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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5409 OF 2003

Govind S/o Vyankatrao Thete,
Age : 61 Years, Occu.: Retired Principal,
Kendriya Vidyalaya, Cantonment, Aurangabad,
R/o "Rupvedh", Plot no.80, Anand Nagar,
Nanded - 431 605.

... PETITIONER...

VERSUS

- 1] The Union of India,
Department of Human Resources &
Development, New Delhi.
- 2] The Secretary,
General Administration, [Education Department]
Human Resources & Development Department,
Government of India,
New Delhi.
- 3] The State of Maharashtra,
through the Secretary to the
Government of Maharashtra in
General Administration Department,
Mantralaya, Mumbai.
- 4] Kendriya Vidyalaya Sanghathan,
18, Institutional Area,
Shaheed Jeet Sing Marg,
New Delhi, through its
Commissioner.
- 5] The Assistant Commissioner,
Kendriya Vidyalaya Sanghathan,
Regional Office,
Indian Institute of Technology (I.T.I.),
Pawai, Mumbai.
- 6] The Principal,
Kendriya Vidyalaya,
Cantonment, Aurangabad.

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7] Director of Education,
Pune Central Building,
Pune.

... RESPONDENTS...

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Shri. S.S. Choudhari, Advocate for petitioner.
Mrs. M.S. Patni, AGP for respondent/State.
Shri. K.B. Chaudhari, advocate for respondent nos.4 to 6.
Shri. A.G. Talhar, Advocate for respondent nos.1 and 2.

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**CORAM : A.V. NIRGUDE AND
A.M. BADAR, JJ.**

DATE : 14.07.2015

ORAL JUDGMENT (PER A.V. NIRGUDE, J) :

The facts leading to this petition in short can be stated as under:-

1] The petitioner was appointed as Assistant Teacher in a school run by an education society in June 1967. This school was provided grant in aid by the State of Maharashtra. The petitioner worked as Assistant Teacher till 1977, thereafter he was transferred to another school run by the same society where he worked till 1982 as Assistant Teacher. He thus had 16 years experience as Assistant Teacher. Thereafter, in 1982 he sought permission of his employer for making an application to another school for getting appointment as Head Master. He was

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accordingly appointed as Head Master of a school by name Rajarshi Shahu Vidyalaya and Junior College, Nanded. This time, he obtained permission of his previous employer for joining his new post. He worked as Head Master in this school till 1993. At this time, the petitioner applied for the post of principal at Kendriya Vidyalaya which is a Central Government autonomous body. According to him, he was permitted by his previous employer to take new job. Thereafter, the petitioner was appointed as Principal of Kendriya Vidyalaya where he worked till his date of retirement in 2002. He completed about 9 year service as Principal of Kendriya Vidyalaya.

2] The petitioner was conscious that, his service rendered in the State of Maharashtra was pensionable and the service rendered by him in Kendriya Vidyalaya would also be pensionable. Therefore, upon resuming his job in Kendriya Vidyalaya, he sent a letter to the management of Kendriya Vidyalaya sometime in 1996 as to whether Kendriya Vidyalaya Sanghathan would count his previous service for the purpose of pensionary benefits. To this, the Assistant Commissioner of

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Kendriya Vidyalaya Sanghathan sent a reply on 10.10.1996. For the purpose of examination of the case, the Assistant Commissioner requested following information:

- i] Whether the aforesaid institution were running on grant-in-aid above 50% during the service period of Shri G.V. Thete;
- ii] Whether Sh. Thete was GPF/CPF optee;
- iii] Whether any payment of pro-rata pensionary benefit has been made to Sh. Thete.

3] To this, the previous employer of the petitioner sent a letter in which it was mentioned that the school in which the petitioner was working was receiving 100% grant-in-aid. It was further informed that, the salary and pension of the employees of the school were paid by the Government of Maharashtra. It was further informed that, the petitioner neither applied nor was paid any pensionary benefits by the State of Maharashtra.

4] on 14th March 1997, the petitioner once again requested the management of the Kendriya Vidyalaya Sanghathan to count his previous service for the purpose

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of giving pensionary benefits. Kendriya Vidyalaya Sanghathan Bombay region vide letter dated 25th March, 1997 requested to Kendriya Vidyalaya Sanghathan, New Delhi to take decision in respect of petitioner's case and communicate the same. Thereafter, nothing happened till the date of retirement of the petitioner. The petitioner retired from service of Kendriya Vidyalaya on 31st August, 2002. The question that arose for Kendriya Vidyalaya then was to what pensionary benefits the petitioner was entitled to. Kendriya Vidyalaya decided to give pensionary benefits to the petitioner only to the extent of its service in Kendriya Vidyalaya of 9 years approximately.

