

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

WRIT PETITION NO.7138 OF 2016

Shakuntala Shantaram Dahitule

... Petitioner

Vs.

Shri Rangadasswami Shikshan

Vikas Mandal & Ors.

... Respondents

Ms. Anita A. Agarwal for the Petitioner.

Mr.D.S. Mhaispurkar i/by Mrs. Vaidehi S. Mhaispurkar for
Respondents No.1 and 2.

Mrs.P.J. Gavhane, AGP for Respondents No.3 to 6.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.**

DATE : 3RD DECEMBER, 2021

P.C. :

1. Rule. Rule made returnable forthwith. Mr.D.S. Mhaispurkar, learned counsel for Respondents No.1 and 2 waives service. Mrs. Gavhane, learned AGP for Respondents No.3 to 6 waives service.

2. By consent of the parties, Petition is heard finally.

3. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of mandamus

against the Respondents to grant her period of leave dated 1st August, 2002 to 29th April, 2004 as special leave and earned leave.

4. The Petitioner was working with Respondents No.1 and 2 and retired as a Supervisor. It is the case of the Petitioner that the Petitioner suffered ill health in and around 2002, was taking treatment and was diagnosed as having Tuberculosis. The Petitioner was very weak and frail and, hence, had to proceed on long leave. The Petitioner was under treatment for Pulmonary Tuberculosis from 2nd March, 2002 to 29th April, 2004.

5. On 30th April, 2004, the Petitioner joined Respondent No.2 School after such leave taken on the ground that the Petitioner was suffering from the said Pulmonary Tuberculosis and was taking treatment. It is the case of the Petitioner that under the Government Resolutions dated 10th November, 1983 and 9th April, 1990, the Petitioner, who was suffering from Pulmonary Tuberculosis, was entitled for special leave with all the benefits. The Petitioner made various representations from time to time for granting a special leave for the said period between 1st August, 2002 to 29th April, 2004. The Petitioner retired on 30th April, 2006.

6. It is the case of the Petitioner that since the Petitioner was not getting the payments for the said period between 1st August, 2002 to 29th April, 2004 and to the retirement/pensionary benefits, the Petitioner filed this Petition in the month of April, 2016.

7. This matter appeared for time to time before the Division Bench of this Court. The Petition has been opposed by the Respondents by filing certain documents and respective affidavits.

8. On 5th December, 2017, this Court directed the Management to prepare papers with regard to grant of pensionary benefits to the Petitioner and also directed the Respondent No.3 to file all the necessary papers for making pensionary benefits applicable to the Petitioner. The Petition thereafter appeared on board on 9th October, 2018 when this Court directed Respondents No.1 and 2 to submit all the necessary papers about making the payment of retiral and pensionary benefits applicable to the Petitioner treating the Petitioner to have validly retired from services on 30th April, 2006, after completing uninterrupted service from 8th June, 1970 to 30th April, 2006, within a period of one week from the date of the said order.

9. On 16th October, 2018, a Division Bench of this Court recorded a statement made by Respondents No.1 and 2 that the Respondents No.1 and 2 had already submitted the proposal for grant of pensionary benefits to the Petitioner on 15th October, 2018. The said statement was confirmed by the learned AGP appearing for the State. This Court, accordingly, directed Respondent No.6 to process the proposal forwarded by Respondent No.3 as expeditiously as possible and in any case within a period of six weeks from the date of the said order. This Court clarified that Respondents No.3 to 6 shall ensure that the actual pension will be made payable to the Petitioner from the month of January, 2019. This Court also clarified that in so far as the payment of interest, etc., is concerned, this Court shall pass the orders subsequently.

10. We are informed that pursuant to the aboveresferred interim orders passed by this Court from time to time, the State Government has released the payment of certain amounts towards the pension as directed by this Court.

11. The issue which survives in this Petition is in respect of the special leave and earned leave, payment arising out of the special leave and earned leave for the period between 1st August, 2002 to 29th April, 2004.

12. Ms. Agarwal, learned counsel for the Petitioner invited our attention to some of the exhibits annexed to the Petition and also the interim orders passed by this Court from time to time. She submits that under the Government Resolutions referred above, the Petitioner at the relevant time, during the period between 1st August, 2002 to 29th April, 2004, having been suffering from Pulmonary Tuberculosis, was entitled to such special leave and earned leave. The Petitioner had produced the relevant medical records in support of her claim for such special leave and earned leave. Respondents No.1 and 2, however, did not consider the said documents. She submits that however pursuant to the interim orders passed by this Court, the pension amount to some extent has been released.

13. It is submitted by the learned counsel that Respondents No.1 and 2 subsequently had even corrected the service book by

recording the entry of such special leave and earned leave. It is submitted that no action was taken by Respondents No.1 and 2 against the Petitioner for such leave between 1st August, 2002 to 29th April, 2004 and promotion was also granted from time to time to the Petitioner. The Respondents No.1 and 2 thus cannot refuse to pay for the said period of special leave and earned leave during the period between 1st August, 2002 to 29th April, 2004.

