

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3493 OF 2015

Vijaya Satyavijay Hiraskar,
Age : - Major, Occu.: - Service,
R/o Near Civil Hospital,
Osmanabad, T/q and Dist. Osmanabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya Mumbai 32.
2. The Director of Education,
Pune.
3. The Deputy Director of Education,
Latur.
4. The Chief Officer of Municipal
Council, Osmanabad,
Tq. & Dist Osmanabad. .. Respondents

Shri Ganesh J. Kore, Advocate for the Petitioner.
Smt. S. A. Dhumal, A. G. P. for Respondent Nos. 1 to 3.
Shri R. V. Naiknaware, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 13 AUGUST, 2015.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of

the learned counsel for the respective parties taken up for final hearing.

2. Mr. Kore, the learned counsel for the petitioner submits that, the petitioner was working from 1986 to 20th August, 2009 as an Assistant Teacher on temporary basis and on 21st August, 2009 her services were regularized. The learned counsel submits that, the service rendered from 1989 to 20th August, 2009 ought to have been considered for the purpose of pensionable service. According to the learned counsel, the petitioner on attaining the age of superannuation would retire on 31st July, 2016. According to the learned counsel the respondent No. 4 is not considering the service rendered from the year, 1989 to 20th August, 2009, for the purpose of pensionable service.

3. Mr. Naiknaware, the learned counsel for the respondent No. 4 submits that, the Government Resolution dated 30th July, 1991 is not applicable to the petitioner, as she was appointed without following proper procedure. The petitioner worked on consolidated salary and the post was not approved. The petitioner was not possessing academic qualification i. e. D. Ed. As such the past service cannot be considered. The petitioner passed D. Ed. examination in the year 2003 only.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. According to the respondents for qualifying service the petitioner should have rendered at least 19 years of service. It is not disputed that, the petitioner was appointed temporarily in the year, 1986 and worked continuously till August, 2009, as a temporary employee. On 21st August, 2009, the petitioner was regularized in service. It is also accepted by the respondents that, the Municipal Council has adopted the Maharashtra Civil Services (Pension) Rules, 1982. The petitioner was possessing the B. A. B. Ed. qualification in the year, 1987 and acquired D. Ed. qualification in the year, 2003. Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 lays down that, in case the employee is paid from the contingency who are subsequently brought on regular establishment by conversion of their posts one half of there previous continuous service shall be allowed to be counted for pension.

6. The petitioner had acquired the B. Ed. qualification. The service of a temporary employee who is paid from contingency funds is to be counted half.

7. Considering the above, we pass the following order -

ORDER

I] The service of the petitioner from the year 1989 to 20th August, 2009 shall be counted as half for the purpose of pension and other retiral

benefits.

II] Rule accordingly is made absolute in
above terms. No costs.

Sd/-
[V. K. JADHAV, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

bsb/Aug. 15