

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

WRIT PETITION NO.1747 OF 2016

Mrs. Kiran Ramesh Singh	]	
Adult Indian Inhabitant	]	
former Assistant Teacher at	]	
Swami Vivekanand High School	]	
Deen Dayal Nagar, Malad (East)	]	
residing at 004B, N G Galaxy	]	
Baverley Park Road, Mira Road	]	
Dist. Thane 401 107	]	 Petitioner.

Versus

1]	The State of Maharashtra	]	
	through Principal Secretary	]	
	Department of Education	]	
	Mantralaya, Mumbai – 400 032	]	
		]	
2]	The Deputy Director of Education	]	
	Mumbai Region	]	
	Jawahar Bal Bhavan	]	
	Mahapalika Marg, Mumbai 400 001	]	
		]	
3]	The Education Inspector	]	
	Mumbai (West Zone)	]	
	Ismail Yusuf College	]	
	Jogeshwar (E) Mumbai	]	
		]	
4]	Deen Dayal Nagar, Appapada	]	
	Kurar, Malad (E), Mumbai – 400 097	]	
	(through its Secretary)	]	
		]	
5]	Swami Vivekanand High School	]	
	Deen Dayal Nagar, Malad (East)	]	
	Appapada, Kurar, Malad (E)	]	
	Mumabi – 400 097	]	
	(through its Ag. Principal)	]	 Respondents.

**Mr. C R Sadasivan for the Petitioner.
Ms. Uma Palsule-Desai, AGP, for Respondent Nos.1 to 3.**

**CORAM : S. S. SHINDE,
V. G. BISHT, JJ**

**Reserved on : 03rd March 2020
Pronounced on : 11th March 2020**

P.C.

1 The Petitioner by this Writ Petition filed under Article 226 of the Constitution of India seeks directions against Respondents to release the provident fund accumulated dues of the Petitioner with the Respondents, to determine the pension and gratuity of the Petitioner in respect of 18 years of service with Respondent College from 1997 when she joined service till superannuation on 31st January 2015, release her monthly pension, to release the arrears of Pension from 1st February 2015 till the month from which monthly pension is commenced, to release the full amount of gratuity due and payable to the Petitioner without any deduction towards, and to release the amounts due to the Petitioner on various accounts set out in paras 13, 15 & 16 in the Petition, with interest.

2 The learned AGP appearing for the Respondents/State invites this Court's attention to the affidavit in reply of Anil S Sable, Education Inspector West Zone Jogeshwari East Mumbai. It has been stated in the said affidavit that Respondent No.5 Swami Vivekanand High School was granted permission

by the State Government through its Management i.e. Respondent No.4 Dindayal Education Trust Mumbai on non-aided basis vide its letter dated 29.11.1997 bearing No. Dy. Dir. Edn./Madhy-4/33661-62. It is also stated that Petitioner was appointed as Assistant Teacher by Respondent No.5 with effect from 01/09/1997 in unaided school, however, Respondent No.5 did not take approval from the office of Respondents. It is further stated that the office of the Respondents vide its letter dated 30/04/2010 bearing No.Edn.Insp.Mumb.West/Madhy-P/227 granted 100% aid to the Respondent-School and consequently the school became 100% aided with effect from 16/06/2008 and therefore the Petitioner was granted approval for her appointment with effect from 16/06/2008 in 100% aided school. The learned AGP therefore submitted that the Petitioner came to be superannuated with effect from 31/01/2015 and Respondent School became 100% aided with effect from 16/06/2008 means after 01/11/2005. Therefore, pursuant to Government Resolution dated 29/11/2010 issued by Education Department all teaching and non-teaching staff appointed after 01/11/2005 in Respondent-School became entitled for the New Defined Contributory Pension Scheme (DCPS) and held to be not eligible for the old pension scheme.

3 The issue regarding applicability of the Pension Schemes to the employees of the Schools including colleges of education arose before the Full Bench of this Court wherein it has been held that the employees of the schools,

including colleges of education, who were working against 100% aided posts prior to 01/11/2005 irrespective of the nature of initial appointment would be governed by the old pension scheme and thus who joined or held 100% aided posts after 01/11/2005 would be entitled to the new pension scheme.

4 It is informed across the bar that leave to appeal has been granted by the Hon'ble Supreme Court in the Special Leave Petition challenging the Full Bench decision and the matter is awaiting final adjudication before the Hon'ble Supreme Court.

5 In this context the learned counsel appearing for the Petitioner invites attention of this Court to the judgment of Division Bench of this Court (Coram : Pradeep Nandrajog, CJ & Smt. Bharati Dangre, J.) dated 26/08/2019 in Writ Petition No.8387 of 2013 and other matters. By the said judgment, the Division Bench has disposed of the said group of similar Petition by observing as under :-

“4 However, as regards this court the issue has attained finality and thus we dispose of all the writ petitions declaring that the right of the petitioners would be determined as per the decision of the Full Bench subject to the same being affirmed, reversed or modified before the Supreme Court. Meaning thereby the mandamus issued by this court today would automatically stand modified depending upon the view finally taken the Supreme Court”.

5 Civil Application Nos.961`/2011 & 971/2011 are disposed of as infructuous.

6 Files be consigned to the Record Room.

7 No costs.”

6 In that view of the matter, we dispose of the present writ petition declaring that the right of the present Petitioner would be determined as per the decision of the Full Bench subject to the same being affirmed, reversed or modified before the Supreme Court, meaning thereby, the mandamus issued by this Court today would automatically stand modified depending upon the view finally taken by the Hon’ble Supreme Court.

7 File be consigned to the Record Room.

8 No orders as to costs.

[V. G. BISHT, J]

[S. S. SHINDE , J]

Laxmikant
G.
Chandan

Digitally signed
by Laxmikant G.
Chandan
Date: 2020.03.12
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