5] The petitioner thus found that, the Kendriya Vidyalaya Sanghathan did not count his previous service for the purpose of pensionary benefits. The question that arises for our consideration is, whether Kendriya Vidyalaya which is a Central Government autonomous body was under obligation to count the petitioner's previous service in the State of Maharashtra as qualifying service for pension?

6] Relevant provisions of Central Civil Service Pension Rules, 1972 are as under :-

“i] **Rule 3(q).** '*qualifying service*' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;

ii] **Rule 26. Forfeiture of Service on resignation**

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

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(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in

or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.

(iii) Rule 49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2)(a) In the case of Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty percent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.

(b) In the case of Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-

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three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than [Rupees three hundred and seventy-five] per mensem;

- (c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a years equal to [three months] and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.”

7] No doubt, apparently, for the purpose of Central Civil Service Pension Rules, the service of almost 9 years rendered by the petitioner with autonomous body of the Central Government was qualifying service, but, in view of rule 49 it was not sufficient for getting pension. The question was

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whether the previous service of the petitioner would be counted for the purpose of pension. Admittedly, the petitioner submitted resignation on two occasions of his two services in the past.

8] Sub Rule (2) of Rule (26) would forfeit his past service, if the same came to an end with resignation without 'proper permission'. As said about the petitioner could convince this Court that, he resigned his previous services with proper permission of his previous employer. Therefore, the case would fall in sub rule (2) of Rule 26 of Central Civil Service (Pension) Rules, 1972. The question would still remain to be answered and i.e. whether the petitioner's previous service in privately run schools that too in State of Maharashtra is qualifying service.

9] In order to answer this, one should referred to two Government of India resolutions, first is of 29th August, 1984 which is in the form office memorandum and the other is dated 13th July, 1992. By the office memorandum of 1984 the Government of India decided to give proportionate retirement benefits for the service

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rendered by an employee of Central Government who would move from the service of Central Government to an autonomous body of Central Government. By the second resolution of 1992, the Government of India decided to count service for pension on reciprocal basis in respect of employees of Central Government or autonomous bodies of Central Government absorbed in the State Government or State Autonomous bodies employment and *vice versa*. This Government Resolution thus extended the benefits from the government of India side to count service rendered by an employee who is absorbed in Central Government autonomous body from State autonomous body.

10] Similar gesture from the state Government was expected. Accordingly the State of Maharashtra also issued similar resolution on giving reciprocal benefits to employees who are absorbed in the State Government employment or autonomous bodies of State Government from Central Government etc.

11] The Kendriya Vidyalaya Sanghathan apparently was quite aware of these resolutions. A letter sent by

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Deputy Commissioner, (Finance), of the Central Government is annexed to the petition which throws light on the subject. The Deputy Commissioner opined that, privately managed aided schools would not be considered as state autonomous body for the purpose of counting of service for the purpose of pension. Probably on the basis of this opinion the petitioner was denied pensionary benefits based on his previous service. However, we found that, this opinion of this officer is apparently erroneous.

12] The question now is whether a private aided school in State of Maharashtra is autonomous body of State. In order to answer this, one must place reliance on the Government of India office memorandum of 29th August, 1984 mention of which is already made above. Para (4) of this memorandum reads as under:-

4. "Central Autonomous Body" means body which is financed wholly or substantially from cess or Central Government grants. "Substantially" means that more than 50 percent of the expenditure of the Autonomous Body is met through cess or Central Government grants. Autonomous Body includes a Central Statutory Body or a Central University but does not include a public

undertaking.

Only such service which qualifies for pension under the relevant rules of Government/Autonomous Body shall be taken into account for this purpose.”

13] Similar rule is obviously applicable to an autonomous body which is wholly or substantially financed by State Government. As said above, the previous employer were privately managed, but fully financed by State Government. The Civil Services Rules which are applicable to the State Government employees are also made applicable to the employees for the private fully aided schools. For all practical purposes an employee of a private school which is fully financed by the government aid, is equivalent to a government employee. He is also entitled to pension.

14] In view of this, the earlier enquiry made by Kendriya Vidyalaya as to whether the employer of the petitioner was getting more than 50 percent grant in aid was quiet relevant. Had his enquiry being taken to its logical end, the Kendriya Vidyalaya Sanghathan would have certainly held the petitioner entitled to pension, counting his previous service as pensionable service.

15] It appears that, the Central Government as well as Kendriya Vidyalaya Sanghathan did not read the office memorandum and Government of India resolutions referred to above in proper perspective. We are therefore inclined to allow this petition in following terms.

The Central Government and Kendriya Vidyalaya Sanghathan, respondent nos. 4, 5 and 6 shall count the petitioners previous service between 1967 to 1992 as pensionable service and pay him pension accordingly. All the arrears shall be paid within one year.

16] Rule made absolute in the above terms. There shall be no order as to costs.

17] Pending civil applications do not survive and the same stand disposed of.

[A.M. BADAR]
JUDGE

[A.V. NIRGUDE]
JUDGE