

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

WRIT PETITION NO.1991/2020

Ku. Durga Shriram Kamthe,
 Now Durga Digambar Gaidhane,
 Aged about 58 years, Occ. Service,
 R/o Second Dal Oli, in front of
 Hanuman Mandir, Kamptee,
 District Nagpur.

....PETITIONER

...V E R S U S...

1. The Education Officer (Primary)
 Zilla Parishad, Nagpur.
2. The Deputy Director of Education,
 Nagpur Division, Nagpur.
3. The Accountant General (Accounts
 & Establishment), Pension Wing,
 Old Building, Civil Lines, Nagpur
 through its Senior Accounts Officer.
4. Modi Club, Kamptee (Pradnyapeeth
 Convent), through its Secretary,
 Advocate Shri Ramesh Kothade,
 Mahatma Fule Audyogik Prashikshan
 Sanstha, Manewada Chowk, Near
 Gas Petrol Pump, Nagpur.

5. The Director of Education (Primary)
 State of Maharashtra, Pune.

...RESPONDENTS

 Mr. A. Z. Jibhkate, Advocate for petitioner.
 Mr. Shaikh Majid, Advocate for respondent no.1.
 Ms N. P. Mehta, A.G.P. for respondent nos.2, 3 and 5.
 Mr. S. S. Joshi, Advocate for respondent no.4.

CORAM:- A. S. CHANDURKAR & ANIL L. PANSARE, JJ.
DATED :- 15.12.2022

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The petitioner has put forth following substantive prayers:

“(i) Direct respondent No.1 i.e. Education Officer (Primary), Zilla Parishad, Nagpur and respondent No.2 i.e. Deputy Director of Education, Nagpur Region, Nagpur to forward regular pension case papers to the Respondent No.3 i.e. Accountant General (Accounts & Establishment), Pension Wing, Nagpur on submission of the same by the petitioner by fixing the pension of the Petitioner as per Rules showing the date of retirement as 31/07/2020 or at any rate 30/04/2013 when the school was closed, within stipulated period and on receipt of the same direct the Respondent No.3 i.e. Accountant General, (Accounts & Establishment), Pension Wing, Nagpur to sanction the pension of the Petitioner and release retirement benefits within stipulated period, by suitable and appropriate writ or directions.

(ii) Further be pleased to direct the Respondents to make payment of amount of pension, gratuity and all other retirement benefits including contribution by State in G.P.F. along with interest thereof at the rate of 12% per annum, by a suitable and appropriate writ or directions.

(iii) Further be pleased to quash and set aside the order dated 15/11/2017 (Annexure No.11) passed by the Respondent No.1 i.e. Education Officer (Primary), Zilla

Parishad, Nagpur by a suitable and appropriate writ or directions.

(iv) Kindly direct the Respondent Nos. 1, 2 & 5 to release unpaid salary of the Petitioner from 01/05/2013 till the date of her superannuation i.e. 31/07/2020, by a suitable and appropriate writ or directions.”

3. It is the case of the petitioner that she being professionally and academically qualified and suitable to the post of Assistant Teacher, the respondent no.4 -Management appointed her on clear sanctioned vacant post of Primary Teacher with effect from 01.07.1988 and continued her services. The school was admitted for grant-in-aid vide order 20.07.1990, 50% grant from 01.07.1988 and 100% grant from 1991 onwards.

4. The respondent no.1 – Education Officer granted approval for the period from 01.10.1988 to 30.04.1989 and thereafter from 01.05.1990 onwards. As such, the petitioner worked on sanctioned vacant post of Assistant Teacher (Primary). The respondent no.1 withdrawn recognition of the school with effect from 30.04.2013 vide order dated 31.07.2012. The Deputy Director of Education, while exercising appellate jurisdiction under the Bombay Primary School Act, 1949 granted permission to run and administer the school for the academic session 2013-14 vide order dated 14.03.2013. However, the Education Officer did not

permit the management and the teachers to run and administer the school for the academic session 2013-14 and passed the orders contrary to the order passed by the Deputy Director of Education.

