

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5649/2015.

Smt. Uma Dnyanprakash Pandey

-VERSUS-

The Deputy Director of Education, Nagpur and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
KUM. INDIRA JAIN, JJ.

DATE : AUGUST 10, 2016.

Shri Bissa, learned A.G.P. appearing on behalf of respondent nos. 1 and 2 is seeking time to place appropriate affidavit on record. However, petitioner has no objection if on the basis of instructions received by the learned A.G.P., facts disclosed by him are accepted.

2. Dispute is about quantum of pension receivable by the petitioner who has been superannuated on 31.01.2013.

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3. Because of break in service for a period from 02.08.2000 to 28.11.2000, the respondent nos. 1 and 2 have ignored her service prior to 02.08.2000 and her service after 28.11.2000 is only being looked into. This service after 28.11.2000 is of 14 years 11 months and 21 days.

4. Perusal of impugned communication dated 21.07.2014 shows a decision of respondent no.2 refusing to condone break in service, as on the strength of later service of 14 years, 11 months and 21 days, petitioner is eligible for pension.

5. Petitioner has joined employment on 10.07.1974. She was working with respondent no.5. She worked in that School till the year 1996-97, and as she was found surplus, she was relieved on 17.02.1997. As per law she was directed to be absorbed in respondent no.4 School where she reported accordingly on 09.09.1997. The strength of students in respondent no.5 school increased in the year 1999-2000 and hence, respondent no.3 sent her back to respondent no.5. Accordingly respondent no.4 relieved her on 02.08.2000, however, the respondent no.5 did not permit her to join and filed Writ Petition

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No.3302/2002 before this Court. Considering the grievance of respondent no.5, this Court stayed the direction of respondent no.3. In view of that stay, respondent no.3 asked the petitioner to join back with respondent no.4. Respondent no.4 accordingly took back petitioner on 29.11.2000.

6. In above circumstances petitioner was not permitted to join by respondent no.5 from 02.08.2000 onwards, and therefore she was nowhere upto 28.11.2000.

7. Petitioner was declared surplus and law contemplates that she should be absorbed in a school where vacancy exists.

8. During the period of absorption she is entitled to salary as per law. As such, as per Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 there is no break in service. Petitioner cannot be blamed for this situation. Similarly respondent no.4 or respondent no.5 whose grievance was accepted by this Court, also cannot be blamed.

9. As such, respondent no.3 erred in treating this period as break in service.

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10. In view of this finding, we quash and set aside the impugned order dated 02.04.2014 and further consequential communication dated 21.07.2014. We therefore direct that as there is no break in service, her entire service put in after joining respondent no.5 on 10.07.1974, shall be taken into account for calculating her pension and other terminal benefits. The said exercise be completed within a period of four months from today.

11. In view of above discussion, Writ Petition is partly allowed and disposed of. No costs.

JUDGE

JUDGE

Rgd.

CERTIFICATE

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