

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

WRIT PETITION (WP) NO. 3337/2019

Pralhad s/o Keshavrao Kate,
Aged about 57 years,
Occ. Service, R/o. 34,
Eklavya Nagar,
Wadgaon Road, Yavatmal.

..... PETITIONER

// VERSUS //

1. State of Maharashtra,
Secretary of Department of Higher
and Technical Education,
Mantralaya Mumbai-32.
2. Joint Director of Higher Education,
Amravati Division, Amravati.
3. Amolakchand Mahavidyalaya,
Yavatmal, Through its Principal,
Yavatmal.

.... RESPONDENT(S)

Shri A.S. Dhore, Advocate for the petitioner
Ms. Kalyani R. Deshpande, AGP for respondent nos. 1 and 2/State
None appears for respondent no. 3

**CORAM : A. S. CHANDURKAR AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 11/01/2022

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

Rule. Rule made returnable forthwith. Heard the learned
counsel for the parties.

2. The petitioner was appointed on the post of Peon – Class IV on 01.08.1989 with respondent no. 3 - College. During the course of employment, the services of the petitioner was upgraded to the post of Laboratory Attendant which is also the Class-IV post. By virtue of continuous service rendered by the petitioner, he was granted the benefit of the Time Bound Promotion Scheme on completion of 12 years of his service. The services of the petitioner were then shown against the post of Junior Clerk which is of Class-III post without his consent. The Joint Director, Higher Education on 09.04.2010 clarified that such placement was not as a promotion but only for adjusting excess Class-IV employees. Since, the Management sought to retire the petitioner from service on attaining the age of 58 years as applicable for Class-III posts, the petitioner has approached this Court with a prayer that he be continued in service till the age of 60 years which is admissible to Class-IV posts.

3. Notice was issued in this writ petition and an interim order was passed on 05.04.2019, by virtue of which the petitioner continued in service till the age of 60 years. He has now superannuated on 30.04.2021.

4. The learned Counsel for the petitioner submits that in similar circumstances with regard to the same employer, this Court on 06.01.2020 while deciding Writ Petition No. 918/2017, has declared that

the said petitioner was entitled to continue in service till the age of 60 years as a Class-IV employee. His pension case was to be prepared on that basis. It is submitted that similar relief be granted to the petitioner.

5. On perusal of the judgment in Writ Petition No. 918/2017, it is seen that the initial entry of the petitioner in service was as a Class-IV employee. His absorption on the post of the Laboratory Attendant was treated as a special arrangement in the facts of the case. It is seen that in the present case, the petitioner entered service on the post of Peon and with a passage of time was granted various service benefits. Only on the ground that the petitioner was shown to hold the post of Junior Clerk, he was sought to be retired at the age of 58 years. Factually, the petitioner continued discharging duties as Class-IV employee. Considering the fact that by virtue of interim order passed in the writ petition, the petitioner has discharged duty till the age of 60 years, it is held that the petitioner was entitled to continue in service till 30.04.2021 as a Class-IV employee till the age of 60 years. In these facts, therefore, it is directed that the pension case of the petitioner shall be prepared by considering him to be in service till 30.04.2021 on a Class-IV post. Necessary steps in that regard be taken expeditiously by the respondent no. 2. The respondent no. 3 shall render necessary co-operation in the matter.

6. The writ petition is allowed. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

SANDIP
MAHADEV
GATE

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