5. Further, out of the two approved teachers working in the school run by the respondent no.4, the respondent no.1 did not take steps to process the case of the petitioner for absorption though there were vacancies in the various primary schools. The respondent no.1 however processed the case of another teacher for absorption. As a result thereof the petitioner remained without salary from 01.05.2013. The respondent no.1 refused to accept the pension case papers of the petitioner for grant of regular pension, gratuity and other retiral benefits and vide order dated 15.11.2017 ordered the petitioner to submit proposal for compensation pension holding therein that regular pension is not payable to the teacher whose services have been terminated under Rule 25(A) of Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 (For short, the “Rules of 1981”).

6. The petitioner has drawn our attention to the impugned order dated 15.11.2017. The pensionary benefits have been denied to the petitioner by relying upon Rule 25 (A) of the Rules of 1981 read with Rule 45 of Maharashtra Civil Services (Pension)

Rules, 1982 (For short, the “Pension Rules, 1982”). Further, the respondent no.1 has directed the respondent no.4 – Education Society to submit the proposal for compensation pension in terms of Rule 81 (a) of the Pension Rules, 1982.

7. Mr. Jibhkate, learned counsel for the petitioner, on instructions, submits that the petitioner is not pressing for orders to release unpaid salary from 01.05.2013 till 31.07.2020. He further submits that the petitioner is restricting her claim to the pensionary benefits only. According to Mr. Jibhkate, the petitioner having put in pensionable service of more than 20 years, the respondents could not have denied pensionary benefits to the petitioner, particularly when there is nothing on record to show that the school under question has been de-recognized for the fault attributable to the petitioner.

8. Mr. Majid, learned counsel for the respondent no.1, submits that there is no dispute that the petitioner was duly qualified and was working with the respondent no.4 till the date of closure and de-recognition of the school. He further submits that respondent no.1 issued order dated 26.03.2013 whereby recognition of the respondent no.4 has been withdrawn with effect from 30.04.2013 for the irregularities, deficiencies which disentitled the school to recognition. According to him, the

petitioner is alone responsible for closure of the school due to de-recognition. The services of the petitioner, therefore stands terminated in terms of Rule 25(A) of the Rules of 1981. He further submits the petitioner was not entitled for absorption under Rule 26(2) of the Rules of 1981. Consequently, in terms of Rule 45 of the Pension Rules, 1982, her services are forfeited and she no longer has right to claim pensionary benefits. He has then drawn our attention to the show cause notice dated 05.08.2013, issued by the Secretary of the respondent no.4 to the petitioner thereby holding her responsible for de-recognition of the school. Accordingly, he supported the impugned order.

9. Ms Mehta, learned Assistant Government Pleader for the respondent nos.2, 3 and 5, has supported the impugned order. According to her, the school run by the respondent no.4 was derecognized solely because of the lapses committed by the petitioner. Accordingly, the services of the petitioner stood terminated in terms of rule 25A and that therefore the petitioner is not entitled for pensionary benefits.

10. During the course of arguments Mr. Jibhkate, has referred to letter dated 08.02.2018 issued by the respondent no.2 in favour of the respondent no.1, by which the respondent no.2 sought report from the respondent no.1, by referring to letter

dated 28.03.2016 recommending absorption of petitioner in other school in terms of of Rule 26 (2) of the Rules of 1981. Thus, according to him, the case of the petitioner for absorption was considered, which impliedly indicates that the petitioner was not responsible for the de-recognition of the school.

11. Learned A.G.P. in response, submits that the communication is inadvertently issued and is, in any case, contrary to the provisions of the Rules, 1981.

12. Having considered the rival submissions, the controversy appears to revolve around Rule 25A of the Rules of 1981 and Rule 45 of the Pension Rules, 1982. Rule 25A of the Rules of 1981 reads thus:

“25A. Termination of Service on account of abolition of posts.

