily wager is required to be counted towards pensionable service, the stand of NMC is that the complainants were not appointed as daily wager against any sanctioned post and therefore service rendered as daily wagers will not qualify as pensionable service. It is also contended that the services of complainants were regularized after 01.11.2005 and therefore provisions of MCS (Pension) Rules 1982 are not applicable to them.

11. Perusal of the complaint will demonstrate that the complainants were appointed initially as daily wagers thereafter were regularized in service as under:-

Complaint No.	Date of appointment as daily wagers	Date of regularization
1.	01/07/1991	19/06/2006
2.	20/01/1992	19/06/2006
3.	29/02/1992	17/11/2006
4.	15/04/1996	13/07/2015
5.	15/04/1996	13/07/2015
6.	15/04/1996	13/07/2015
7.	15/04/1996	13/07/2015
8.	15/04/1996	13/07/2015
9.	15/04/1996	13/07/2015
10.	15/04/1996	13/07/2015

12. The learned Industrial Court has granted relief with respect to payment of pension by placing reliance on judgment of this Court in the case of *Narendra Shaligram Thakre & others ..vs.. Nagpur Municipal Corporation and another*¹. In the said case, it is held that the complainants who were employees of NMC, were entitled to benefit of regularization of service upon completion of 240 days of service. However, the said relief was not granted to them since their services were regularized in the year 1994 and the

¹ In WP No.643/1995 decided on 22.03.2006

complaint was filed after an inordinate delay. In the said case, this Court did not grant other monetary benefits to the complainants except directing NMC to fix a date on which each complainant had completed 240 days of service for the purpose of granting benefit of pension and gratuity. The learned Industrial Court has followed the said course in the present case as well.

13. However, as stated above while dealing with contention with respect to claim of regularization in service upon completion of 240 days, this Court has held in the case of *Subhash Sukhadev Sahare* (Supra) that unless the initial appointment of an employee working with the NMC is against a sanctioned post, the employee concerned cannot claim that his service will be regularized upon completion of 240 days of service in a calendar year as per clause 4(c) of MSO. It is held that the benefit of the said provision can be claimed only if initial appointment is against the sanctioned post. The complainants were not appointed as daily wages against any sanctioned post. The complainants were not appointed as daily wagers against any sanctioned post. In view of the aforesaid, relief of pensionary benefits cannot be granted to the complainants on the ground that they are entitled for regularization in service from the

day on which they completed 240 days service in a calendar year, as was done in the case of *Narendra Shaligram Thakre* (Supra).

14. The complainants have placed reliance on judgment of the Hon'ble Supreme Court in the case of State of *Himachal Pradesh and another ..vs.. Sheela Devi*², which is subsequently followed in the case of *S.D. Jayaprakash and others ..vs.. Union of India and others*³. They have also placed reliance on Division Bench judgment of this Court in the case of *Jagjeewan Jaikumar Sanghai (since deceased) through LRs ..vs.. Parbhani Municipal Corporation and others*⁴ to contend that service rendered as daily wager is required to be taken into consideration for the purpose of computing pensionable service.

15. As against this, the learned Advocate for the NMC has placed strong reliance on Division Bench judgment in the case of *Sanjay N. Revatkar ..vs. Chief officer, Municipal Council, Wardha and others*⁵ and a Single Bench decision in the case of *Municipal Council through its Chief Officer ..vs.. Ramesh Haribhauji Wankhede*⁶.

