

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

WRIT PETITION NO.5866 OF 2015

Ramesh s/o. Laxman Kelkar,
Age: 57 Yrs., Occ: Retired,
R/o. Sindkhedraja, Tq.Sindkhedraja,
Dist. Buldana.

PETITIONER

VERSUS

- 1] The State of Maharashtra
Through its Secretary for Education
Department, Mantralaya,
Mumbai-400 032.
- 2] The Chief Executive Officer,
Zilla Parishad, Jalna,
Dist. Jalna.
- 3] The Education Officer [Primary],
Zilla Parishad, Jalna,
Dist. Jalna.
- 4] The Chief Accounting Officer,
Zilla Parishad, Jalna,
Dist. Jalna.

RESPONDENTS

...
Mr. S.S.Panale, Advocate for the Petitioner
Mr. V.H.Dighe, AGP for Respondent No.1
Mr. S.S.Tope, Advocate for Respondent Nos.2 to 4
...

**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Reserved on : 09.10.2015
Pronounced on: 19.10.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith, and heard with the consent of the parties.

3] By the present Writ Petition, the petitioner is seeking direction to the respondent authorities for grant and release of pension payable to the petitioner, as per the relevant provisions.

4] It is the case of the petitioner that, the petitioner completed SSC in 2nd Division in March 1974, and accordingly, the School of the petitioner issued School Leaving Certificate. The date of birth of the petitioner in the School record is 01.07.1958. It is further the case of the petitioner that, the petitioner also completed D.Ed. education from Shri Shivaji Adhyapak Vidyalaya, Chikhali, District Buldhana in April, 1979.

5] It is further the case of the petitioner that, the petitioner got his name registered with the employment office and in response to the said registration, the petitioner received call-letter from Zilla Parishad, Jalna and after following due procedure, the petitioner was appointed as an Assistant Teacher with Zilla Parishad, Jalna on 08.02.1985. It is further the case of the petitioner that, on 17.07.2004, the petitioner was issued show-cause notice and asked to submit original documents about educational qualifications

of the petitioner. On 02.08.2004, the petitioner submitted all documents relating to his education.

6] It is further the case of the petitioner that, the petitioner rendered unblemished services till his voluntary retirement, on 29.02.2008. The respondent authorities, by accepting the request of the petitioner by way of filing application for voluntary retirement of the petitioner, relieved him. On 05.05.2008, elder brother of the petitioner, due to ancestral property dispute, filed complaint before the Chief Executive Officer of Zilla Parishad, Jalna, alleging therein that, the petitioner has secured employment by taking undue advantage / by using certificate, degree of another person namely Ramesh Laxman Kelkar, resident of same town. That the petitioner was asked to submit original documents regarding his education. On 31.03.2009, the petitioner submitted his original documents to the Education Department of Zilla Parishad.

7] It is further the case of the petitioner that, on 01.07.2009 and 21.08.2009, the petitioner made representations to the respondent Nos.2 to 4 requesting them to grant pension and other retirement benefits. It is further the case of the petitioner that, on 31.07.2014, the Divisional Commissioner, Aurangabad, had issued letter to the respondent No.2 on the basis of application dated 17.07.2014, and asked as to why the pension and other pensionary benefits are not paid to the petitioner and directed to submit report in its office. It is further the case of the petitioner that, in the meantime, at the instance of

elder brother of the petitioner namely Bhagwan Kelkar, on 19.12.2013 one Smt. Mangal Kachru Dhupe, Block Education Officer, Zilla Parishad, Jalna lodged First Information Report against the present petitioner, alleging therein that, one Bhagwan Kelkar had filed complaint with Chief Executive Officer of Zilla Parishad, Jalna, on 05.05.2008 that, by taking undue advantage of similar name, the petitioner has used D.Ed. certificate of another person namely Ramesh Kelkar s/o. Laxman Govindrao Kelkar, serving as Technical Assistant with Irrigation Department and obtained service and thereby cheated the Government as well as Zilla Parishad. On the basis of said FIR, Crime No.289/2013 has been registered against the present petitioner and another person namely Ramesh Laxman Kelkar for the offences punishable under Section 420, 471 r/w.34 of IPC. The petitioner obtained regular bail in the said crime.

8] It is further the case of the petitioner that, with reference to the letter dated 31.07.2014, the Divisional Commissioner, Aurangabad, was communicated by the respondent No.3 that, the petitioner is not entitled for the pension and pensionary benefits. It is first time by letter dated 12.09.2014, the petitioner learnt that, his pension and pensionary benefits are withheld due to complaint dated 05.05.2008, filed at the instance of elder brother of the petitioner namely Bhagwan Laxman Kelkar. It is further the case of the petitioner that, after completing 23 years of service and accepting voluntary retirement on 29.02.2008, the respondents authorities should not have denied the

pensionary benefits to the petitioner and that too when no inquiry of any sort was conducted or no Inquiry Officer was appointed. The said fact was communicated by the respondent authorities by letter dated 23.01.2014.