(1) The services of permanent employee may be terminated by the Management on account of abolition of posts due to closure of the school after giving him advance intimation of three months to the effect that in the event of closure of the school his services shall be automatically stand terminated. In the case of closure of school due to de-recognition, such advance intimation of three months shall be given by the management to the permanent employees after receipt of a show cause notice from Deputy Director.

Explanation: For the purposes of this subrule, the expression 'closure of the school' shall include -

(i) Voluntary closure by the management of the entire School if it is imparting instruction through one medium

or a part of the school comprising one or more media of instruction if it is imparting instruction through more than one medium; and

(ii) closure of the school due to de-recognition by the Department.

(2) The names of the employees in aided schools, whose services stand terminated in accordance with sub-rule (1) on account of de-recognition and who are not directly responsible for such de-recognition shall be taken on a waiting list by the Education Officer in the case of primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and Junior college of Education and same shall be recommended by him to the managements of newly opened aided Schools or of the existing aided schools which are allowed to open additional Division or classes for consideration."

Rule 45 of the Pension Rules, 1982 reads thus:

"45. Forfeiture of service on dismissal or removal. Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service."

13. Bare reading of Rule 25A indicates that there is clear mandate to issue three month's advance notice to the permanent employee, if he has to be terminated by management on account of abolition of post due to closure of the school. It further provides that in case of closure of school due to de-recognition, such advance intimation shall be given by the management to the terminated employee after receipt of show cause notice from the Deputy Director.

14. We were not shown the show cause notice issued by the respondent no.2 to the respondent no.4 nor is the notice issued to the petitioner been shown to us. Sub Section (2) of Rule 25A, provides that if the service of an employee is so terminated on account of de-recognition and if the employee is not directly responsible for such a de-recognition he shall be taken on wait-list by the Education Officer or the Deputy Director, as the case may be and that the same shall be recommended by him to the management of newly opened aided school. The letter dated 18.02.2019 shows that the name of the petitioner was recommended for absorption, meaning thereby that the petitioner was not responsible for de-recognition of the school.

15. The learned A.G.P. has argued that the issuance of letter is contrary to the provisions of the Rules of 1981. This argument is based on the presumption that the petitioner is responsible for de-recognition of the school. On this point, our attention was drawn to the show cause notice issued by the respondent no.4 to the petitioner, calling upon her to explain within three days as to why action should not be taken against her.

16. Mr. Jibhkate has drawn our attention to the letter dated 25.05.2015 issued by the respondent no.4 to the respondent no.1. The letter records the fact that the petitioner has handed over

entire record to the respondent no.4 and therefore the respondent no.4 has no objection if the petitioner is given reappointment in the aided school.

17. The documents placed before us thus do not substantiate the stand taken by the respondents that the petitioner is responsible for de-recognition/closure of the school. The respondents have not placed before us the show cause notice issued by the Deputy Director to the Management as required under Rule 25A (1) nor is the advance notice issued to the petitioner by the respondent no.4, placed before us to show compliance of Rule 25A(1).

18. Resultantly, what transpires is that the petitioner has rendered pensionable services as she was appointed on 01.07.1988 and the de-recognition came into force with effect from 30.04.2013. Thus, she has put in more than 20 years of service and, therefore, she will be entitled to the pensionary benefits.

19. The respondents have erroneously invoked the provisions of Rule 25A of the Rules of 1981 and Rule 45 of the Pension Rules, 1982. The impugned action is, therefore, contrary to the Rules of 1981 and Pension Rules of 1982. The action of the respondents, withholding the pensionary benefits to the petitioner,

therefore, does not stand the scrutiny of law. The petitioner has made out a case to that effect. We, therefore, proceed to pass the following order.

20. The writ petition is hereby allowed.

The respondents are directed to process the regular pension case papers of the petitioner, treating the date of her retirement as 30.04.2013.

The respondents are directed to make payment of amount of her pension, gratuity and all other retirement benefits accordingly, as expeditiously as possible and in any case on or before 31.03.2023.

Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

(A. S. Chandurkar, J.)

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