

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1334 of 2019

Maya Prabhudas Parchake,
Aged about : 37 years, Occupation: Assistant Teacher,
R/o C/o B.B.Sarate
At Post-Jalka, Tq. Ralegaon,
District Yavatmal.

..... **PETITIONER**

...VERSUS...

1. The State of Maharashtra through
Its Secretary, Tribal Development Department,
Mantralaya, Mumbai-32.
2. The Upper Commissioner,
Tribal Development Department,
Camp, Amravati.
3. The Project Officer,
Integrated Tribal Development Project,
Pandharkawada, District Yavatmal.
4. Lokvikas Shikshan Sanstha, Wani,
through its Secretary, Shri Sanket Netaji Rajgadkar,
R/o. Sneha Nagar, Wardha Road,
Nagpur. Tq. And District Nagpur.
5. The Head Master,
Pratibha Madhyamik Ashram School,
Jalka, Tq. Ralegaon District Yavatmal.

..... **RESPONDENTS**

Shri V.A.Kothale, Advocate for petitioner.
Shri A.S.Fulzele, Additional Government Pleader for respondent nos. 1 to 3.
Shri B.G.Kulkarni, Advocate for respondent nos. 4 and 5.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- SEPTEMBER 12, 2022.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner was appointed on the post of 'Shikshan Sevika' at the respondent no.5-Ashram School run by the respondent no.4-Society. The order of appointment is dated 28.07.2006 on probation for a period of three years. The services of the petitioner came to be terminated with effect from 01.08.2009 pursuant to the notice dated 28.07.2009. Being aggrieved the petitioner challenged the said order of termination by filing an appeal before the School Tribunal, Amravati under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. By the judgment dated 11.02.2010 the School Tribunal allowed that appeal and after setting aside the order of termination directed reinstatement of the petitioner with continuity in service alongwith back wages. The Management challenged the aforesaid judgment by filing Writ Petition No.1439 of 2010. In that writ petition, the petitioner as well as the respondent nos. 4 and 5 herein entered into a compromise on 24.11.2014. As per that compromise the petitioner gave up her entitlement to back wages from 01.08.2009 to 30.11.2014. Rest of the order passed by the School Tribunal was agreed to be complied with. On that basis, Writ Petition No.1439 of 2010 was disposed of on 24.11.2014.

The petitioner thereafter resumed her duties and sought benefit of continuity in service in the form of grant of annual increment. The services of the petitioner were approved on 13.01.2017 for the period from 01.08.2009 and onwards on the post of 'Assistant Teacher'. The Management forwarded requisite documents for grant of annual increments to the petitioner for the year 2009 to 2014. The same has been refused by the Project Officer by relying upon Rule 39(1)(a) of the Maharashtra Civil Services (Pay) Rules, 1981 (for short, the Rules of 1981). The reason assigned is that as the petitioner was not on duty from 01.08.2009 to 30.11.2014, she was not entitled for any increment. Being aggrieved the petitioner has challenged the aforesaid order in the present writ petition.

3. We have heard the learned counsel for the parties and we have perused the documents on record. In the affidavit filed by the respondent nos. 1 to 3 reliance is placed on the provisions of Rule 39 of the Rules of 1981. We find that insofar as the directions issued by the School Tribunal with regard to grant of benefit of continuity in service pursuant to the order of reinstatement are concerned, the same have attained finality. The petitioner has merely given up the back wages in the compromise entered into with the respondent nos. 4 and 5. As a consequence of the direction to grant continuity in service, the petitioner's services have been approved as Secondary School Teacher from 01.08.2009

onwards. As a consequence of grant of continuity in service she would also be entitled to annual increments from 01.08.2009 to 30.11.2014. The aspect that the petitioner was not on duty during the period from 01.08.2009 to 30.11.2014 is not at all relevant in this context as the petitioner has been granted the benefit of continuity in service. Once it is found that the order of termination has been set aside and she has been directed to be reinstated with continuity in service, there is no reason to deny her the benefit of annual increments. Rule 71 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 supports this contention of the petitioner.

4. In that view of the matter the order passed by the Project Officer on 07.12.2017 denying to grant annual increments to the petitioner from 01.08.2009 to 30.11.2014 is set aside. It is held that the petitioner is entitled for annual increments for the aforesaid period which have become due from 01.07.2010 to 01.07.2014. Necessary steps in that regard shall be taken by the respondent nos. 2 and 3 within a period of six weeks from the receipt of copy of this judgment.

Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)