UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT

BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO.7284 OF 2011

1. Mrs.Mala W/o T.K.Sreenivasan,
Age 51 years, Occ.Service,
R/o E-33/04, Gulmohar Colony,
N-5,CIDCO, Aurangabad.

2. Sow. Chitra D/o Ramrao Kulkarni,
Age 45 years, Occ.Service,
R/o Plot No.3, “Sahayog”
Nandigram Colony, In front of
Gajanan Maharaj Mandir, Garkheda
Parisar, Aurangabad. … Petitioners.

Versus

1. The State of Maharashtra,
through the Secretary,
School Education & Sports
Department, Mantralaya,
Mumbai-400 032.

2. The Education Officer
(Secondary), Zilla Parishad,
Aurangabad.

3. The Secretary,
St. Francis De Sales
Education Society,
Jalna Road, Aurangabad.

4. The Head Master,
St. Francis De Sales High
School, Aurangabad. … Respondents.

…

Mr.H.A.Joshi, advocate for the Petitioners
Mr.K.G.Patil, Addl. Govt. Pleader for the State.

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CORAM : S.V.GANGAPURWALA &
V.K.JADHAV,JJ.

Date : 10.07.2015.

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

1. Heard.

2. Mr.Joshi, learned counsel submits that the petitioners were appointed as Assistant Teachers in St.Xavier High School on non-grant-in-aid post. On 7.6.2006, the petitioners were transferred to the Respondent No.4 School i.e. grant-in-aid post. The petitioners joined the petitioner No.4 School on grant-in-aid immediately on 8.6.2006. On 28.7.2006, proposal was forwarded to the Respondent No.2 seeking approval to the transfer of the petitioners. The Respondent No.2 refused to grant approval on the ground that transfer from non-grant-in-aid post i.e. from non-aided School to aided School is not permissible. The Respondent No.2 also persuaded the Management to take resignation of the

petitioner in order to enable the Respondent No.2 to grant approval, pursuant to which the Management took resignation letters of the petitioners on or about 16.9.2006 and issued fresh appointment orders dated 25.1.2007. The approval was granted immediately to the said appointment on 27.1.2007. The learned counsel submits that the resignation dated 16.9.2006 is no resignation in the eyes of law. The same is a forced resignation due to the circumstances. The service of the petitioners is required to be counted continuous from 1992. The learned counsel further submits that the Respondent No.4 be directed to deduct the amount from the petitioners' salary towards GPF.

3. The learned counsel for the Management supports the case put forth by the petitioners and states that right since 1992, the petitioners are continuously in service. The resignation was taken for the purpose of administrative exigencies and in light of the facts as stated by the petitioners in the petition.

4. Learned Addl. Govt. Pleader states that Respondent No.2 at no material point of time impressed upon the Management to take resignation of the petitioners. The proposal is approved as is forwarded. The Education Officer is not concerned with the internal affairs i.e. appointments made. The proposal seeking approval was with regard to the appointments of the petitioners from 25.1.2007, which is rightly sanctioned as per the proposal. Even as per the case put forth by the petitioners, they are inducted on grant-in-aid posts only in the year 2006, as such is not entitled for keeping the GPF account opened.

5. We have considered the submissions. In fact, on 25.1.2007, letter is issued by the Secretary to the Education Officer, wherein it is clearly stated that the petitioners were transferred from non-aided to aided posts, however, for such transfer as approval was not been given, resignation was taken and fresh appointments are given. This is the stand of the Management itself. This circumstance would

depict that the petitioners were already transferred to the grant-in-aid post in the year 2006 but under the misconception that no approval can be given to such transfers, it appears that fresh appointment orders are passed appointing petitioners on grant-in-aid post. Considering the factual matrix, the case put forth by the petitioners, appears to be probable.

6. Considering the aforesaid factual matrix, we have no hesitation to conclude that the petitioners are continuously in service since the year 1992 i.e. from 1992 till 7.6.2006 on non-gtrant-in-aid post and from 7.6.2006 onwards on grant-in-aid post. Considering the above, prayer clause A is required to be granted, however, the relief claimed in prayer clause B can not be considered in view of the defined contributory Pension Scheme. The petitioners are brought on grant-in-aid post on 7.6.2006 and the cut off date is 1.11.2005. Upto 7.6.2006, the petitioners were working on non-grant-in-aid post.

7. In light of the above, Rule is made partly absolute in terms of prayer clause (A) only. No costs.

(V.K.JADHAV,J.) **(S.V.GANGAPURWALA,J.)**

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