9] It is further the case of the petitioner that, on 09.04.2015, the petitioner again made a representation to the respondent authorities, requesting for grant of pensionary benefits. The pension proposal filed by the petitioner is still pending for consideration by the respondent authorities and since last 7 years, no action has been taken upon the same. Hence this Writ Petition.

10] The learned counsel appearing for the petitioner invited our attention to the pleadings in the Petition, annexure thereto, and relying upon the provisions of the Maharashtra Civil Services [Pension] Rules submits that, Petition deserves to be allowed.

11] On the other hand, the learned counsel appearing for the respondent Nos.2 to 4 submits that, the petitioner was appointed as Assistant Teacher with Zilla Parishad, Jalna, by appointment order dated 8th February, 1985. The petitioner applied for voluntary retirement from the service, and accordingly, he is voluntarily retired on 29th March, 2008. One Mr. Bhagwan Laxman Kelkar has filed an application / complaint against the present petitioner on 05.05.2008 i.e. after voluntary retirement of the petitioner, alleging therein that, the petitioner obtained certificates, D.Ed. mark list and School leaving certificate

of another person namely Ramesh Laxman Kelkar from the village of the petitioner, and on that basis he has rendered service with Zilla Parishad, Jalna. The petitioner's birth date is 01.07.1958 and another person namely Ramesh Kelkar's birth date is 05.07.1958. Therefore, the complainant has requested to take appropriate action against the petitioner. Accordingly, the inquiry was initiated against the petitioner, and inquiry report was submitted by the Block Education Officer on 13.12.2008. The learned counsel appearing for the respondent Nos.2 to 4 also invited our attention to the fact that, the then Education Officer [Primary] by letter dated 18th April, 2011 addressed to the complainant asked to remain present for hearing. Upon enquiry, it was revealed that, there is some substance in the complaint, and accordingly, the Chief Executive Officer, by letter dated 07.12.2013, directed the Block Education Officer, Panchayat Samiti, Ambad, to lodge the First Information Report against the petitioner. Accordingly, the complaint was lodged to Kadim Police Station, Jalna on 19.12.2013 under Section 420, 471 r/w. 34 of IPC. Therefore, the learned counsel appearing for the respondent Nos. 2 to 4 submits that, Petition may be dismissed.

12] We have heard the learned counsel appearing for the petitioner, the learned AGP appearing for the Respondent – State, and the learned counsel appearing for the respondent Nos.2 to 4. With their able assistance, we have perused the pleadings in the Petition, annexure thereto, and also affidavit-in-reply filed by the respondent Nos.2 to 4. In this Petition, the petitioner had sought

direction to the respondent Nos.2 to 4 to decide representation of the petitioner dated 9th April, 2015 in which request is made to decide pension proposal of the petitioner, and then to pay pension and all pensionary benefits. It is not in dispute that, the petitioner voluntarily retired on 29th February, 2008. The complaint was filed on 05.05.2008. Therefore, the said complaint was filed after voluntary retirement of the petitioner.

13] The provisions of Rule 27 of the Maharashtra Civil Services [Pension] Rules, 1982, has given right to the Government to withhold or withdraw pension. However, the provisions of Rule 27 (2) (b) states that, the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment shall not be instituted save with the sanction of the Government. It further mentions that, the said proceedings shall not be in respect of any event which took place more than four years before such institution. In the present case, admittedly, the petitioner retired voluntarily on 29.02.2008. The complaint is filed thereafter. No departmental inquiry was initiated against the petitioner, neither any show-cause notice was issued, and therefore, in view of the afore-mentioned provisions of Rule 27, the respondents cannot withhold pension of the petitioner. If the offence is registered against the petitioner subsequently after his retirement, law will take its own course. However, so far pension is concerned the respondents cannot withhold the pension of the petitioner.

14] In that view of the matter, we direct the respondent Nos.2 to 4 to decide representation of the petitioner dated 9th April, 2015, if not already decided, as expeditiously as possible, however, within six weeks from today in accordance with the relevant Rules, and take further steps to send said proposal for approval / sanction to the Competent Authority. The respondents are directed to complete the entire exercise within 12 weeks from today and ensure that, petitioner starts receiving pension.

15] Petition is allowed in part. Rule is made absolute in above terms. Petition stands disposed of accordingly.

Sd/-
[A.M.BADAR]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

DDC