

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

WRIT PETITION NO. 7808 OF 2019

Janardhan s/o Pundlik Raut,
 Aged about 70 years,
 Occupation-Nil,
 R/o. Malsur, Tah. Patur,
 Dist.Akola.

..

Petitioner

.. Versus ..

- 1) Swami Vivekanand Shikshan
 Prasarak Mandal, Malsur,
 Tah. Patur, Dist. Akola, through
 its President.
- 2) The Education Officer (Secondary),
 Zilla Parishad, Akola, Tah. & Dist.
 Akola.
- 3) The Head Master,
 Ramsingh Munssing Naik Vidyalaya,
 Malsur, Tah. Patur, Distt. Akola.

..

Respondents

.....

Shri S.T. Harkare, Advocate for the petitioner,
 Shri M.R. Deshmukh, Advocate h/f Shri S. Zia Qazi, Advocate for
 respondent nos.1 and 3,
 Shri Neeraj Patil, Assistant Government Pleader for respondent
 no.2/State.

.....

CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.
DATED : 28.03.2022.

ORAL JUDGMENT (Per : A.S. Chandurkar, J.)

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

2. In this Writ Petition the petitioner has challenged the communication dated 20.02.2017 that has been issued by the respondent no.3-Head Master holding the petitioner ineligible for receiving pensionary benefits. Along with such challenge, the petitioner has also challenged to the order of termination dated 25.04.1997 and has sought payment of back-wages consequent upon such order of termination being set aside.

3. It is submitted by the learned counsel for the petitioner that Writ Petition No.6037/2014 was filed by another employee in which this Court on 21.11.2014 observed that the said petitioner would not be entitled to seek any pensionary benefits. Relying upon that adjudication, the present petitioner has been held not entitled for pensionary benefits. It is submitted that the petitioner was not a party to Writ Petition No.6037/2014 and therefore that adjudication cannot be applied to the petitioner. The Education Officer (R-2), being the Competent Authority to adjudicate the entitlement to pension, that Officer may be directed to consider the petitioner's claim.

4. On behalf of the respondent nos.1 and 3 request is made by the learned counsel that as Shri S. Zia Qazi, Advocate is unavailable, time may be granted.

5. We have, however, perused the reply filed on behalf of the respondent nos.1 and 3. In that reply, it has been stated that with regard to the challenge to the order of termination is concerned, the petitioner had filed Writ Petition No.4855/2014 raising with similar challenge and that writ petition was dismissed on 22.11.2016 by observing that if otherwise the petitioner would be entitled to post-retiral benefits in accordance with law, he would be entitled to receive the same. It is further stated in the reply that the petitioner is not entitled to pensionary benefits.

6. At the outset, it may be stated that the prayer for challenge the order of termination dated 25.04.1997 is covered by the order passed in Writ Petition No.4855/2014 and hence that prayer cannot be considered in this writ petition. We however find that Writ Petition No.6037/2014 was not filed by the petitioner. Hence, that adjudication could not have been applied in the case of the petitioner as has been done by the impugned communication dated 20.02.2017 issued by the respondent no.3. This Court in Writ Petition No.4855/2014 has observed that the entitlement of the petitioner to post-retiral benefits is a matter to be considered in accordance with law.

7. In that view of the matter, the communication dated 20.02.2017 would be applicable only to the petitioner in Writ Petition No.6037/2014. The said could not have been applied to the present petitioner in absence of any adjudication as regards his pensionary benefits. In view of aforesaid, the following order is passed :

ORDER

- (i) It is held that the communication dated 20.02.2017 issued by the Head Master would not be applicable to the case of the petitioner.
- (ii) The Head Master (R-3) shall forward all the relevant papers of the petitioner to the Education Officer (Secondary), Zilla Parishad, Akola (R-2) within a period of six weeks from today to enable the Education Officer to consider the entitlement of the petitioner to the pensionary benefits.
- (iii) The Education Officer shall, within a further period of six weeks, take a decision on the proposal of the petitioner for grant of pensionary benefits. The entitlement shall be decided in accordance with law and the decision taken shall be communicated to the parties.
- (iv) Rule is made absolute in aforesaid terms. No costs.

[SMT. M.S. JAWALKAR, J.]

[A.S. CHANDURKAR, J.]