

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8443 OF 2018

Ambadas Digambar Deshpande,
 Age: 71 Years, Occu.: Nil,
 R/o.: 21, Kalpataru Housing Society,
 Garkheda Parisar,
 Aurangabad

.. **Petitioner**

Versus

1. The Education Officer (Secondary),
 Zilla Parishad, Aurangabad

 2. Dnyan Prabodhini Shikshan Sanstha,
 Paithan, Nathnagar / Jayakwadi (South),
 Tq.: Paithan, Dist.: Aurangabad,
 Through its President / Secretary,
 Shri Devidas Rangnath Kulkarni,
 Rangarahati, Paithan, Dist.: Aurangabad

 3. Balaji Vidyalaya,
 Nathnagar / Jaikwadi (South),
 Tq.: Paithan, Dist.: Aurangabad,
 Through its Headmaster
- ... Respondents**

Mr. Pradeep Deshmukh h/f. Mr. Y. P. Deshmukh and
 Mr. A. D. Kawre, Advocate for the Petitioner.
 Mrs. G. L. Deshpande, A.G.P. for Respondent No. 1.
 Mr. Nilesh S. Choudhary h/f. Mr. M. M. Joshi,
 Advocate for Respondents no. 2 and 3.

CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

Reserved for Judgment on:	<u>08.03.2019</u>
Judgment pronounced on:	<u>22.03.2019</u>

JUDGMENT (Per S. V. GANGAPURWALA, J.):

1. Heard.

2. Rule. Rule made returnable forthwith. With the consent of learned counsel for respective parties matter is taken up for final hearing.

3. The petitioner was working as Headmaster with respondent no. 3 school. He was suspended on 05.02.1999 in contemplation of departmental enquiry. The departmental enquiry was concluded. The petitioner was terminated from service. The petitioner challenged his termination before the school tribunal. The appeal filed before the school tribunal was dismissed. The petitioner assailed the said order by filing writ petition before this Court. The writ petition is also dismissed. The special leave to appeal filed against the said order before the Apex Court is also dismissed.

4. The present writ petition is filed seeking retiral and pensionary benefits with effect from

30.04.2006. The petitioner further claims that he should be treated as retired from service as Headmaster of respondent no. 3 / school on completion of 58 years of age or at least with effect from 23.08.1999, the date on which he was terminated.

5. Mr. Deshmukh, learned counsel for the petitioner submits that the petitioner was fraudulently terminated by the *defacto* management without authority. The change report filed by the persons claiming to be in the management was rejected, as such, they did not have the authority to terminate the service of the petitioner. As the termination was not by a competent management, the petitioner would be deemed to have continued in service. The termination order is *void ab-initio*.

6. The learned counsel for the petitioner further submits that, even if it is assumed that the petitioner is removed from service is entitled for the pensionary and retiral benefits. According

to the learned counsel, the petitioner cannot be denied the pension. The pension is not a bounty but the property within the meaning of Article 300-A of the Constitution of India and a person cannot be deprived of his property except in accordance with due process of law. The learned counsel to buttress his submission relies on the judgment of learned Single Judge of this Court in case of **Kalyani Sangappa Sadashivappa Vs. The State of Maharashtra and others dated 19.01.2012.** The learned counsel for the petitioner also placed the reliance on the judgment of the Apex Court in case of **Deokinandan Prasad Vs. State of Bihar and others** reported in **1971 AIR 1409.**

7. The learned counsel for the petitioner further submits that even if it is assumed that the petitioner is removed from service, still the petitioner would be entitled for compassionate pension as per Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982.

8. The learned Assistant Government Pleader for respondent no. 1 and the learned counsel for respondents no. 2 and 3 submit that the dismissal forfeits the past service. In view of that, the petitioner is neither entitled for pension nor for gratuity or the other retiral benefits.

9. *Prima dona* issue involved is whether the petitioner can be deprived of the payment of gratuity so also of the pension.

10. The order terminating the service of the petitioner has attained finality up to the Apex Court. Once the change report is filed the persons who have filed the change report assume the office and would conduct day to day management. The petitioner was terminated of the charges levelled against him after conducting departmental enquiry. The said order of termination has been upheld by the School Tribunal, this Court and the Apex Court. Mere rejection of the change report much subsequent thereto would not affect the order of

termination of the petitioner.

11. The payment of gratuity is governed by the Payment of Gratuity Act, 1972. Sub-section 6 of Section 4, would be relevant. The same reads thus -

"4. Payment of gratuity - (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation - In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced;

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose

services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

12. The payment of gratuity can be disallowed only under the circumstances as detailed in Sub-section 6 of Section 4 of the Payment of Gratuity Act, 1972. It is not the case that some damage or loss has been caused to the society by the act of the petitioner or that his services are terminated for riotous or disorderly conduct or any other act of violence nor is terminated for any act which constitutes an offence involving moral turpitude. None of the ingredients as detailed in Sub-section 6 of Section 4 of the Payment of Gratuity Act, 1972 are attracted. In the light of that, the

petitioner cannot be denied the benefit of the gratuity.

13. The petitioner would not be entitled to the pension. The services of the petitioner are terminated after due enquiry by the employer. The termination has been upheld up to the Apex Court. Rule 45 of the Maharashtra Civil Services (Pension) Rules, 1982 provides that dismissal or removal of a Government servant from a service or post entails forfeiture of his past service. The petitioner has been dismissed from service. In the light of that, petitioner would not be entitled for pension. The facts in the case of Kalyani Sangappa Sadashivappa Vs. The State of Maharashtra and others (*supra*) are different and would not be applicable to the present case. In the said case the Court held that the case of the petitioner does not fall under Rule 45 of the Maharashtra Civil Services (Pension) Rules, 1982. In the present case, the petitioner has been dismissed / terminated from

service. The case of the petitioner would be within the ambit and purview of Rule 45 of Maharashtra Civil Services (Pension) Rules, 1982 and as such is not entitled for pension.

14. In the light of above, the writ petition is partly allowed. It is held that the petitioner would be entitled for the payment of gratuity. The respondents no. 2 and 3 shall forward the proposal of the petitioner for payment of gratuity as per Rules to respondent no. 1 within a period of six (06) weeks from today. On receipt of the said proposal, respondent no. 1 shall thereafter process the same and take further decision expeditiously and preferably within a period of six (06) weeks thereafter. The Rule is made absolute in above terms.

15. Writ Petition stands disposed of accordingly.
No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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