

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO.8309 OF 2022

TUKARAM BABURAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

...

Advocate for Petitioner : Mr. R. D. Biradar
AGP for Respondent 1 to 3: Mr. S.K. Tambe
Advocate for Respondents 4 to 6: Mr. E.P. Sawant

.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 30th JANUARY, 2023.**

PER COURT :-

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

"B. The petitioner is praying direction to Respondent No. 4 to 6 to submit correction proposal with proper pay fixation to Respondent No. 2 for releasing pension and retirement benefits of the petitioner, including gratuity, increment with benefit of promotion/seniority by proper pay fixation and other consequential benefits.

C. The petitioner praying direction to Respondent No. 4 to 6 submit the correction proposal with proper pay fixation for pension and retirement benefits of the petitioner forthwith to Respondent No. 2 and after receiving said proposal from the Respondent No. 4 to 6, the Respondent No. 2 be directed to sanction forthwith the pensionary and other retirement benefits in favor of the petitioner with the interest accrued thereon from the date of retirement as per provision of Rule, 129 (A) and 129 (B) of the M.C.S. (Pension) Rules.

D. The petitioner praying to decide the proposal dated 02/12/2016 in respect of releasing family pension to handicap son of the petitioner as per Government Resolution dated 08/10/2018 and release the family pension to handicap son of petitioner.”

2. The petitioner is a 78 years old retired teacher. Admittedly, he was absent from 30.8.1990 till 24.7.1994. It is also an undisputed position that he was not terminated from service during this period. It is further undisputed that the petitioner did not claim any benefits for this period of absence since he was unauthorizedly absent.

3. The learned advocate for the Zilla Parishad has placed on record a communication dated 24.01.2023, which is a decision arrived at by the Education Officer (Primary). A copy of the said communication is marked as “X-1” for identification and the same is delivered to the learned advocate for the petitioner. The learned advocate, therefore, submits that the petitioner’s prayer clause D is taken care of by the document “X-1”. The learned advocate for the petitioner submits that prayers B and C pertain to certain retiral benefits which he has not received.

4. It does not call for any debate that, for period of his unauthorized absence, the petitioner would not be entitled for any monetary benefits, as the principle of NO WORK NO WAGES would not be applicable. This period would be notionally included only for the purpose of calculating the gratuity amount, since he was never terminated. However, the petitioner would not be entitled for

increments or benefits of promotion for the said period.

5. In view of the above, the learned advocate for the petitioner submits on instructions that the Zilla Parishad may take an expeditious decision by calculating his unpaid retiral benefits, including gratuity and make such payment within a time limit.

6. In view of the above, this petition is disposed off with the following directions:-

- a) The gratuity of the petitioner would be calculated on the basis of the last drawn salary when he superannuated on 30.04.2002 and to be more specific, for the period from 29.04.1966, when he joined duties, till the date of his superannuation.
- b) He would not be entitled for any salary benefits for the period of unauthorized absence.
- c) The above directions are to be implemented by the Zilla Parishad, in case of there being any unpaid amounts of gratuity or if the gratuity has not been properly calculated.
- d) As like the above direction, other retiral benefits, if not paid, shall be paid by the Zilla Parishad to the petitioner.
- e) The above unpaid amounts, if any, would carry admissible

interest in accordance with law.

- f) The unpaid amounts, if any, as per the above directions, shall be paid to the petitioner, on or before 30.04.2023.
- g) Since there is no break in service for the period of absence, the seniority of the petitioner would remain undisturbed and calculation of any unpaid amount or carrying out re-pay fixation would be done by the Zilla Parishad, on or before 30.04.2023 and appropriate steps for releasing the pensionary benefits as per re-calculation, shall be initiated by following the due process of law.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/