

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

WRIT PETITION NO. 3402 OF 2013

Sainath s/o Laxmanrao Lomte,
Age : 40 years, Occupation : Service,
R/o Kranti Chowk, Khadgaon Road,
Latur, District Latur.

...PETITIONER

-VERSUS-

- 1 The Secretary,
Venkatesh Bahu Udashiya Shikshan
Prasarak Mandal, Ghonsi, Tq.Jalkot,
Dist.Latur.
- 2 Sant Namdeo (Pri.) Vidhyamandir,
Hanuman Nagar, Udgir,
Tq.Udgir, Dist.Latur.
Through it's Headmaster.
- 3 The Education Officer,
Primary, Zilla Parishad, Latur,
District Latur.
- 4 Sadanand Suryakant Patil,
Age : Major, Occupation : Service,
R/o Sant Namdeo Primary Vidhyamandir,
Udgir, Tq.Udgir, Dist.Latur.
- 5 Education Officer (Secondary),
Zilla Parishad, Latur.

...RESPONDENTS

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Advocate for Petitioner : Shri P.G.Deshmukh h/f Shri Joshi Hrishikesh A.
Advocate for Respondents 1, 2 and 4 : Shri V.J.Dixit, Senior Advocate a/w
Shri S.G.Rudrawar.

Advocate for Respondent 3 : Shri U.B.Bondar.

AGP for Respondent 5 : Shri P.N.Kutti.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th October, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 Though the Petitioner has succeeded before the School Tribunal, he has preferred this petition for being appointed as the Headmaster. The Respondent Management has not challenged the impugned judgment dated 28.02.2013. The operative order reads as under:-

- "1. Appeal is partly allowed.
2. The respondent management is directed to reinstate the appellant forthwith on the post of assistant teacher in the respondent school and pay him regular salary as per rule.
3. The rest of the reliefs claimed in the appeal stands dismissed.
4. No order as to costs."

3 After hearing the learned Advocates for the respective sides extensively and over a number of dates herein before, I find that the entire issue has been narrowed down by the contention of the Petitioner that he would apply for voluntary retirement by tendering the application dated

10.10.2016 and on expiry of three months' notice period, the Respondent/ Management shall accept the said application thereby, retiring the Petitioner w.e.f. 10.01.2017.

4 I am not required to advert to the detailed submissions of the learned Advocates as well as the facts of this case considering the proposal put forth by the Petitioner which I am inclined to accept after hearing Shri Dixit, learned Senior Advocate on behalf of the Respondent/ Management.

5 The Petitioner was said to have resigned from service on 17.11.2011 as a Headmaster. On 20.11.2011, the Management accepted the resignation. However, the Petitioner was transferred to another place as an Assistant Teacher and he joined on 25.11.2011. He tendered leave applications on 17.02.2012 and 25.02.2012 after working for about three months. Thereafter, he has joined on 25.03.2013 and after working for one day, he is alleged to be absent.

6 It appears from the record as well as the order passed by this Court on 19.01.2015 that the Petitioner has voiced a serious apprehension about a threat to his life. It is informed that a complaint was filed with the Education Officer. These contentions are refuted by the Management. I am not required to go into these disputed issues except for the purpose of

noting that the Petitioner is said to be absent on account of his serious apprehension about his physical existence.

7 The Education Officer has filed an affidavit dated 11.01.2016. In paragraph 3 it is specifically stated that a guidance was sought from the office of the Divisional Deputy Director of Education, Latur and after receiving the guidelines on 05.01.2016, the affidavit has been filed. Paragraph 3 of the affidavit dated 11.01.2016 filed by the Education Officer reads as under:-

"3. *It is submitted that, on the proposal submitted before the Court, there were some confusion regarding services of the petitioner as untrained teacher, whether to be counted for the purpose of pensioner benefits or not, therefore, the guidance was sought from the office of the Divisional Deputy Director of Education, Latur and same was received on 05.01.2016, in which it has stated that, services which was without approval i.e. from 1993-1995 cannot be counted for the purpose of pensioner benefits, however, though the petitioner was untrained till 2002, his services which is approved though untrained from the year 1995 till 2002 as untrained teacher, it can be counted for the purpose of pensionary benefits, however so far as voluntarily retirement is concerned, there should be approved service for minimum 20 years qualified service, however there is procedure prescribed in the pension Rules 1982, Rule 66, Sub-Rule (1) that, one has to give 3 months notice to the appointing authority for voluntary retirement. In this case, said notice is not there, however, as the Court wants whether, he can be granted with voluntarily retirement benefits or not in that case, as record shows that, the Petitioner is*

absent from 01.03.2012, if the said period is considered as leave without pay by the Management, who has such powers to grant leave without pay and if the leave is granted in that case, the petitioner will complete qualified service for voluntarily retirement, otherwise not. Therefore if at all the school management considered the Petitioner on leave without pay from 01.03.2012 and submits such proposal to the office of the Education Officer in that case the Education Officer will forward such proposal to the competent authority i.e. Accountant General, who has power to grant benefits of voluntarily retirement to the Petitioner."