2 2023 SCC OnLine SC 1272

3 2025 SCC OnLine SC 973

4 2018(4) Mh.L.J. 947

5 In WP No.1533/2011 decided at Nagpur Bench on 07.10.2011

6 2024 SCC OnLine Bom 2127

16. In the case of *Purshuram Vithoba Bhandare ..vs. State of Maharashtra and others*⁷, this Court was dealing with a case of a daily wager who was appointed on the post of Labour Supervisor in the year 1964. The said post was sanctioned subsequently in the year 1980. The petitioner in the said case was granted permanent appointment on the said post vide order dated 13.09.1980. He attained the age of superannuation before completing 10 years of service after 13.09.1980 i.e. the date on which he was appointed on permanent basis. His pension case was rejected on the ground that he had not completed qualifying service of 10 years after 13.09.1980 i.e. from the date of permanent appointment. In this backdrop, issue arose as to whether services rendered as daily wager could be taken into consideration. Referring to Rules 30 and 57 of the MCS (Pension) Rules, 1982 the Division Bench held that since the petitioner was working on the post from the year 1964, although as a daily wager, and it was not the case of the State that his salary was paid from contingency fund, services rendered from the year 1964 were required to be taken into consideration for computing pensionable service. Thus, service rendered as a daily wager from 1964 to 1980 against a non-sanctioned post was

7 2001(4) Mh.L.J. 587

counted as pensionable service.

17. In the case of *Shivappa ..vs.. State of Maharashtra and others*⁸, again Rules 30 and 57 of the MCS (Pension) Rules, 1982 fell for consideration before Division Bench of this Court. Petitioner in the said case was appointed as part-time peon in a school run by the Zilla Parishad. He was thereafter appointed on regular basis vide order dated 07.07.1990. He attained the age of superannuation on 30.04.1993. It was the case of the petitioner that he was entitled to regularization of service in the year 1973 itself, however, he was wrongly deprived on the said benefit, which was finally granted in the year 1990. Upon his superannuation, dispute arose as to whether service rendered prior to 06.07.1990 could be taken into consideration. Accepting the contention of the petitioner, this Court has held in paragraph-6 of the judgment as under :-

“6. The only crux in the present matter as the Zilla Parishad authorities has rejected the claim of present petitioner relying on Note 2, however, considering the factual aspect from the present case as it is seen that the initial appointment order of the present petitioner as part time Peon is 24-7-1970; he continued as part time Peon till 10-7-1990 and thereafter by order dated 6-7-1990 the petitioner was taken on regular cadre in the pay scale of Rs. 750-12-870-DR-14-940 by the

Chief Executive Officer, Zilla Parishad. The order passed by the Chief executive Officer, Zilla Parishad is also on record and the very wording of the said order safely makes it clear that the persons who are working as part time and salary being paid from contingency, those persons are being taken on regular cadre in class-4 and being fixed in the pay scale of Rs. 750-12-870-DR-14-940. After going through the order dated 7-7-1990 it can be said that it is the fresh order giving regular employment to the petitioner, however, as he was already worked as part time Peon and being paid from contingency the services being regularised in the pay scale in class-4 servant. We have gone through the Note 1 and Note 2 of Rule 57 and we find that the Zilla Parishad has wrongly applied note 2 in the present matter while rejecting the claim of the petitioner to grant pension, as in fact in the present case, Note 1 of Rule 57 is applicable. Therefore, we find that the claim as set up by the present petitioner that he is entitled for pensionary benefits, is definitely justified.”

18. The Division Bench directed the respondent/employer in the said case to consider the case of the petitioner for granting him pension as per Rule 57 Note 1 of MCR Pension Rules, 1982.

19. In both these cases, services rendered by employees as daily wager is directed to be taken into consideration as pensionable service.

20. In the case of *Parshuram Bhandare* (Supra), the post on which the petitioner was working as daily wager was sanctioned in the year 1980. The petitioner had rendered 16 years service from 1964 onwards against a post, which was not sanctioned till 1980. Since the post was subsequently sanctioned and salary was not paid to the petitioner out of consolidation fund, the Division Bench held that service rendered from the year 1964 was required to be taken into consideration for claim of pension.

