

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

WRIT PETITION NO.2418 OF 2013

Mangesh Narayanrao Gadhave
Age 42 years, R/o Naik Road,
Mahal, Nagpur

... Petitioner

-vs-

1. Deputy Director of Vocational Education
and Training, Civil Lines, Nagpur
2. District Vocational Education and
Training Officer, Nagpur
3. Principal, Sindhu Jr. College,
Panchpawali, Nagpur

... Respondents

Shri P. N. Shende, Advocate for petitioner.
Ms Tajwar Khan, Assistant Government Pleader for respondent Nos.1 and 2.
Shri Anand Parchure, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : September 23, 2022

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

The challenge in this writ petition is to communication dated 22/01/2013 issued by the respondent No.1 thereby holding the petitioner to be not entitled to benefit of old pension scheme for the reason that the petitioner was re-appointed on 29/08/2006 after his services were terminated earlier.

Facts relevant for considering the challenge are that the petitioner was appointed as a Teacher at Pitale Shastri Junior College,

Laxminagr, Nagpur that was conducting M.C.V.C. courses. His date of appointment is 07/08/1992. 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 in Writ Petition No.2435/2005 (*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. The respondent No.1 held the petitioner not entitled to benefit of old pension scheme on the ground that his services were absorbed after 01/11/2005 and the same was by way of re-appointment. The petitioner is aggrieved by this communication.

2. The learned counsel for the petitioner submitted that the petitioner having joined service on 07/08/1992 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 and 2 opposed the writ petition by relying upon the affidavit in reply. 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. Infact grant of such benefit itself was illegal and the same was rightly withdrawn by the impugned communication. 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, it was not permissible for the respondent No.1 to hold that the petitioner was re-appointed after 01/11/2005. 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. The respondent No.1 had rightly granted benefit of the old pension scheme to the petitioner which was sought to be withdrawn by the impugned order. Since it is not a case of any new appointment being made after 01/11/2005, the impugned order is unsustainable.

For aforesaid reasons, the order dated 22/01/2013 passed by the respondent No.1 is set aside. It is held that the petitioner is entitled to benefit of old pension scheme as was made applicable to him prior to passing of the impugned order. 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.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)

Asmita