14. Mr. Mhaispurkar, learned counsel for Respondents No.1 and 2 would submit that the documents in support of the leave during the period between 1st August, 2002 to 29th April, 2004 were submitted in 2006. The Petitioner did not take charge of the post on transfer. It is submitted that if the Petitioner wanted to avail of the said special leave and earned leave, the Petitioner was required to remain present before the medical team of Respondents No.1 and 2 before granting any such approval for said special leave and earned leave by Respondents No.1 and 2. He lastly submits that if the Respondents No.3 to 6 are ready and willing to pay the Petitioner for the said leave period, his clients have no objection.

15. Mrs. Gavhane, learned AGP for Respondents No.3 to 6, on the other hand, opposed this Petition and strongly relied upon the affidavit filed by Rajmohan Hariprasad Sharma, the then Superintendent, Pay and P.F. Unit (Secondary) and would submit that there was delay on the part of the Management to submit the pension papers. It is submitted that the Petitioner was required to submit the application according to Rule 16(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 for seeking special leave and allowance, even if she was suffering from Pulmonary Tuberculosis. No such procedure was followed by the Petitioner.

16. The learned counsel for the Petitioner in rejoinder invited our attention to the letters annexed at Pages 13 to 58, some of which were addressed by the Petitioner and would submit that attention of the Respondents No.1 and 2 was invited about sickness of the Petitioners since the date of her sickness.

17. A perusal of the record produced by the Petitioner for perusal of this Court more particularly the correspondence exchanged between the parties would clearly indicate that since

2002 itself the Petitioner has addressed various letters for seeking such special leave on the ground of her sickness. At no point of time, any action was taken by Respondents No.1 and 2 against the Petitioner for remaining absent during the said period. The Petitioner was granted promotion from time to time by Respondents No.1 and 2 after she resumed her duties after taking the treatment for Pulmonary Tuberculosis. This fact is not disputed by the learned counsel for Respondents No.1 and 2.

18. A perusal of the record further indicates that even the service book of the Petitioner was updated which would include the said period of 1st August, 2002 to 29th April, 2004.

19. Be that as it may, by an interim order dated 9th October, 2018 passed by the Division Bench of this Court in this Petition, Respondents No.1 and 2 were directed by this Court to submit all necessary papers for making the retiral and pensionary benefits applicable to the Petitioner treating the Petitioner to have validly retired from service on 30th April, 2006 after completing uninterrupted service from 8th June, 1970 to 30th April, 2006. It is not in dispute that the said interim order passed by this Court was

not impugned by any of the Respondents before the Hon'ble Supreme Court and has been complied with.

20. In our view, once this Court has already observed that the Petitioner was entitled to pension and other retiral benefits by treating the services of the Petitioner from 8th June, 1970 to 30th April, 2006 as uninterrupted service, the Respondents No.1 and 2 cannot be allowed to urge now that the leave taken by the Petitioner during the period between 1st August, 2002 to 29th April, 2004 as special leave and earned leave cannot be paid to the Petitioner. Be that as it may, the service book of the Petitioner has already been updated which would also clearly indicate the continuity of the service from 8th June, 1970 to 30th April, 2006 including the said leave period from 1st August, 2002 to 29th April, 2004. In our view, the refusal on the part of Respondents No.1 and 2 at the first instance to pay the Petitioner during the said period of special leave and earned leave between 1st August, 2002 to 29th April, 2004 is illegal. Consequently, Respondents No.3 to 6 also cannot refuse to pay the Petitioner for the said special leave and earned leave during the said period in lieu of Petitioner having demonstrated or entitled to get such leave including the earned leave. The Petitioner has

made out a case for payment of interest. We accordingly pass the following order :-

ORDER

(i) The Writ Petition is made absolute in terms of prayer clauses (a) and (b).

(ii) Respondents No.3 to 6 shall release the amount due and payable to the Petitioner for the said period from 1st August, 2002 to 29th April, 2004 considering the said period as special leave and earned leave within eight weeks from today.

(iii) The further retiral benefits shall be computed by Respondents No.3 to 6 considering the findings, directions and the reliefs granted in terms of prayer clause (a) and shall be released simultaneously.

(iv) In so far as the regular pension is concerned, the same shall be recomputed by giving effect to this order and shall be paid every month on the due date as per policy.

(v) As far as the interest on delayed payment is concerned, since the Petitioner approached this Court after almost 10 years from the date of her retirement, we direct Respondents No.1 and 2 on one hand and Respondents No.3 to 6 on another hand, to pay the interest to the extent of 50% each, for the period from 1st January, 2006 till the date of filing this Petition, i.e., 26th April, 2016, to the Petitioner on the delayed payment of earned leave at the rate of 6% per annum within six weeks from today. The interest would be computed till the date of payment.

(vi) Respondent No.6 is directed to compute the amount payable to the Petitioner for giving effect to the orders passed by this Court and shall furnish such computation in so far as the principal amount is concerned, to the Respondents No.1 and 2 within three weeks from today. Respondents No.1 and 2 in turn shall remit the amount of interest directed to be paid, as would be computed by Respondent No.6, to the Petitioner within three weeks thereafter.

(vii) Rule made absolute forthwith. No order as to costs.

(viii) Parties to act on the authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)

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