21. As against this, in the case of *Shivappa* (Supra), the Division Bench found that since salary was paid to the petitioner in the said case, out of contingency fund, the services rendered as daily wager were required to be counted as per Note 1 of Rule 57 of the MCR Pension Rules, 1982, which provides that in cases where employees who are paid from contingency fund are subsequently brought on regular pensionable establishment, half of their previous continuous service should be counted for calculating pensionable service. It needs to be reiterated that service rendered by Shivappa till the year 1973 to 1990 was as a part time peon and yet, half of the said period was directed to be counted towards pensionable service.

22. The judgments in the cases of *Parshuram* (Supra) and *Shivappa* (Supra) are considered in the case of *Waliuddin S/o Pashasaheb ..vs.. State of Maharashtra and another*⁹. The petitioner in the said case was appointed on daily wager with respondent/Municipal Council on 01.11.1973 and worked till 30.09.1974. A reference was made before Industrial Court contending that employees working on daily wages for a period of 240 days in a calendar year were entitled to benefit of permanency. The reference was answered in favour of the workers/daily wagers, directing that daily wager who has completed 240 days service in a calendar year should be granted permanency upon completion of 240 days service. The award was accepted by the Municipal Council/employer. Accordingly, order dated 21.11.1986 was issued granting permanency to the petitioner upon completion of 240 days of service. It was stated in the appointment order that the petitioner will be continued as daily wager till vacancy in permanent post was available. Thereafter, vide subsequent order dated 19.12.2000, the petitioner was granted permanency with effect from 01.12.2000. The petitioner attained age of superannuation on 28.02.2007. In this backdrop, dispute arose as to whether the petitioner was

9 WP No.1542/2008 decided at Aurangabad Bench on 25.08.2010

entitled for pension. Referring to Rules 30 and 57 of the MCR Pension Rules, 1982, the Division Bench held that in view of Note 1 to Rule 57, the petitioner was entitled to receive pension by taking into consideration half of the service rendered by him from 01.11.1973 to 30.09.1974 and 21.11.1986 to 30.11.2000 (service rendered as daily wager in absence of any sanctioned post) in addition to service from 01.12.2000 to 28.02.2007 (service rendered as regular employee against sanctioned post). The Division Bench held that service rendered from 21.11.1986 till 30.11.2000 was required to be taken into consideration to the extent of half of the length of service for counting pensionable service in view of Note 1 to Rule 57. Half of the service is ordered to be counted in view of the contention of respondent/Municipal Council that salary during the said period from 21.11.1986 to 30.11.2000 was paid out of contingency fund. Thus, in this case, service rendered by the petitioner as a daily wager which was not against any sanctioned post was ordered to be taken into consideration for computing pensionable service.

23. In the case of *Syed Afzaluddin Ustad S/o Abdul Samad ..vs.. State of Maharashtra and another*¹⁰, the petitioner was

¹⁰ WP No.815/2011 decided at Aurangabad Bench on 24.08.2011

initially appointed as daily wager in Municipal Council in the year 1987. His services were regularized pursuant to direction dated 29.12.2000 issued by the Government of Maharashtra. The Government of Maharashtra had declared that the employees whose services were regularized shall not claim any financial or other benefit of counting their earlier services rendered as daily wager for the purpose of computation of pension. The respondent/ Municipal Council raised a contention that since the petitioner had accepted all the conditions imposed for regularization of services, he was estopped from claiming pension on the basis of service rendered as a daily wager. The contention was rejected by this Court holding that there cannot be any estoppel against law. Services rendered by the petitioners as a daily wager were ordered to be considered towards pensionable service.

24. In the case of *Jagjeevan Jaikumar Sanghai* (Supra), the petitioner was appointed as Junior Clerk as a daily wager in January 1989. He was granted permanency vide order dated 27.09.2001. He retired from service on 31.07.2006. Upon his superannuation, a question pertaining to right to receive pension by counting service rendered as a daily wager arose for consideration. While granting

benefit of regularization, one of the conditions imposed was that he will not be entitled to claim monetary or service benefit of past service rendered as a daily wager. The petitioner had also tendered affidavit accepting the said condition. In view of the aforesaid, legal issue as to whether past service rendered as daily wager could be counted towards pensionable service and estoppel arose for consideration. The Division Bench referred to judgment in the case of *Syed Afzaluddin Ustad* (Supra) and rejected the contention by the employer with respect to estoppel. On merits also, it was held that service rendered on daily wager since the year 1989 was required to be taken into consideration as pensionable service. It will however be pertinent to state that in this case, the petitioner was working as daily wager against a sanctioned post.

