

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 64 OF 2015

Smt. Raziya Begum D/o Mohd. Sk. Ahmed,
Age : 61 years, Occu. : Nil,
R/o Iqbal Nagar, Near Madina Masjid,
Dadarao Plots, Behind Vakil Colony,
Parbhani.

... Petitioner

Versus

01. The State of Maharashtra
Through the Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032.

02. The Education Officer (Secondary),
Zilla Parishad, Parbhani.

03. Indira Gandhi High School,
Near Nanal Peth, Parbhani,
Through its Head Master.

04. Indira Gandhi Girls Education Committee,
Near Nanal Peth, Parbhani,
Through its Secretary.

... Respondents

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Advocate for Petitioner : Mr. Ajay S. Deshpande
AGP for Respondent Nos. 1 and 2 : Mrs. V. A. Shinde
Advocate for Respondent No. 3 : Mr. G. R. Syed
Advocate for Respondent No. 4 : Mr. V. D. Salunke
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 8th JULY, 2015

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :-

1. Heard.

2. Rule. Rule returnable forthwith. By consent of parties, taken

up for final hearing at admission stage.

3. Mr. Deshpande, the learned counsel for the petitioner states that the petitioner has worked up to July, 2014. The petitioner is paid salary up to 31st March, 2014. As per the date of birth of the petitioner, the petitioner was to retire w.e.f. 01.01.2011. The petitioner is not paid salary from 01.04.2014 to July, 2014. The petitioner is entitled for the same. Even the pension be directed to be determined notionally as on 31.07.2014.

4. Mr. Salunke, the learned counsel for respondent No. 4 and Mr. Syed, learned counsel for respondent No. 3 submit that as the petitioner was due to retire after 31.12.2010, the petitioner is not entitled for salary after that period and is liable to refund the said amount. The petitioner is not entitled for any amount after 31.12.2010.

5. We have considered the submissions canvassed by learned counsel for respective parties. It is not disputed by the learned counsel for respondent No. 3 that the petitioner has worked even after 1.1.2011. As per the learned counsel for respondent No. 3, the petitioner has worked up to March, 2014. In case the petitioner has worked up to the said date, the petitioner is entitled for salary for the

period for which the petitioner has actually worked. Even otherwise, a person who is on the verge on retirement, no recovery can be claimed from him as is held by the Apex Court in paragraph no. 12 in the case of ***State of Punjab and others vs. Rafiq Masih (Whitewasher) reported in (2014) 8 SCC 883.***

6. However, for pension purposes, the service of the petitioner will have to be calculated only till 31.12.2010.

7. In the light of the above, we pass the following order.

ORDER

- I. The respondents shall not claim recovery from the petitioner in respect of the salary paid to the petitioner if otherwise the petitioner is eligible. The pension papers of the petitioner be forwarded considering her services up to 31.12.2010.
- II. Rule is made absolute in the above terms. Writ Petition stands disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

rlj/