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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

907 WRIT PETITION NO.6141 OF 2022

**MANSURI GULABKHAN MUSAKHAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS**

....

Mr A. R. Syed, Advocate for petitioner;
Mr S. G. Sangle, A.G.P. for respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE : 3rd August, 2022

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (C),(D), (E), (F) and (G), which read as under :-

“C) This Hon’ble Court may be pleased to issue appropriate writ order or direction to quash and set aside the impugned order dated 14.01.2019 issued by the respondent no.2 (Exh.-‘K’).

D) This Hon’ble Court may be pleased to issue appropriate writ order or direction to the respondents to grant him benefits of continuity from his initial date of appointment i.e. from 26.06.1991 and grant him all consequential benefits as per the Judgment and order dated 12.12.2002 passed by the Ld. School Tribunal, Nashik.

E) This Hon’ble Court may be pleased to issue appropriate writ order or direction to the respondent no.3

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& 4 to forward the revised pension proposal by awarding the benefits of continuity from his initial date of appointment i.e. from 26.06.1991 as per the Judgment and order dated 12.12.2002 passed by the Ld. School Tribunal, Nashik within stipulated period. The respondent no.2 be directed to process the same and revise the pension.

F) This Hon'ble Court may be pleased to issue appropriate writ order or direction to the respondents to release all consequential benefits of continuity in service from 1991.

G) Pending, hearing and final disposal of this Writ Petition, the respondents be directed to revise the pension of the petitioner by awarding him benefits of continuity in service from 1991.”

2. We have considered the extensive submissions of the learned Advocate for the petitioner and the learned A.G.P. appearing on behalf of respondent Nos.1 and 2.

3. Considering the statement made by the learned Advocate for the petitioner, on instructions, and as the petitioner has already superannuated, we did not find any purpose in issuing notices to respondent Nos.3 – Society and 4 - School, as the petitioner is not claiming any relief against them.

4. The petitioner joined on 26/06/1991 as an ‘Untrained Assistant Teacher’. He acquired the requisite qualifications to be

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considered as a 'Trained Teacher' in March 1999. On 14/06/1999, the Management restrained the petitioner from signing the muster roll. The petitioner approached the School Tribunal, Nashik, by preferring Appeal No. DHL-30/2000. By Judgment dated 12/12/2002, the appeal was allowed by the Tribunal. The petitioner's oral termination was held to be illegal, was set aside and he was granted reinstatement in service with continuity. However, he was not granted back-wages. Specific reasons were assigned in the last paragraph of the order by the Tribunal that, as the petitioner was an 'Untrained Teacher', he did not deserve back-wages.

5. The Management approached this Court in Writ Petition No.1616/2003. By an order dated 13/04/2004, this Court held that the Tribunal had rightly proceeded with the appeal without the written statement of the Management, as the Management had not tendered its written statement for more than two years. The Management was further saddled with costs and this Court observed that, there was no reason to entertain the petition.

6. We find a peculiar aspect with regard to this case. There is no formal direction or sentence in the order dated 13/04/2004 that,

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Writ Petition No.1616/2003 is dismissed. The reasons assigned by the learned Single Judge, clearly point towards the intention of the Court to dismiss the petition, though there is no formal statement that the petition is dismissed. We, therefore, called for the file from the Record Room and we noticed on the covering sheet that the writ petition number is not encircled, which is a normal way of indicating that the petition is disposed off. Nevertheless, the Decree Department has attached a sheet on the file and it is written on the top of the sheet as “*decided on 13/04/2004*”. We rest the issue at that stage.

7. In view of the above, it is apparent that the petitioner was granted continuity in service along with reinstatement.

8. The learned A.G.P. submits on instructions that, since there was no post available to accommodate the petitioner, Shri Shantaram Wagh, an employee, who was working on the post of an ‘Assistant Teacher’, was displaced and by declaring him as being surplus, he was absorbed elsewhere. Shri. Shantaram Wagh was already paid the salary through the salary grants for the period 1999, till August 2004 and the State Government, therefore, cannot make a double payment to two candidates for

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the same post. There is no litigation on this count according to the instructions of the learned A.G.P.

9. The petitioner was reinstated on 27/08/2004. The Tribunal declined back-wages to the petitioner. Moreover, the learned Advocate for the petitioner has specifically spoken to his client and on instructions submitted that, if continuity in service is being recognized by this Court and necessary directions are issued, he would not claim any arrears of wages prior to 27/08/2004 and more so, in the light of the verdict of the Tribunal refusing back-wages to him.

10. In the light of the fact situation as above, we find that the impugned order dated 14/01/2019, declaring that the petitioner's services would be approved from 27/08/2004 on-wards, would be an unsustainable conclusion. The petitioner has been granted continuity in service for the period of his termination between 14/06/1999 till his reinstatement on 27/08/2004. It is admitted that he was not having the requisite qualifications and was an Untrained Teacher from 26/06/1991, till the date he acquired requisite qualifications to be treated as a Trained Teacher. As such, from the date the petitioner acquired requisite qualifications,

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so as to be treated as a Trained Teacher, the Education Officer will have to grant him approval as a Trained Teacher from March 1999, when he acquired the qualifications.

11. For these reasons, this petition is partly allowed and the impugned order is quashed and set aside.

12. We direct the Education Officer (Secondary), Zilla Parishad, Dhule, to grant approval to the petitioner's services as a 'Trained Assistant Teacher' from March 1999 on-wards. Needless to state, if service conditions or the law permits, taking into account the period of service put in by the petitioner as an 'Untrained Teacher', for the purposes of computing his retiral and pensionary benefits, the concerned authorities would consider this aspect within the framework of law.

13. The Education Officer shall issue a fresh order in the light of the above directions, on or before 30/08/2022. Pensionary benefits would be made available to the petitioner, within 60 days thereafter.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

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