25. From the above decisions, it appears that this Court has taken a consistent view that the services rendered by an employee as a daily wager needs to be taken into consideration for computation of pensionary services if his services are regularized and he retires from a service as a regular / permanent employee, even in cases where service is rendered as a daily wager against an unsanctioned post. Likewise, even service rendered as part time employee needs to

be counted towards pensionable service in case where services of such part time employee are regularized and he superannuates from service as a regular employee in a pensionable establishment.

26. The petitioners have also placed reliance a judgment in the case of *Sheela Devi* (Supra). In the said case, the respondents/employees were in employment in Education and Ayurvedic Department of State Government as contractual employees. While they were in employment, the earlier pension scheme was substituted by a new pension scheme in the year 2004. Under the new pension scheme, the right to receive pension was abolished. The respondents who were engaged on contract basis, were granted regularization in service after advent of new pension scheme, 2004. The contention of the respondent was that after regularization of their services, the period of service rendered as contractual employees was required to be counted for the purpose of pension. The State Government refused to count period of contractual service for the purpose of pension. The High Court allowed the petition filed by the respondents/employees holding that in view of regularization of their services, the period of service rendered by the employees on contractual basis, was required to be

counted for extending benefit of pension to them. The State Government challenged the order passed by the High Court before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the petition in view of Rule 17 of the Central Civil Services (Pension) Rules, 1972. Rule 17 of CCS Pension Rules read as under :-

“17. Counting of service on contract.- (1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either-

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service;

(b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service or if the Government servant is on leave on the day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of

Office within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefit payable or paid to him on account of service rendered on contract.”

27. It will be pertinent to state that Rule 2(f) of the CCS Pension Rules provides that the said rule shall not be applicable to persons employed on contract. However, having regard to express language of Rule 17, the Hon’ble Supreme Court has held that benefit of past contractual service will have to be granted to the employees in view of regularization of their service, having regard to the mandate of Rule 17 of the CCS Pension Rules.

28. The said decision is followed by the Hon’ble Supreme Court in the case of *S.D. Jayaprakash* (Supra). In the said case, the respondent/Union of India sought to distinguish the judgment in the case of *Sheela Devi* (Supra) on the ground that initial appointment of the petitioners (employees) was not against any sanctioned post. The Hon’ble Supreme Court allowed the petition of the employees and issued direction to consider their case for grant of pension by counting service rendered on contract basis in view of judgment in the case of *Sheela Devi* (Supra).

29. Rule 17 of CCS Pension Rules is identical with Rule 38 of the MCS (Pension) Rules, 1982. In view of aforesaid, the said decision will be applicable in the present case as well.

30. The learned Advocate for the petitioner/NMC however places reliance on Division Bench judgment in the case of *Sanjay M. Revatkar* (Supra). In the said case, the services of the petitioner/employee who was appointed as daily wager were regularized on 02.08.2003 with a condition that he will not be entitled for benefit of past service, either financial or otherwise. The petitioner retired from service on 31.12.2010. His claim for pension was rejected on the ground that he had not completed 10 years qualifying service post after 02.08.2003 i.e. date of regularization of service. It will be pertinent to mention that in the said case, the petitioner had filed a complaint before the Industrial Court under Section 28 of the MRTU and PULP Act, 1971. The office order issued by the Regional Director of Municipal Administration whereby permission was granted to create posts for regularization of service of daily wagers, imposed a condition that the daily wager should withdraw all Court cases claiming benefit on account of service rendered as daily wager. The petitioner in the said case had

withdrawn the complaint filed by him as required under office order. In view of this, it is held that the petitioner had acquiesced in the action and therefore, could not claim benefit of past service rendered as daily wager. This Court also rejected the contention of the petitioner that past service was required to be counted in view of Rule 30 of MCS (Pension) Rules, 1982 on the ground that qualifying service is required to be counted from the date on which employee is first appointed against a post, either, substantively or in officiating or temporary capacity and that the post was created for the first time on 03.06.2003. For these reasons, services rendered as daily wager were not counted towards pensionable service.

