

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

WRIT PETITION NO.1956 OF 2019

Nandkishor Shrikrishna Wankhedkar,
Age 59 years, Occu. Retired
R/o 3rd Bus Stop, Gopalnagar,
Nagpur ... Petitioner

-vs-

1. State of Maharashtra,
through its Secretary, Department of
Education, Mantralaya, Mumbai-32
2. Deputy Director of Vocational
Education and Training
Nagpur Division, Civil Lines, Nagpur
3. The Superintendent,
Pay and Superintendent Fund Unit (Higher Sec.)
Zilla Parishad, Wardha
4. New English Highschool and Jr. College,
Wardha, Dist. Wardha, Thr. Its Principal ... Respondents

Shri P. N. Shende, Advocate for petitioner.
Shri D. P. Thakare, Additional Government Pleader for respondent Nos.1 to 3.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.

DATE : October 20, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

The petitioner seeks benefit of old pension scheme in the present writ petition.

Facts relevant for considering the challenge are that the petitioner was appointed as a Teacher at Pitale Shastri Junior College, Laxmi Nagar, Nagpur that was conducting M.C.V.C courses. His date of

appointment is 15/10/1991. On the directions of the Deputy Director of Education, the said course was closed from the end of academic session of 1999-2000. As a result, the petitioner's services were terminated by order dated 28/04/2000 with effect from 05/05/2000. Being aggrieved the petitioner filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The learned Presiding Officer by the judgment dated 12/04/2005 partly allowed the appeal by recording a finding that the petitioner had acquired the status of a permanent employee and that before terminating his services, the procedure prescribed under Rule 25(A) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the Rules of 1981) was not followed. By holding the order of termination to be in contravention of Rule 25(A) of the Rules of 1981, the same was set aside and the Management was directed to pay back-wages from the date of termination till the petitioner was absorbed in another school. The Management was also directed to recommend the petitioner's name to the Deputy Director of Education for being taken in the waiting list of Teachers to facilitate absorption in another school. The order passed by the School Tribunal was confirmed by the learned Single Judge by a common order in Writ Petition Nos.2435/2005, 2436/2005 and 2437/2005 (*D. Asha Education Society and anr. vs. Mangesh Narayanrao Gadhwe and anr.*) on 05/10/2005. The Management challenged this order before the Supreme Court but that Civil Appeal came to be dismissed on 09/08/2017. Though back-wages were directed to be paid only for the remaining period of the

academic year in which such services were terminated, other findings in favour of the petitioner were maintained. In this backdrop, the petitioner seeks benefit of the old pension scheme.

2. The learned counsel for the petitioner submitted that the petitioner having joined service on 15/10/1991 and the School Tribunal having recorded a finding that he was a permanent employee and was thus entitled to benefit under Rule 25(A) of the Rules of 1981, he could not be denied benefit of the old pension scheme. Merely because the services of the petitioner were absorbed after 01/11/2005, he could not be treated to be a newly appointed employee from that day. The past service of the petitioner as well as the status as a permanent employee was not wiped off by he being declared surplus and being subsequently absorbed. It was thus submitted that the petitioner was entitled for the relief as claimed for.

3. The learned Assistant Government Pleader for respondent Nos.1 to 3 opposed the writ petition. It was sought to be urged that since the services of the petitioner were absorbed after 01/11/2005, he could not be held entitled to benefit of old pension scheme. Hence the writ petition was liable to be dismissed.

4. On hearing the learned counsel, we find that the School Tribunal has recorded a categorical finding that the petitioner had attained the status of a permanent employee. His services had been terminated without

following the provisions of Rule 25(A) of the Rules of 1981. While directing his absorption, directions to pay back-wages were also issued. Once the order of termination was set aside, it would have to be assumed that the petitioner continued in service and such order of termination was passed without following the due procedure of law. It is not in dispute that the order passed by the School Tribunal has attained finality except that the amount of back-wages has been partially reduced. In view of the findings recorded by the School Tribunal, absorption of the petitioner in service in these circumstances cannot amount to re-appointment especially when he had already acquired the status of a permanent employee. Since it is not a case of any new appointment being made after 01/11/2005, it is held that the petitioner is entitled to benefit of old pension scheme as was made applicable to him prior to termination of his services. Necessary consequential steps be taken within a period of six weeks from receiving copy of this judgment.

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

(M. W. Chandwani J.)

(A. S. Chandurkar, J.)

Asmita

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ADWAIT BHANDAKKAR
Signing Date: 21.10.2022
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