

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7927 OF 2021

Hemlata Pradip Bhuyar (Kadam),
Age : 58 years, Occu : Retired,
R/o : Plot No. 52/F-4,
Telecom Housing Society, N-6,
CIDCO, Aurangabad
Tq & Dist – Aurangabad

.. Petitioner

Versus

1] State of Maharashtra
Through Secretary for
General Administration Department
Mantralaya, Mumbai – 32

2] Aurangabad Municipal Corporation, Aurangabad
Through its Administrator and Commissioner

3] Deputy Commissioner and Head of
Education Department,
Aurangabad Municipal Corporation, Aurangabad

4] Education Officer,
Aurangabad Municipal Corporation,
Aurangabad

.. Respondents

...

Advocate for petitioner : Mr. Parag V. Barde
AGP for the respondent – State : Mr. K.N. Lokhande
Advocate for the respondents nos. 2 to 4 : Mrs. Anjali Bajpai-Dube

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 26 AUGUST 2022

ORAL JUDGMENT (SANDEEP V. MARNE, J.) :

Rule. Rule made returnable forthwith. Learned AGP
waives notice for respondent no. 1 and Mrs. Anjali Bajpai-Dube waives

notice for respondents nos. 2 to 4. By consent of the parties, the petition is heard finally at the stage of admission.

2. The petitioner was appointed as Assistant Teacher in the school run by respondent no. 2 and came to be promoted as Headmistress. On 17-09-2004, the caste scrutiny committee rejected the validity of the petitioner's caste certificate. The said decision was challenged by the petitioner before this Court, Bench at Nagpur in writ petition no. 4714 of 2004. This Court passed an interim order on 04-03-2005 and thereby granted stay to the decision of the Committee dated 17-09-2004 during pendency of the petition. Writ petition no. 4714 of 2004 was later dismissed by this Court by its judgment and order dated 01-08-2018. However, the interim protection granted earlier, came to be continued for a period of eight weeks.

3. Petitioner has challenged the judgment of this Court before the Supreme Court by filing Special Leave Petition no. 26231 of 2018 and by order dated 08-10-2018, the Supreme Court has continued the interim relief that was granted by this Court. The Special Leave Petition is still pending and the interim order continues to operate.

4. In the meantime, on 21-12-2020, an order had been passed by respondent no. 2 – Corporation placing post of the petitioner on a supernumerary post. That decision was challenged by filing writ

petition no. 9104 of 2020 which came to be allowed by order dated 06-01-2021 and the direction to put the services of the petitioner on supernumerary post came to be set aside. During pendency of that petition, the petitioner retired on attaining the age of superannuation on 31-12-2020.

5. Now the grievance of the petitioner is that despite having retired from service on 31-12-2020, none of her pensionary benefits have been released.

6. Mr. Barde, learned counsel appearing for the petitioner submits that on account of the interim order granted by the Hon'ble Supreme Court, the petitioner was continued in service right till her retirement. He further submits that the pension is a right deriving out of the services rendered by the employee. Having completed the entire tenure of service, the petitioner cannot be denied pension. He also places reliance on decision of this Court in *Leelamrut S/o Narayan Karoo Vs. Mormugao Port Trust, Goa and others; 2022 (2) Mh.L.J. 74*.

7. Per contra, Mrs. Bajpai, learned counsel for respondents nos. 2 to 4 opposes the petition and submits that since the very entry into the service of the petitioner is rendered void on account of the caste claim being rejected, the petitioner cannot be granted any pension. She alternatively submits that in the event the petitioner is

held to be entitled for payment of pension, she can only be paid the provisional pension under Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter “the Rules of 1982”).

8. Having heard learned counsel for the respective parties, we find that the petitioner continued to work in service till her retirement on account of the interim order initially granted by this Court and later continued by the Supreme Court. We reproduce the interim order granted by this Court on 04-03-2005 in writ petition no. 4714 of 2004,

“Heard.

Rule.

Respective Counsel waive service.

This petition be listed along with bunch of petitions, which are admitted, kept pending and proposed to be referred to the larger Bench.

Therefore, interim order in terms of prayer clause (D)”

Thus, this Court stayed the very order of the scrutiny committee dated 17-09-2004. This stay order continues to operate till date. Thus, as of today, the order passed by the scrutiny committee remains suspended. Therefore, ordinarily, the petitioner cannot be denied pension and other pensionary benefits. However, the fact remains that petitioner’s Special Leave Petition is still pending.

9. Mr. Barde’s reliance on the decision of this Court in *Leelamrut* (supra) appears to be misplaced. In that case, the disciplinary proceedings were initiated against the petitioner therein

and stoppage of pension was as a measure of penalty. The facts in the case at hand are entirely different and, therefore, the said decision has no application to the present case.

10. However, in view of the situation that emerges before us, the petitioner cannot be kept waiting for her pensionary benefits indefinitely. At the same time, we cannot direct that during pendency of the determination of the validity of the scrutiny committee's order, full and final pensionary benefits can be paid to the petitioner.

11. Mrs. Bajpai's reliance on Rule 130 of the Rules of 1982 appears apposite. Under that provision, Government servant undergoing departmental or judicial proceeding can be granted provisional pension. Though Rule 130 may not strictly apply to the present case as no disciplinary proceedings are pending against the petitioner and pendency of the Special Leave Petition before the Supreme Court cannot be construed to be judicial proceeding within the meaning of Rule 130 of the Rules of 1982, we are of the view the principles and objectives behind Rule 130 can be applied to the present case. In the circumstances, we proceed to pass the following order :-

ORDER

- I) We direct that the petitioner be paid provisional pension from the date of her retirement.
- II) Such provisional pension be continued to be paid to her till the decision of the Special Leave Petition pending before the Supreme Court.
- III) Further course of action be taken depending on the orders passed in the pending Special Leave Petition.
- IV) Rule is made absolute in the above terms.
- V) No costs.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/