IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 814 OF 2016

PANDIT DAMU WAGH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.P.B. Patil, Advocate for the petitioner.
Mr.S.B. Pulkundwar, AGP for respondent/State.
Mr.A.V. Hon, Advocate for respondent No.6.

CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE,JJ.
DATED : 04.10.2018

P.C. :-

1. Mr. Patil, learned Advocate for the petitioner submits that respondent No.6 appointed the petitioner on 29.10.1993 as Assistant Teacher after following due selection process on the sanctioned post in the D.Ed. Pay-scale from the S.T. category. On or about 29.09.2008, the petitioner tendered his resignation and on the very same day the petitioner was appointed in M.C.V.C. Section of the same management from the S.T. category. Learned Counsel for the petitioner submits that his earlier service is not being counted for the purpose of pensionary benefits.

2. Mr. Pulkundwar, learned AGP submits that earlier service of the petitioner cannot be counted in view of circular dated 12.01.2007. The petitioner has not taken permission of the concerned Department before accepting employment in M.C.V.C. section. Earlier services of the petitioner were with School Education Department. The department has undergone change. In view of circular dated 12.01.2007, the petitioner's earlier service cannot be accepted.

3. Mr.Hon, learned Counsel for the management submits that the petitioner's service from 29.10.1993 to 01.10.2008 and till the date are under the same management and it is with the permission of the management, the petitioner has been shifted to M.C.V.C. section.

4. We have considered the submissions. It is not disputed that the petitioner was appointed on 29.10.1993

on the sanctioned post in D.Ed. pay-scale in the S.T. category as Assistant Teacher by respondent No.6 and services of the petitioner were approved. The post on which the petitioner was appointed on 29.10.1993 was grant-in-aid post. It also appears that the petitioner had tendered his resignation on 01.10.2008 and on the very same date he joined the M.C.V.C. section of respondent No.6 and since then he is working.

5. Rule 46(2) of the Maharashtra Civil Services (Pension) Rules provides that a resignation shall not entail forfeiture of past service if it has been submitted to take up, with appropriate permission, another appointment, whether temporary or permanent under the Government where service qualifies.

6. The post on which the petitioner was initially working and the subsequent post, both are grant-in-aid posts. The assignment from 01.10.2008 is with the permission of the management. In view of that, circular

dated 12.01.2007 also stands complied. In the light of above, the services of the petitioner shall be considered for pensionary benefits from 29.10.1993.

7. The writ petition is accordingly allowed. No costs

[S.M.GAVHANE,J.] **[S.V.GANGAPURWALA,J.]**

snk/2018/OCT18/wp814.16