

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 10424 OF 2019**

. Smt. Talat Sardar Khan

Age: 64 years, Occu: Retired,
R/o Anam Complex, Labour Colony,
Aurangabad.

... Petitioner

Versus

1. The State of Maharashtra
through School Education
and Sports Department,
Madam Kama Marg,
Mantralaya Mumbai – 400 032

2. The Accountant General,
A & E-II, Maharashtra State Nagpur,
Retirement Pension Branch,
Post Box No. 114, Old Building,
Nagpur.

3. The Deputy Director of Education
Aurangabad Division Aurangabad.

4. The Education Officer (Secondary)
Zilla Parishad Jalna.

5. The Gevrai Shikshan Prasarak Mandal
(Gevrai Bazar), Taluka Badnapur,
District Jalna.
Through its Secretary, Shri. Shivaji Kanhare,
Age: 50 years, Occu: Secretary,
R/o C/o Kasliwal Market,
1/6-B, N-2, CIDCO, Aurangabad.

6. Head Master
Shivaji High School, Gevrai (Bazar)
Taluka Badnapur, District Jalna,
A & E-II, Nagpur.

... Respondents

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Ms. A. N. Ansari, Advocate for the Petitioner
Mrs. M. A. Deshpande, Addl. GP for Respondent Nos.1 to 4
Mr. R. R. Imale, Advocate for Respondent No.5 & 6

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**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE : 12th October, 2021

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :

1. Rule. Rule made returnable forthwith. With consent of the parties, taken up for final hearing.
2. The petitioner is denied pension and retiral benefits.
3. The petitioner was appointed on or about 02.09.1985 for one academic year. Every year, the petitioner was appointed upto 30.04.1989. On 19.07.1991, the petitioner was appointed on two years probation. The approval was granted. Thereafter, the petitioner become permanent. On or about 31.03.2011, the petitioner submitted a notice of voluntary retirement. The said notice of voluntary retirement it appears was accepted by the Management. The Accountant General, at Nagpur raised certain queries and held that, the petitioner has not completed twenty years of qualifying service and as such, is not entitled for retiring pension.
4. Ms. Ansari, the learned counsel for the petitioner submits that, the Government Resolution dated 09.09.1988 is made applicable to the employees of the schools governed under the Maharashtra Employees of Private Schools. It states that, an employee cannot give a notice of voluntary retirement prior to completion of twenty years

of service. In view of that, the notice of voluntary retirement will have to be deemed to be invalid. The petitioner shall be deemed to have worked till completion of the age of superannuation and as such, the petitioner would be completing twenty two years of service as on the date, the petitioner would attain the age of superannuation.

5. Mrs. Deshpande, the learned Additional Govt. Pleader submits that, the petitioner, on her own volition, gave notice of voluntary retirement and thereafter, did not attend the service. The break-in-service is rightly not condoned. The provisions of Rule 66 (1) of the Maharashtra Civil Service (Pension) Rules, 1982 [For short 'MCS (Pension) Rules'] are violated. As such, the petitioner is rightly denied the retiring pension.

6. It appears that, the petitioner before completion of twenty years of service had tendered notice of voluntary retirement. The petitioner was not entitled to do so. Neither rule 66 (1) of MCS (Pension) rules would permit the petitioner, nor the Government Resolution dated 09.09.1988 would allow the petitioner to tender the notice of voluntary retirement prior to completing twenty years of qualifying service.

7. In that case, the notice issued by the petitioner of voluntary retirement would be invalid. The petitioner would complete twenty years of service on 19.07.2011. As the notice issued by the

petitioner itself was invalid, the petitioner could not be voluntarily retired as per the notice of the petitioner. Considering the above anomalous position and the the mistake committed by the Management, by accepting the said notice, (by not communicating the rejection of the same), we direct that, the petitioner shall be deemed to have retired on 19.07.2011, considering the notice of voluntary retirement to be effective from 19.07.2011 i.e. the date on which, the petitioner completes twenty years of qualifying service. However, it is made clear that, the petitioner would not be entitled for salary from the date of notice of voluntary retirement till 19.07.2011. However, the said period will have to be counted for retiring pension and other benefits.

8. In light of the above, the impugned communication is quashed and set aside. The service of the petitioner would be deemed to be counted from 19.07.1991 till 19.07.2011 i.e. twenty years of qualifying service for the purpose of retiring pension and all other benefits. The benefits shall be accorded expeditiously.

9. Rule is accordingly made absolute. No costs.

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)