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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1317 OF 2017

Pratima Dave

...Petitioner

VS

State of Maharashtra & Ors.

...Respondents

.....

Mr Mihir Desai, Sr. Counsel i/b Ms Devyani Kulkarni for the
Petitioner

Mr H.S.Venegavkar, Addl GP for Respondent Nos.1 to 3.

Mr Asadullah Shaikh i/b Mr Rui A. Rodrigues for Respondent
No.4.

.....

CORAM : **B.R.GAVAI &
B.P.COLABAWALLA, JJ.
DECEMBER 11, 2017.**

P.C.:

Rule. Rule made returnable forthwith. By consent
of parties taken up for final disposal.

2 The Petitioner by way of present Petition has
impugned the communication dated 12th May, 2015 thereby
rejecting the proposal of the Petitioner for retirement dues.

3 The facts in brief giving rise to the present Petition

are as under. The Petitioner was initially appointed in the college section of Respondent No.4 on 20th August, 1993 through local selection committee. However, by an order dated 12th July, 1996, after undergoing the process of selection by duly constituted selection committee, the Petitioner came to be appointed. However, since the post against which the Petitioner was appointed was for a reserved category (S.C.) and since the Petitioner is not from reserved category, he was initially appointed for one year. However, since the reserved category candidate was not available, the Petitioner came to be continued on the same post on year to year basis. It appears that Respondent No.4 University had submitted proposal to the State Government for de-reservation of the post held by the Petitioner and during the pendency of the same Respondent No.4 continued to appoint the Petitioner on the same post, on temporary basis. Therefore, the Petitioner was required to approach this Court by way of Writ Petition No.1461 of 2011. This Court by an order dated 22nd December, 2011 admitted the Petition and by an interim order directed the State Government to release the increments. The Petitioner thereafter through regular selection process came to be appointed as a Assistant

Professor on 6th September, 2011 against a open category post. Vide an order dated 25th September, 2012, the services of the Petitioner came to be confirmed against the post on which he was appointed. On completion of 60 years, the Petitioner was again granted extension of two years as per then prevailing policy of the State Government on 8th May, 2012. The Petitioner superannuated on 28th February, 2014 on completion of 62 years. Thereafter, the Petitioner made an application to Respondent No.4 to give her pensionary benefits. It appears that Respondent No.4 also submitted a proposal to Respondent No.2 for grant of pensionary benefits to the Petitioner. However, the same came to be rejected by the impugned order. Hence, the present Petition.

4 Mr Venegavkar, learned Additional GP appearing on behalf of the State submits that in view of Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982, the Petitioner is not entitled to the pensionary benefits inasmuch as he does not complete the qualifying services of 10 years after his regular appointment. He, therefore, submits that no interference is warranted in this Petition and the Petition

deserves to be dismissed.

5 It will be relevant to refer to the provision of Rule 30 of the Maharashtra Civil Services Rules, which reads thus:

“30. Commencement of qualifying service:-

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or **temporary capacity**:

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:

[Provided further that, in cases where a temporary Government servant retires, on Superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of Superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.]

Exception - The rules regarding grant of terminal benefits to temporary Government servants [except those mentioned in the second proviso] who retire without being confirmed in any post in Government service are embodied in Appendix II.” (**emphasis supplied**)

It could clearly be seen that the Rule 30 is clear. If at the time of retirement a person holds a permanent post substantially in the

Government service, the qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In other words if a person holds permanent post substantively, even if his initial appointment is in an officiating or temporary capacity, the qualifying services would commence from the date from which he has first been appointed in the Government service.

6 In this view of the matter, we find that since the Petitioner was initially appointed on 12th July, 1996, after following due selection process, his qualifying services would commence from the said date. Though the Petitioner was regularly selected, he could not be made permanent on that date, since the post was reserved for Backward Class candidate, and as the Backward Class candidate was not available, the Petitioner was continued on the same post on year to year basis. Not only that, Respondent No.4 had also addressed a communication to the State Government for de-reservation of the post and continue the Petitioner on the same post. Be that as it may, the Petitioner has again been selected and appointed on

6th September, 2011 after following due selection process.

7 If the Petitioner's qualifying services commences from 12th July, 1996, he has put in 18 years services, which are more than the qualifying services of 10 years.

8 It is further pertinent to note that even according to the policy framed by the State Government under Resolution dated 5th December, 1994, if a candidate belonging to open category is selected against the post sanctioned for reserved category on account of non-availability of the candidate of such category such a reservation candidate can be carried forward for six years and thereafter such a candidate who was initially appointed is entitled to be continued on the said reserved category post.

9 In the result, the Writ Petition deserves to be allowed. The impugned order dated 12th May, 2015 is quashed and set aside. It is held and declared that the Petitioner is entitled to the pension and his qualifying services would commence from 12th July, 1996. The Pensionary benefits of the Petitioner be worked

out on the basis of last pay paid to the Petitioner and it shall be paid to the Petitioner from the month of January-2018. All terminal benefits be worked out on the basis of the aforesaid and shall be paid to the Petitioner along with interest at the rate of 6 % per annum within a period of six months from today. The Writ Petition is disposed of in the aforesaid terms with no order as to costs.

(B. P. COLABAWALLA, J.)

(B.R.GAVAI J.)