

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

WRIT PETITION (WP) NO. 3148/2021

Manohar s/o Natthuji Awachat,
 Aged about 58 years,
 Occupation – Retired,
 R/o. Plot No. 88-C,
 Behind Ramna Maroti Mandir,
 Ramna Maroti Nagar, Nagpur – 09.

..... PETITIONER

// VERSUS //

1. State of Maharashtra Through Secretary,
 Department of School Education
 and Sports Department,
 Mantralaya, Mumbai – 32.
2. Deputy Director of Education,
 Nagpur Division, Nagpur, Balbharti,
 Opp. Dhantoli Park, Dhantoli, Nagpur.
3. The Education Officer (Secondary),
 Zilla Parishad, Nagpur,
 Tah. and District – Nagpur.
- ~~4. Maharashtra Gramheet Shikshan Sanstha,
 Nagpur, Juna Subhedar Layout, Sharda Chowk,
 Nagpur, Through its Secretary.~~
4. Maharashtra Gramhit Shikshan Sanstha,
 through its Secretary, R/o and C/o Adarsh
 Vidya Mandir, Juna Subhedar Layout,
 Sharda Chowk, Nagpur – 440024.
5. Head Master, Adarsha Vidyalaya,
 Gumthala (Gumathi), TPS Koradi,
 Post – Gomathi,
 Tah. & District – Nagpur- 441 111.

.... RESPONDENT(S)

Amended as
per Court's
order dt.
29.10.21

 Shri V.N. Patre, Advocate for the petitioner
 Shri A.M. Deshpande, Additional Government Pleader for respondent
 nos. 1 to 3/State
 None for respondent nos. 4 and 5

CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, J.J.

DATED : 06/04/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties. The respondent nos. 4 and 5 despite service have not chosen to oppose the prayers made in the writ petition.

2. The petitioner was appointed on the post of Shikshan Sevak with the respondent no. 5 – School on 26.06.1991. Since the petitioner was to attain the age of superannuation and retire by 31.05.2021, he on 26.03.2021 made a request to the School and the Management to send his pension papers to the competent authority to enable him to receive pension. Since the same was not being done, the petitioner has filed the present writ petition praying that the Headmaster be directed to forward the pension papers of the petitioner to the competent authority. During pendency of the writ petition and after the petitioner's superannuation, his services came to be terminated on 22.01.2022. By amending the writ petition the order of termination is also put to challenge.

3. The learned Counsel for the petitioner submits that under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short the "Act of 1977"), it is not permissible to continue the inquiry proceedings after superannuation. The documents

on record indicate that only on 28.06.2021 the petitioner was served with the statement of allegations. This is after the petitioner's superannuation. The termination of services have been effected on 22.01.2022 which is also after his superannuation. Referring to the orders passed in Writ Petition No. 1861/2014 (*Gunderao Suryabhan Gode Vs. Mah. Gramin Shikshan Sanstha Thru Its Secretary/C.E.O., Nagpur and 3 others*) decided on 25.07.2014 and Writ Petition No. 6682/2016 (*Shrikrishna S/o Sitaram Dahare Vs. State of Maharashtra and ors.*) decided on 08.01.2018 it is submitted that this Court has held that there cannot be termination of services post retirement. It is thus prayed that the order of termination be set aside and the pension papers be directed to be forwarded to the Education Officer.

4. As stated above, the respondent nos. 4 and 5 have not chosen to oppose the prayers made in the writ petition. Shri A.M. Deshpande, learned Additional Government Pleader for the respondent nos. 1 to 3 submits that it is responsibility of the respondent nos. 4 and 5 to submit the pension papers of the petitioner after which the same can be considered by the respondent no. 3.

5. It is an undisputed position that the petitioner attained the age of superannuation on 31.05.2021. The statement of allegations was served on the petitioner thereafter on 28.06.2021. The order of

termination is dated 22.01.2022. These events have occurred after the petitioner's superannuation. In the absence of any provision under the Act of 1977 to continue the inquiry and thereafter terminate the services after retirement of the concerned employee, the order of termination is not sustainable and is liable to be set aside. The decisions in *Gunderao Suryabhan Gode* and *Shrikrishna Sitaram Dahare (supra)* support the aforesaid conclusion.

6. Hence for aforesaid reasons, the order of termination dated 22.01.2022 is set aside. The respondent nos. 4 and 5 are directed to forward the pension papers of the petitioner within a period of four weeks from the receipt of the copy of this judgment. The respondent no. 3 - Education Officer (Secondary) after receiving the same shall examine the matter and process the said papers in accordance with law within a period of six weeks from the date of the receipt of the same.

7. With these directions, the writ petitions is allowed and disposed of.

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

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)