

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6096 OF 2018

Pandu Ramu Gaikwad ... Petitioner

V/s.

Rayat Education Society and ors. ... Respondents

Ms.Rati S. Sinhasane i/by Mr.Umesh R. Mankapure for
the Petitioner.

Mr.Milind Deshmukh for Respondent No.1.

Mr.S.H.Kankal, AGP for Respondent Nos.2 and 3-State.

CORAM : UJJAL BHUYAN, J.

DATE : OCTOBER 15, 2019.

P.C.:-

1. Heard Ms.Rati Sinhasane, learned counsel for the petitioner; Mr.Milind Deshmukh, learned counsel for respondent No.1 and Mr.S.H.Kankal, learned counsel for Respondent Nos.2 and 3.

2. Petitioner is a disabled person suffering 55% disability. He was a Teacher in the New English High School at Bedag run by respondent No.1. By order dated

14th June, 2016, he was transferred to Shree Shahu High School at Shahuwadi, District Kolhapur also run by respondent No.1, Contending that the petitioner was covered by the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the present writ petition came to be filed assailing the order of transfer.

3. On 15th October, 2018, while the case was taken up for hearing, learned counsel for the petitioner upon instructions made a statement that petitioner would join his service in the transferred place on 22nd October, 2018. On 15th October, 2018, the following order was passed:-

“1. In the present petition on 11th July, 2018, Mr. Deshmukh had sought time to file vakalatnama and reply. The matter was adjourned by consent on 7th August, 2018. On 10th September, 2018, the learned counsel for the Respondents had sought time to file affidavit in reply. On 3rd October, 2018, it was noticed that the affidavit was not filed and neither served upon the learned counsel for the Petitioner. Hence, the matter was kept on 15th October, 2018.

2. The Petitioner herein is to retire on 31st October, 2018. The Petitioner was working in New English High School at Bedag. The school is run by Rayat Shikshan Sanstha i.e. Respondent No.1. The Secretary of Respondent No.1 by its order dated 14th June, 2016 had transferred the Petitioner to Shri Shahu High School at Shahuwadi, Dist. Kolhapur with effect from 16.6.2016. The case of the Petitioner is covered under the provisions of Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 dated 6th July, 2016. The Petitioner had, therefore, approached the Welfare Commissioner for disabled person seeking intervention. He had requested the management to retain him at Bedag since it would be inconvenient for him to travel to his place to work and since he is disabled to the extent of 55%. The distance between Sangli to Bedag is 25 kilometers. Whereas Sangli to Kolhapur is 42 kilometers and it would take around two hours to travel for the place of working. The appropriate authority i.e. Commissioner for Disabled by an order dated 9th January, 2018 had directed the Respondents to retain the Petitioner at Bedag. However, there was no compliance and, therefore, the Petitioner was constrained to approach this Court.

3. It is the contention of the Respondents that the Petitioner ought to have joined the place of service and then would have realized that there is no difficulty in commuting from Sangli to Kolhapur every day. The said submission cannot be accepted on any count. The Petitioner is to retire on superannuation on 31st October, 2018. According to the

Respondents, the Petitioner could approach the office of the Commissioner at Pune but could not join the place of service at Kolhapur.

4. This appears to be a case of deliberate victimization. It is admitted by the Respondents that in fact the Petitioner had joined the service on 8th August, 2017 and, thereafter, had not reported to the said School.

5. The learned counsel for the Petitioner submits that the action of the Respondents has not only caused grave prejudice to the rights of the Petitioner but has also caused grave loss and it was unfair on the part of the Respondents to keep the Petitioner away from the service. The Government resolution dated 15.4.2004 specifically contemplates that the management shall be sensitive towards physically disabled person and shall preferably allow them to work at a place close to their residence. There is violation of the said G.R. In any case, the Learned counsel for Petitioner, upon instructions, submits that the Petitioner would join the place of service on 22nd October, 2018.

6. It is made clear that the Respondents would not create hindrance. Any person from the Education Department, Kolhapur duly authorized by the Deputy Director of Education shall remain present at the time of joining of the Petitioner in the said School i.e. Shri Shahu High School, Shahuwadi, Dist. Kolhapur and shall see to it that the management causes no impediment in allowing him to join the services.

7. The learned counsel for Respondent No.1 seeks time to take instructions in respect of the compensation to be paid to the Petitioner by the Management.

8. The Learned AGP to communicate this order to the office of the Education Department at Kolhapur.

9. Stand over to 30th October, 2018.”

4. After a couple of dates, the following order was passed on 2nd April, 2019:-

“ Learned Counsel for the petitioner as well as respondents submit that the petitioner has now retired on 31st October, 2018. The petitioner makes a grievance that he has not been paid salary and his pension papers are not processed.

2. Learned Counsel for the respondent No.1 would submit that they expect co-operation from the petitioner to process the pension papers.

3. Considering the fact that the petitioner is a disabled person, learned Counsel for the respondent No.1 to submit a list of all the details that are required from the petitioner for processing his pension papers by way of an affidavit so as to enable learned Counsel to inform the petitioner.

4. Learned Counsel for the petitioner submits that the petitioner undoubtedly would cooperate the respondent No.1 in

processing the pension papers.

5.List the Petition on 16/4/2019.”

5. Thus, from the above, it is evident that petitioner had carried out the order of transfer on 22nd October, 2018 and thereafter, he retired from service on 31st October, 2018 on attaining the age of superannuation.

6. It would further appear from the order dated 2nd April, 2019 that petitioner was not paid salary and his pension papers were also not processed. Today, when the matter is taken on board, it is seen that respondent No.1 has not filed the required affidavit. However, learned counsel representing respondent No.1 submits that petitioner was absent for a long period for which his salary could not be paid. Petitioner has also not co-operated with respondent No.1 in identifying the leave to which petitioner was entitled. Because of such non-operation neither the salary could be paid nor pension papers could be finalized.

7. On the other hand, learned counsel for the petitioner submits that petitioner has not received salary since 16th June, 2016, till his date of superannuation. Thereafter, though almost a year has gone by, pension papers have not been processed.

8. Heard learned counsel for the parties and on due consideration, court is of the view that keeping the matter pending any further would serve no useful purpose. Since the petitioner has carried out the order of transfer and has rendered service, his salary should be paid and after his superannuation his pension should be finalized.

9. In the order dated 2nd April, 2019, learned counsel for the petitioner had submitted that petitioner would undoubtedly co-operate with respondent No.1 in processing the pension papers. Therefore, let the petitioner appear before respondent No.1 within a period of 30 days from today and on such appearance respondent No.1 shall sort out the leave entitlement of

the petitioner to enable payment of salary to the petitioner from the date he was not paid salary till his superannuation. Alongwith the aforesaid, respondent No.1 shall also finalize the pension papers of the petitioner so that he receives his pension without any further delay.

10. Let the arrear salary be paid to the petitioner within a period of 60 days from the date of appearance of the petitioner before respondent No.1.

11. In so far pension is concerned, the same shall be released to the petitioner within a period of three months from appearance before respondent No.1 and thereafter, on regular basis.

12. With the above directions, Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

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