

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

16 WRIT PETITION NO. 5941 OF 2015

PATEL SHAMSODDIN SHAIKH HUSAIN

VERSUS

STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Talhar Ajay G.

AGP for Respondents State: Mr. V. S. Badakh

Advocate for Respondent No.5 : Mr. V. G. Kodale h/for
Mr. V. D. Gunale

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 23rd August, 2016

ORDER:

1. Mr. Talhar, learned counsel for the petitioner states that the respondents be directed to fix the pay of the petitioner as Junior Clerk as per 5th Pay Commission on the basis of last pay certificate from 04.10.1997 and further as per 6th Pay Commission. The respondents be also directed to pay past salary from 1997 to 2012.

2. Learned AGP states that services of the petitioner came to be terminated as per Rule 25 of the MEPS Rules. It is not a case of retrenchment under Rule 26 of the MEPS Rules and as such, the petitioner is not entitled for salary for the said period. Learned AGP relies on the judgment and order dated 20th January,

2015 passed by this Court in Writ Petition No. 2786/2013.

3. It is not in dispute that services of the petitioner stood terminated on account of closure of the school in the year 1997-98. The petitioner was declared surplus in 2005 and subsequently absorbed in the year 2012. It is not the case of retrenchment of services but it is a case of termination. The argument of learned counsel for the petitioner could have been considered if, it would have been a case of retrenchment under Rule 26 of the MEPS Rules.

4. Considering the above, the prayer of the petitioner for salary from the year 1998 to 2012 cannot be considered.

5. The petitioner had been absorbed in the year 2012 with the respondent Institution. Whether the closure of the school was on account of default on the part of employees or not will have to be considered. It is for the concerned authorities to consider the same. There is nothing on record to suggest as to the reason for closure of the school, where the petitioner was working earlier.

6. Considering the above, the petitioner may file comprehensive representation/proposal seeking continuity of service from the date of his initial appointment. In case, such representation/proposal is received by the respondent authority, the respondent authority shall take decision on the same on its own merits, in accordance with law, rules and policy, expeditiously, after hearing the parties, preferably within a period of six months from the date of receipt of the said proposal.

7. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC