

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

924 WRIT PETITION NO.6704 OF 2019

**MINATAI NANASAHEB KAMBLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner : Mr. Ambetkar Arvind G.
AGP for Respondent Nos. 1 & 2 : Mr. K. N. Lokhande
Advocate for Respondent No. 4 : Mr. A.D. Aghav h/f Dipali Wagh

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

DATE : 30.08.2022.

PER COURT : (PER : SANDEEP V. MARNE, J.)

We have heard both the sides.

2. By the present petition, the petitioner seeks following prayers :

“A) The Writ Petition may kindly be allowed.

B) By issuing a writ of certiorari or any other appropriate writ, order or directions in the like nature, this Hon’ble Court may kindly be pleased to call for the papers and proceeding in respect of impugned communication dated 01.04.2019 issued by respondent No. 4 and after examining its legality, validity and propriety to quash and set aside the same;

C) By issuing a writ of certiorari or any other appropriate writ, order or directions in the like nature, this Hon’ble Court may kindly be pleased to continue service of the petitioner from 20.07.2001 with all service benefit under the said Rules and the approval granted to the appointment of the petitioner as ‘Shikshan Sevak’ from 24.12.2007 to 24.12.2010 is liable to be cancelled and she should be held eligible for the pay scale applicable as Assistant Teacher in the Primary School.

D) By issuing a writ of mandamus or any other appropriate writ, order or directions in the like nature, this Hon'ble Court may kindly be pleased to thereby directing the respondent Nos. 3 to 5 to continue to extend the benefits of old pension scheme, increments, promotions, pay fixation, dereference and other service benefits from initial date of appointment i.e. 20.07.2001.

E) Pending the hearing and final disposal of the present petition, this Hon'ble Court may kindly be pleased to grant stay to the effect execution and implementation to impugned communication dated 01.04.2019 issued by respondent No. 4.

F) Interim and ad-interim reliefs in terms of prayer clause 'E' above may please be granted.

G) Such other and further reliefs as the nature and circumstances of the case may require."

3. So far as prayer clause 'C' is concerned, the same is rejected by a communication dated 01.04.2019 on the ground that the conditions required under the Government Resolution dated 15.09.2011 are not fulfilled by the petitioner. It is also stated that she was not educationally qualified at the time of her initial appointment. The third ground of rejection was that during 2001-2002 to 2006-2007 only temporary approval was granted for each academic year to the petitioner.

4. However, the petitioner has placed on record order dated 15/21.05.2018 passed by the Assistant Commissioner Social Welfare Beed by which the break in service of 267 days has been condoned. In the said order it has been directed that the service of the petitioner from 20.07.2001 to 22.12.2007 should be treated as a continuous service. It is further directed that since the service is treated as continuous service upon condonation of break, all the future benefits as admissible under the applicable policy and Government Resolutions can be extended to her by her current employer. Also, even though the petitioner was not holding the

qualification of D.Ed. on the date of her initial appointment on 20.07.2001 and on that ground her approval was rejected for the academic year 2001-2002 by order dated 23.10.2001, for the subsequent academic year of 2002-2003 she was granted approval by order dated 16/19.10.2002 treating her date of initial appointment as 20.07.2001. Therefore, it is questionable whether the objection of the petitioner not holding requisite qualification on the date of initial appointment would survive or not ?

5. The Education Officer has not considered all these aspects while rejecting the case of the petitioner vide a communication dated 01.04.2019.

6. In prayer clause 'D' the petitioner has sought counting of past services for pension and application of the old pension scheme. This aspect is also not considered by the Education Officer.

7. Consequently, we deem it appropriate to set aside the communication dated 01.04.2019 and remand the matter to the Education Officer for reconsideration of the entire issue. The Education Officer may take a fresh decision within a period of three months from today.

8. The petitioner will have liberty to make an additional representation before the Education Officer.

9. The Writ Petition is disposed of accordingly. No costs.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-