8 Shri Dixit has placed reliance upon the Government Resolution dated 23.08.2005 to indicate that the period of absence without leave shall not be considered for retiral benefits. By his contention, it appears that, the period of absence without leave is virtually to be interpreted to mean a break in service. Prima facie, absence with or without leave has not been interpreted to mean a break in service. Shri Deshmukh submits that a G.R. cannot override the law and service conditions. Nevertheless, I am not dealing with the said issue in this petition since the said issue is not required to be dealt with in the peculiar circumstances of this case.

9 It is apparent from the affidavit of the Education Officer and especially paragraph 3 which has been reproduced herein above that the Petitioner's services have been approved from 1995 onwards. By the

impugned judgment of the School Tribunal dated 28.02.2013, Appeal No.22/2012 filed by the Petitioner has been partly allowed and he has been granted reinstatement with regular salary. The impugned judgment indicates that the continuity of service has been accepted. The Management has not challenged the said judgment and the Petitioner, by putting forth his proposal of voluntary retirement is, therefore, apparently withdrawing his challenge to the impugned order in this petition.

10 In the course of the submissions of the litigating sides, the Management has raised a serious controversy about the pay fixation of the Petitioner as a trained graduate teacher. The contention is that there are four trained graduate teachers presently working and there is no vacancy to accommodate the Petitioner.

11 To a pertinent query put by the Court, Shri Dixit has taken instructions from the authorized representative of the Management present in the Court that the senior-most trained graduate teacher today is one Mr.Swami, who acquired his qualifications in June, 2000 so as to become a trained graduate teacher. The Petitioner acquired his qualifications in order to become a trained graduate teacher in 2002. A statement, confirmed twice, is made that after the Petitioner acquired the qualifications for becoming a trained graduate teacher, he was appointed

as the Headmaster.

12 It requires no debate that the senior-most teacher from amongst the teachers qualified to become a Headmaster, is appointed as the Headmaster. If the senior-most qualified teacher declines to accept the said position, the next senior-most qualified teacher is required to be made the Headmaster. Consequentially, if the incumbent Headmaster at some stage in service, desires not to continue to discharge functions as a Headmaster, he may choose to resign and the next senior-most qualified teacher would become the Headmaster.

13 In the present case, the resignation of the Petitioner as a Headmaster is tendered after putting in 09 years as Headmaster. Consequentially, acceptance of his resignation would relegate him to the position of trained graduate teacher and the qualified person below him would then be eligible for becoming the Headmaster. What appears from the record and the submissions of the Management is that the Management dispatched the Petitioner to a stage even below the untrained graduate teacher, as if, by resigning as a Headmaster, he was relinquishing his rights as a trained graduate teacher and was accepting the service conditions applicable to an untrained graduate teacher. This cannot be permitted for the reason that the joining report of the Petitioner

indicates that he was joining as an Assistant Teacher in a trained graduate teachers' scale. His resignation cannot be interpreted to mean that he is compulsorily brought down from the trained graduate teachers' pay scale to the untrained graduate teachers' pay scale, as if he is being punished. This issue apparently was lost sight of by the parties before the School Tribunal.

14 Nevertheless, the School Tribunal has only accepted the contention of the Management that the resignation as a Headmaster was not an act of force or duress. In this backdrop, the Petitioner, therefore, gets relegated to the trained graduate teachers' pay scale after resigning as a Headmaster because he was already a trained graduate teacher prior to his appointment as a Headmaster. It is inconsequential as to how the Management has treated him, in these peculiar facts of this case, for the reason that the law would not permit the Management to demote the Petitioner from the trained graduate teachers' pay scale to the untrained graduate teachers' pay scale merely because he resigned as a Headmaster, having already being a trained graduate teacher.

15 In the peculiar facts of this case, this Writ Petition is partly allowed with the following directions:-

- (a) The Petitioner shall forthwith file an application for voluntary

retirement dated 10.10.2016 indicating that he would be seeking voluntary retirement after expiry of the three months' notice period from the date of the application.

- (b) The Respondent/ Management shall accept the said application and the Petitioner shall stand relieved from employment as an Assistant Teacher w.e.f. 10.01.2017.
- (c) The period of his absence from 25.03.2013 onwards shall stand condoned as absence without pay since the Petitioner has made a statement that he will not claim a single penny for this entire period till 09.01.2017.
- (d) He shall be treated to be in continuous service from 1995 till 09.01.2017 for the purpose of pensionary and retirement benefits.
- (e) The Respondent/ Management shall forward the proposal of the Petitioner to the appropriate authorities for processing his pension papers within FOUR WEEKS from 10.01.2017.
- (f) While forwarding the pension papers of the Petitioner, the Respondent/ Management shall fix his salary/ pay scale at par with equally placed comparable trained graduate teachers pay scale.
- (g) It is expected that the appropriate authorities dealing with the proposal of the Petitioner for pensionary benefits shall act

in promptitude and shall take a decision as expeditiously as possible.

16 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)