31. The said judgment in the case of *Sanjay Revatkar* (Supra) does not take into consideration Rule 57 of the MCS Pension Rules, 1982. Likewise, attention of the Court was not drawn to earlier decisions in the cases of *Parshuram Bhandare, Shivappa, Walliuddin and Syed Afzaluddin Ustad* (Supra).

32. Apart from this, the decision in the said cases, turns on its own facts, where the petitioner had withdrawn complaint filed under MRTU and PULP Act, 1971 with respect unfair trade practice upon benefit of regularization being conferred upon him.

In the present case respondents/complainants have not withdrawn the complaints filed by them.

33. As regards judgment in the case of ***Ramesh Haribhauji Wankhede*** (Supra), which is relied upon by Mr. Kasat, learned Advocate for the NMC, the said decision deals with right of workmen to claim regularization in service upon completion of 240 days service in a calendar year as per clause 4(c) of MSO. It is held that benefit of regularization upon completion of 240 days service cannot be claimed by the employees of a local body in the absence of any sanctioned post. Apart from this, while dealing with the prayer for pension, the said judgment places reliance on judgment in the case of ***Sanjay Revatkar*** (Supra) to hold that the employees in the said case were not entitled to claim pension. For the reasons recorded in paragraph 31 above while dealing with ***Sanjay Revatkar*** (Supra), it will not be possible to agree with the view in ***Ramesh Wankhede*** (Supra) regarding the respondents/employees right to claim pension.

34. In view of judgments in the cases of ***Parshuram Bhandare, Shivappa, Walliuddin*** and ***Syed Afzaluddin Ustad*** (supra), the services rendered by the complainants as daily wagers

will have to be taken into consideration for counting pensionable service, although the same was not against any sanctioned post. Likewise, the contention with respect to estoppel in view of acceptance of orders granting permanency which state that the complainants will not be entitled to benefits of past service for any purpose is also liable to be rejected, in view of judgment in the case of *Syed Afzaluddin Ustad* (supra). In the considered opinion of this Court, the service rendered by respondents as contractual employees is required to be counted for the purpose of pension. Likewise, in view of judgments of the Hon'ble Supreme Court in the case of *S.D. Jayaprakash* and *Sheela Devi* (supra), the complainants who were appointed on contractual basis as daily wagers prior to introduction of New Pension Scheme will be entitled to receive pension under the Old Pension Scheme as per MCS (Pension) Rules, 1982 .

35. It is, however, necessary to state that there is no evidence to ascertain as to whether salary of complainants was paid from the contingency fund or not. In the event, the salary for contractual period was paid from contingency fund, half of the service rendered on contractual basis will be counted as pensionable service. If the salary was not being paid from contingency fund, entire service

rendered, as contractual employees will have to be counted as pensionable service.

36. In view of the reasons recorded above, the petitioner/NMC is directed to consider the case of each complainant/respondent and in cases where the total period of service rendered, including service rendered as daily wager, even against an unsanctioned post, is more than the pensionable service, to compute the amount of pension payable to all the complainants who have superannuated from service and to make payment of pension to them as early as possible. Arrears of amount of pension shall be clear as early as possible and in any case, on or before, 30.06.2026. With respect to complainants, who are still in service, pension shall be paid on their superannuation in accordance with MCS (Pension) Rules, 1982.

Petitions are **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate