

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3887 OF 2021

Savio Jerry Moraes & Ors. ... **Petitioners**
Versus
The State of Maharashtra & Ors. ... **Respondents**

Mr. Ashok Shetty & Ms. Rita Joshi & Mr. Kalpesh Nansi i/b.
Kalpesh Nansi, Advocate for the Petitioners.

Mr. Kedar Dighe, AGP for the Respondent Nos.1 to 3/State.

Mr. Kiran Bapat a/w. Ms. Manorama Mohanty & Mr. A. P.
Singh i/b. S. K. Srivastav & Co., Advocate for Respondent
Nos.4 and 5.

**CORAM: S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

DATED : AUGUST 17, 2022

P.C.

1. Petitioner No.1 was appointed as full time teacher on or about 10th August 1993. Petitioner No.2 was appointed as full time instructor on or about 11th January 1989. Petitioner No.3 was appointed as Junior Clerk on or about 2nd April 1993. Petitioner No.4 was appointed as Peon-Class IV on or about 1st April 1993. Petitioner No.1 on or about 15th July 2016 gave notice of voluntary retirement to the institution. Petitioner No.2 gave notice of voluntary retirement on 14th July 2016. Petitioner Nos.3 and 4 gave notice of voluntary retirement to the Institution on 25th July 2016. The three months' notices were given. The said

notices of voluntary retirement were accepted by the Institution.

2. The Management submitted the pension proposal of the petitioners. The same is rejected.

3. It is submitted by the learned Counsel for the petitioners that the petitioners have been paid their Provident Fund dues, but are not paid the gratuity amount nor the pension has been paid, so also the salary for the period from June 2016 till the date of their voluntary retirement is not paid.

4. The learned AGP submits that the Joint Director has rightly rejected the retiral benefits of the petitioners. Notices of voluntary retiral are given by the petitioners after the Institution took a decision to close down the course on 13th December 2015. The said decision was without permission of the Department. As per Rule 25A of the Maharashtra Employees of Private School (Condition of Service) Rules, 1981 (hereinafter referred to as, “**MEPS Rules**”), the services of petitioners can be terminated after giving three months notice or three months salary. As Rule 25A of the MEPS Rules would be applicable, it is the responsibility of Management to pay the salary.

5. The learned AGP, on instructions, submits that the permission has been refused for the closure of the course on which the petitioners were employed.

6. Be that as it may, even assuming that the permission was refused to close down the course, still that would not affect the case of the petitioners. If the permission was

refused to close down the course, the petitioners would be on better footing in as much as the course was to be continued, but the petitioners obtained voluntary retirement. As per Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 after completion of 20 years of service, the petitioners are entitled to give notice of voluntarily retirement.

7. If the applications of the petitioners for voluntary retirement are accepted before closing down the course, the petitioners would be entitled for the benefits of pension as notices of voluntary retirement were prior to permission to close down the course. Under any circumstances, as the petitioners have completed the minimum required service before issuance of notice of voluntary retirement and the applications for voluntary retirement are accepted by the Management, the petitioners would be entitled for retirement benefits.

8. In light of the above discussion, the impugned order is quashed and set aside. The Management shall process the applications submitted by the petitioners seeking pensionary benefits in the light of the observations made herein above and the decision shall be taken preferably within three months from today. The salary bills submitted by the Management seeking salary of the petitioners from June 2016 to October 2016 shall be processed by the Education Officer and the payment be made in view of the observations made herein above.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)

Gaikwad RD