

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 WRIT PETITION NO.734 OF 2023

**VISHNU UTTAMRAO SARKATE
VERSUS
STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS**

...
Advocate for Petitioner : Mrs. Rani Bora h/f. Bora Satyajit S.
AGP for Respondents/State : Mr. S.K. Tambe
...

**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.
DATE : 25th January, 2023**

PC. :-

1. The petitioner has put-forth prayer clause 'B', 'C' and 'D' as under:

B) By issuing appropriate writ, order or direction under Article 226 of the Constitution of India, the petitioner may kindly be upgraded to the post of Full Time Librarian from the year 2000-2001 when the student strength in the school at Georai run by the management had crossed more than 1000 students with further directions to grant all the consequential service benefits to the petitioner.

C) By issuing appropriate writ, order or direction under Article 226 of the Constitution of India, the respondents may kindly be directed to apply Old Pension Scheme as per Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Computation of Pension) Rules, 1984 and General Provident Scheme to the petitioner

D) By issuing appropriate writ, order or direction under Article 226 of the Constitution of India, the respondent No.2 may kindly be directed to issue necessary directions to respondent authorities to open a GPF account in the name of petitioner and to deduct appropriate amount towards the said scheme.

2. We have considered the submissions of the learned advocates for the respective sides.

3. Having perused the order dated 10.07.2018 passed by this Court in Writ Petition No. 10393/2015 filed by the present petitioner, the learned AGP submits on instructions from the Director of Education (Secondary), Pune that the proposal forwarded by the management dated 12.11.2010 has been misplaced and is not traceable. Office of the said department has changed several times and the papers were not traceable

4. We find from the record that though oral submissions of the AGP may be true, we fail to understand as to why the said authority did not approach this Court for seeking extension of time. This Court has passed an order on 10.07.2018 directing the Director of Education to take a decision within six months. These six months concluded on 10.01.2019. A bald statement is made that the representation has gone missing. However, the petitioner has tendered one representation on 23.09.2019, followed by another representation dated 10.10.2019, which was then followed by representations dated 26.06.2020, 16.09.2021, 09.02.2022 and 08.04.2022. Not once did the concerned office ever reply to the petitioner stating that his proposal dated 12.11.2010 is misplaced or not traceable. It is also not the case of the said department that they approached the management of the petitioner and sought

a copy of the representation. These circumstances clearly indicate apathy of the department towards the petitioner and lack of desire and the will to obey the order of this Court and comply with the directions. If the representation was misplaced, the least that was expected was that the Department would have addressed the petitioner stating that his proposal is missing. Until this petition is filed, the Department of Education has not moved.

5. The learned AGP has made a valiant attempt to justify as to why decision was not taken. Despite his best efforts we are not convinced in the light of the entire facts and circumstances discussed above.

6. In view of the above, this petition is partly allowed with the following directions:

A) The proposal dated 12.11.2020 which is at page no.48 shall be treated as being a proposal of the management.

B) The Director, Secondary and Higher Secondary Education Pune-respondent no.2 would consider the record available. If the record is not available, it shall be his duty to collect the record from the management and forward the proposal of the petitioner with the record as it stood in 2010 and onwards, to respondent no.1. This shall be done within 45 days thereafter and convey the decision to the petitioner and his management within 15 days post decision.

C) Since respondent no.2 Director of Education was sitting over the proposal of the petitioner and who did not comply with the directions of this Court dated 10.07.2022, that we are imposing cost of Rs.5,000/- which the office of respondent no.2 shall deposit in this.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]