

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5023 OF 2021

Ku. Ranjana Tulshiramji Dharmale,
aged about 50 years, occupation :
service, r/o at Post Yeoda, Tahsil
Daryapur, District Amravati.

... Petitioner

- Versus -

- 1) State of Maharashtra, through
its Secretary, Department of
School Education and Sports,
Mantralaya, Mumbai – 32.
- 2) The Education Officer (Secondary),
Zilla Parishad, Amravati.
- 3) The Yeoda Education Society,
Yeoda, through its Secretary,
Tahsil Daryapur, District Amravati.
- 4) The Co-ordination Committee,
Yeoda Education Society,
through its Secretary, Yeoda,
Tahsil Daryapur, District
Amravati.
- 5) Kashibai Agrawal Vidyalaya,
Yeoda, through its Head Master,
Tahsil Daryapur, District
Amravati.
- 6) Bhausahab Thakur Vidyalaya,
Talegaon (Thakur), through its
Head Master, Tahsil Tiwsa,
District Amravati.

... Respondents

Mr. Anand Parchure, Advocate for petitioner.

Mr. N.R. Patil, Assistant Government Pleader for respondent nos.1 and 2.

Ms. R.D. Raskar, Advocate for respondent nos.3 and 4.

Ms. V.S. Gordey, Advocate for respondent nos.5 and 6.

CORAM : DIPANKAR DATTA, C.J. AND
NITIN W. SAMBRE, J.

DATED : SEPTEMBER 8, 2022

P.C. :

1) The petitioner is a school teacher appointed by the respondent no.3 (hereafter "society", for brevity). While the petitioner was working in the respondent no.5-School, she was transferred to the respondent no.6-School pursuant to an order dated 10/8/2019. She was also relieved of her duty on the same day. Incidentally, both the schools are administered by the society. A writ petition was instituted by the petitioner on 25/8/2019 questioning the order of transfer. On 28/8/2019, a coordinate Bench of this Court while issuing notice directed the parties to maintain *status quo* in relation to transfer of the petitioner. Such interim order was founded on twin grounds. First, the transfer order did not specify any reason and secondly, it was a mid-term transfer order.

2) Armed with the said order dated 28/8/2019, the petitioner applied on 5/9/2019 for resuming duty in the

respondent no.5-School. However, the prayer to grant her permission to resume duty was refused on the ground that she stood relieved on 10/8/2019 and, therefore, the *status quo* as on 28/8/2019 would mean that the petitioner no longer could resume duty in the respondent no.5-School.

3) Soon thereafter, COVID-19 pandemic struck the nation resulting in the nationwide locked down being imposed. Nothing much could be done by the parties during such period of lockdown. On 5/3/2021, the writ petition instituted by the petitioner was disposed of by another coordinate Bench. It was recorded that the ground for grant of interim relief, i.e., the order was a mid-term transfer order, did not survive because of lapse of time. Liberty was granted to the petitioner to make a representation to the Management of the School for consideration. The Bench made it clear that it did not extend the interim order till the disposal of the representation.

4) Upon disposal of the writ petition, the petitioner joined the respondent no.6-School on 9/3/2021. By an order of the respondent no.2-Education Officer dated 8/6/2021, she received approval with effect from 9/3/2021. Praying for continuity in service during the period from 10/8/2019 to 9/3/2021, i.e., the date when the petitioner was relieved and the date when she joined duty complying with the transfer order at the respondent no.6-

School, as well as other consequential benefits, several representations were made by the petitioner between 27/6/2021 and 3/9/2021. These were finally disposed of by the society vide order dated 14/9/2021 by informing her that continuity in service for the period from 10/8/2019 to 9/3/2021 would be granted; however, the arrears of salary, annual increments and other consequential benefits stand refused. This order dated 14/9/2021 forms the subject matter of challenge in this writ petition, which is the second round of litigation between the same parties.

5) We have heard Mr. Parchure, learned counsel for the petitioner, Mr. Patil, learned Assistant Government Pleader for the respondents 1 and 2, Ms. Raskar, learned counsel for the respondents 3 and 4 and Ms. Gordey, learned counsel for the respondents 5 and 6.

6) The first question that we are tasked to decide is whether the society was in error in not permitting the petitioner to resume duty in the respondent no.5-School after the order of this Court dated 28/9/2019 was passed directing the parties to maintain *status quo*. The order dated 28/8/2019 does not indicate with sufficient degree of clarity the status of the petitioner, which the Court required the parties to preserve or maintain till further hearing. She had been relieved on 10/8/2019 itself when the transfer order was issued. She could not, therefore, have been accommodated at the respondent no.5-School because her status as a teacher of such school stood changed. The

order of *status quo* being ambiguous in nature, was open to interpretation; and, the interpretation given by the society that the petitioner stood relieved on 10/8/2019 does not appear to us to be acceptable; hence, we hold that the society was right in refusing to allow the petitioner to resume duty in the respondent no.5-School.

7) Next, arises the question of benefits that the petitioner could be entitled in the circumstances. Despite being refused permission, the petitioner continued to abstain from attending duty at the respondent no.6-School and incurred the disability of losing out on continuity in service as well as other service benefits. The petitioner must consider herself fortunate that the society has granted her continuity in service by treating the period of her absence from 10/8/2019 to 9/3/2021 as "*dies non*". We also hold that the petitioner has been rightly deprived of arrears of salary and annual increments for the period of her absence, because she did not put in any work. However, the society has been graceful enough to concede before us that the annual increments of the petitioner shall stand postponed and become payable only when the petitioner puts in the qualifying service therefor. This submission on behalf of the society is agreed to by Shri Patil for the respondents 1 and 2.

8) In such view of the matter, we dispose of the writ petition with the observations that the period of absence of the petitioner to render service between 10/8/2019 and

9/3/2021 shall not be treated as break in service for the purpose of computation of her retiral benefits. She shall be treated to be in continuous service all through, but neither shall she be entitled to claim arrears of salary nor such period shall count towards payment of annual increments. However, the annual increments shall stand postponed and only upon the petitioner having put in requisite period of service, shall she be entitled to the same. We direct the society to forward a proposal to the Education Officer within a fortnight from date, who shall proceed to pass an appropriate order in the light of the above observations as early as possible, but positively within three months from the date of receipt of the proposal.

9) No costs.

(NITIN W. SAMBRE, J.)

(CHIEF JUSTICE)

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