

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

WRIT PETITION 5820 OF 2015

Sau. Sindhu w/o. Sureshrao Bijwe,
 Aged about 58 yrs,
 Occ. Retired Assistant Teacher,
 r/o.Chandur Railway Road,
 Nandgaon Khandeshwar,
 District Amravati

.....**PETITIONER**

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

1. Education Officer (Primary),
Zilla Parishad, Amravati.
2. Chief Executive Officer,
Zilla Parishad, Amravati
3. State of Maharashtra,
through its Secretary, Rural
Development Department,
Mantralaya, Mumbai 32

.....**RESPONDENTS**

 Mr. P.V. Thakre, counsel for petitioner.
 Mr. D.M. Kale, counsel for respondents 1 & 2.
 Mr. M.K. Pathan, AGP for respondent 3/State.

CORAM: **ROHIT B. DEO AND ANIL L. PANSARE, JJ.**
DATE: **2nd AUGUST, 2022.**

ORAL JUDGMENT: (Per : Rohit B. Deo, J.)

The challenge in the petition is to the communication dated 13.7.2015, issued by the respondent 1 – Education Officer (Primary), Zilla Parishad, Amravati addressed to the Block

Development Officer, Panchayat Samiti, Nandgaon Khandeshwar with copy to the petitioner, articulating that since a Departmental Enquiry is pending against the petitioner on the allegation that she was not possessing the minimum qualification at the time of appointment, no decision on her entitlement to pension can be taken, till the culmination of the enquiry.

2. Petitioner is further challenging the chargesheet dated 26.2.2013, issued by the respondent 2 – Chief Executive Officer, Zilla Parishad, Amravati and the recovery of Rs. 3,25,118/- (Rupees Three Lac Twenty Five Thousand One Hundred Eighteen) which is effected on the premise that the petitioner was paid excess salary i.e. the salary payable to trained teacher.

3. Facts are broadly not in dispute.

4. It appears that petitioner was appointed as Primary Teacher under the “Operation Blackboard Scheme” vide order dated 6.10.1988. Perusal of the appointment order dated 6.10.1988 reveals that the appointment was purely temporary and for the period of six months or till the Selection Board recommends regularly appointed candidate, whichever event

occurs first in point in time.

5. It further appears that the Chief Executive Officer, Zilla Parishad, Amravati addressed communication to the State Government, seeking regular appointment to the petitioner on the ground that she is suffering from physical disability. The fate of the said communication is not known. Be that as it may, it appears that appointment orders, worded similarly came to be issued and finally the petitioner “retired” from the services of the respondent 2, on 31.3.2015.

6. Before we look into the submissions canvassed by the learned counsel for the petitioner Mr. P.V. Thakre, we may note the uncontroverted position that at the time of appointment, and indeed retirement, the petitioner did not possess the training qualification of Diploma in Education. The petitioner was a matriculate and holder of Anganwadi Training Certificate (“ATC”) when she was appointed under the Operation Blackboard Scheme and it is common ground that the qualifications were not improved during her tenure as a temporary employee.

7. It appears that the respondents 1 and 2 have

proceeded on the premise that the petitioner is prima facie guilty of serious misconduct inasmuch as the temporary employment is secured by giving the impression that she possesses the basic eligibility qualification. It is on such premise and assumption, that Enquiry Officer was appointed. The enquiry has proven abortive since the Enquiry Officer has addressed a communication to respondent 2 pointing out that in the absence of the original record, it would not be possible to take the enquiry to the logical end.

8. As the situation stands today, having retired, the petitioner is not receiving the pension. The enquiry instituted is an empty formality since even according to the Enquiry Officer, the original record is not available. The issue which really falls for consideration is whether the petitioner is entitled to pension. The answer must be in the negative.

9. The entitlement to pension is governed by the Maharashtra Civil Services (Pension) Rules, 1982. In all fairness to the learned counsel Mr. P.V. Thakre, it is not even argued that a temporary employee is entitled to pension under the said Rules. The argument of Mr. P.V. Thakre in essence is that having

discharged duty as a Primary Teacher from 6.10.1988 to 31.3.2015, the petitioner may be deemed or treated as a permanent employee. We regret inability to accept the said submission.

10. Status of permanency cannot be conferred on sympathetic considerations or *de hors* the statutory provision. It appears to us, that the petitioner was not appointed in the regular course. She was appointed under a particular scheme under which the maximum tenure was six months and even this tenure was liable to be curtailed as and when the candidates regularly appointed through District Selection Board are available. We have not come across any material whatsoever to indicate that the petitioner attained the status of permanent employee. In this view of the matter, we ought rightly reject the claim of the petitioner to pensionary benefits.

11. In so far as the pending enquiry is concerned, in view of the stand of the Enquiry Officer that in the absence of original record, it would not be in a position to make any effective enquiry, we do not see any fruitful purpose in keeping the enquiry pending. We therefore, quash the chargesheet and the pending enquiry.

12. An amount of Rs. 3,25,118/- (Rupees Three Lac Twenty Five Thousand One Hundred Eighteen) is recovered from the petitioner on the premise that she received excess salary. It is true that the petitioner was not holding the qualification of Diploma in Education. But then we have not come across any material to suggest that the petitioner induced the employer to pay her excess salary by practicing deception or misrepresentation. We are, therefore, inclined to allow the petition partly and direct that the amount of Rs.3,25,118/- (Rupees Three Lac Twenty Five Thousand One Hundred Eighteen) which is recovered from the petitioner be refunded to her within the next 90 days (ninety days), failing which such amount shall attract interest @ 6% (Six Percent) per annum.

13. We reject the other prayers.

14. Petition is partly allowed in terms of prayer clauses (i-a) and (i-b), which reads thus:

(i-a) Quash and set aside the chargesheet dated 26.2.2013 issued by the respondent No. 2 vide annexure-VIII-A being arbitrary and malafide.

(i-b) Quash and set aside the recovery of Rs. 3,25,118/- towards the pay scale of trained teacher from the bill of March-2016 vide Annexure-X-A and refund back the same to the petitioner.

(ANIL L. PANSARE, J.)

(ROHIT B. DEO, J.)

Belkhede