

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

Writ Petition No. 11484 of 2019

Khajan P. Pawara ... Petitioner

v/s.

State of Maharashtra & ors. ... Respondents

Mr.N.V. Bandiwadekar a/w. Mr. V.R.Kumbhar i/b. Mrs. Ashwini N.
Bandiwadekar & Ms. Neha N. Bandiwadekar, advocate for the
petitioner.

Mr. S.H. Kankal, AGP for respondent-State.

**CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ**

27th August 2020.

P.C.

Heard Mr. Bandiwadekar, learned counsel for the petitioner and
Mr.Kankal, learned AGP for respondent-State.

2. Petitioner served as an Assistant Teacher (Untrained) under

respondent no.2. He retired from service on attaining the age of superannuation on 31.05.2013. Grievance of the petitioner is that even though petitioner retired on attaining the age of superannuation more than 7 years ago, he has not been paid pension and other pensionary dues on the ground of being an untrained teacher, not having passed Diploma in Education.

3. We find that this issue is covered by a Division Bench judgment of this Court in Writ Petition No.6143/2016 (**Umabhai R. Deshmukh v/s. State of Maharashtra**) decided on 4th July 2019.

4. In Umabhai R. Deshmukh (*supra*) a Division Bench of Aurangabad Bench of this Court held as under:-

“7. It has been time and again reiterated by the Apex Court that pension is neither a bounty, nor matter of grace depending upon the sweet will of the employer and that it creates vested right. Pension is not ex-gratia payment, but it is a payment for the past service rendered. Pension is a social welfare measure rendering a socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension is a deferred compensation for service rendered for a long time gracefully and satisfactorily and as a consideration of his past service. It is a secured health and support to an ex-employee who is no more in

a position to work and earn after devoting his prime time of life to the service of the State.

8. The respondents did not dispute that the petitioners herein had put in the qualifying service. The petitioners were duly appointed by following selection process as contemplated under the law. They were appointed on sanctioned and substantive post. Their appointments are approved. They are paid salary as untrained teachers till the date of their superannuation. It is not the case of the respondent No. 4 that, the petitioners at the time of securing appointment had played a fraud or suppressed the fact of their qualification. The petitioners never represented that they are trained teachers.

9. The Maharashtra Zilla Parishad District Services Rules provide that, provisions of the Pension Rule shall apply.

10. All the parties agree that the Maharashtra Civil Services (Pension) Rules, 1982 (for short "Pension Rules") is applicable to the case in hand. It is also not disputed that at no point of time any departmental proceedings were initiated against the petitioners, nor they had suffered any disability except the fact that they were untrained teachers.

11. Rule 6 of the Pension Rules provide that any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or retired or is discharged or dies, as the case may be. Pensionable service is defined in Rule 9 (39) of the Pension

Rules. "Pensionable service means service which qualifies the Government servant performing it to receive a pension from the

consolidated fund”. Rule 30 of the Pension Rules provides that, 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 substantive or permanent post in Government service or holds a suspended lien or certificate of permanency. Rule 31 of the Pension Rules deals with conditions subject to which service qualifies. Same reads thus :

*The Maharashtra Civil Services (Pension) Rules,
1982.*

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31. Conditions qualifies to which service

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government.

(2) For the purposes of sub rule (1) the expression “service” means service under Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by Government.

(3) In the case of a Government servant belonging to the Central Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under

the Central Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify: Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed other wise than by deputation to a service or post to which these rules apply.

12. The Pension Rules read in its entirety nowhere stipulates that if a person is appointed on substantive post by following due selection process and completes 10 years or more service till the date of his superannuation and against whom no departmental or judicial proceedings are pending is dis-entitle for pension on the ground that on the date the employee was appointed and retires on attaining age of superannuation was untrained.

13. It is not disputed by respondents that, the petitioners were duly appointed on a substantive and sanctioned posts. They have completed the minimum period of qualifying service. In fact, most of the petitioners have completed more than 30 years of service and honourably retired on attaining age of superannuation. They were treated as regular employees, were paid the regular salary, their appointments are approved as per their qualification. No rule exists in the Pension Rules that would deny the petitioners right to claim pension. The posts these petitioners were holding, were never declared to be non pensionable or that the posts created by it shall not be qualifying service for pension. In absence of any rules, denying the right to get pension to the petitioners will not be permissible.

14. *The Government Resolution dated 04.10.1983 prescribing that those appointed prior to the cut off date i. e. 01.07.1972 and possessing only S.S.C. qualification would be deemed trained teachers not those appointed till the date of Government resolution is unreasonable classification as is observed by the Division Bench of this Court under judgment and order dated 13.12.2017 in a case of Smt. Gokula Vilas Patil Vs. The Education Officer (Primary) Sangli and others referred to (supra). The Division Bench of this Court at its Principal Seat at Bombay in the said case has observed that, the cut off date for making the pensionary benefits applicable to the untrained teachers as on 01st July, 1972 cannot be said to have any nexus with the object sought to be achieved. This Court in the said judgment further observed that, it would have been a different matter, had the State Government notified the date of Government Resolution or subsequent date as a cut off date for making the pensionary benefits applicable. However, by the 1983 Government Resolution the State could not have gone backward by nine years to provide a cut off date.*

15. *The provisions of the Government Resolution dated 04th October, 1983 are self eloquent. It has been observed in the said Government Resolution that these teachers have rendered laudable service and during their tenure the educational institutions have prospered and the results of such institutions are also excellent. The Division Bench in the case of Smt. Gokula Vilas Patil Vs. The Education Officer (Primary) Sangli and others (supra) further observed that, cut off date provided does not have*

any rational and one could have considered, if the cut off date provided was the date of Government Resolution or the subsequent date and in clear words observed that the Government Resolution does not have any nexus with the object. The Division Bench further observed that, by the 1983 Government Resolution, the State could not have gone backward by nine years to provide a cut of date.

16. Moreover, it would appear that all these petitioners were appointed after following due selection process. Their appointments have been approved and for all purposes they were treated as regular employees on substantive posts. They have rendered their services till the age of superannuation. Till the date of retirement these petitioners were at no point of time treated as ineligible for appointments. It is not case that the petitioners have suppressed or misrepresented about their qualification. The respondents consciously allowed petitioners to render services till they retired on attaining the age of superannuation. Their service record is unblemished and are appointed after following due selection process. They have rendered their services to the satisfaction of the institution and the authorities. They were paid salaries from the funds of the State.

17. As these petitioners were treated as regular employees working and officiating on substantive vacant posts till the age of their retirement, they were allowed to be honorably retired on attaining age of superannuation. Some of them have been promoted as Head Master. Thereafter the respondents could not

have come with the case that these petitioners are not entitled for retiral benefits and pension on the ground that they did not possess necessary qualification. It would be too late in the day for the State to contend that, these petitioners would not be entitled for retiral and pensionary benefits on account that they did not possess the required qualification.

18. Considering the aforesaid conspectus and the discussion supra, we direct that the petitioners would be entitled for pension and pensionary benefits. The respondents shall consider case of the petitioners for pensionary benefits and shall not refuse to grant pensionary benefits to the petitioners on the ground that they did not possess the necessary qualification. The same shall be considered expeditiously and preferably within a period of four (04) months from the date of this order.

19. In the light of the above, rule is made absolute in above terms. No costs.”

5. In view of the above, we hold that petitioner is entitled to pension and pensionary benefits. Accordingly, respondents are directed to grant pension and pensionary benefits to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

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

7. This order will be digitally signed by the Private

Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(ABHAY AHUJA, J)

(UJJAL BHUYAN, J)

L.S. Panjwani, P.S.