

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3975 OF 2016

Sunitadevi Chandrashekhar Gursale
Age 46 years, Occ. Nursing Tutor
Thane Municipal Corporation
(Smt. Meenatai Thakre Institute)
R/at 98, Gulmohar, At Patgaon,
Post Kishor, Taluka Murbad,
District Thane – 421 401.

....Petitioner

V/S

1. The Commissioner
Thane Municipal Corporation
District Thane,
2. The Principal
Sou. Minatai Thakare Institute of
Nursing Education
Old Corporation Building,
Station Road,
Thane – 400 601.

....Respondents

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Mr. Shriniwas S. Patwardhan for the Petitioner.
Mr. Mandar Limaye for Respondent No.1 -TMC.

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CORAM : **DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**
DATED : **3 JULY 2023.**

JUDGMENT *(Per Sandeep V. Marne, J.):*

. Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for Petitioner and the learned Counsel appearing for Respondent-Thane Municipal Corporation.

2 Petitioner has filed present Petition challenging the order dated 8 May 2012 of Respondent-Thane Municipal Corporation thereby treating the period from 14 September 2009 to 8 May 2012 without pay and as non-qualifying service for pension.

3 Petitioner was appointed as Staff Nurse in the year 1992 with the Respondent-Municipal Corporation. She availed study leave for undergoing the course of B.Sc. Nursing during the year 1999 to 2001 and acquired the qualification of B.Sc. Nursing. On the strength of newly acquired qualification she participated in selection process of direct recruitment to the post of Nurse Tutor and was appointed on that post by order dated 5 September 2003.

4 In the year 2009 Petitioner desired to undergo the course of M.Sc. Nursing and made Application dated 9 January 2009 to the Respondent-Municipal Corporation seeking permission to apply for the course of M.Sc. Nursing. By letter dated 30 January 2019 Petitioner was permitted

to apply for Post Graduate Degree in Nursing Training (M.Sc. Nursing). The No Objection Certificate was issued with the approval of Respondent-Municipal Commissioner. Petitioner accordingly took admission for M.Sc. Nursing Programme at the Institute of Nursing Education and Paramedical Sciences, Asian Institute of Medical Sciences, Dombivli. She made representations dated 2 September 2009 and 22 September 2009 to grant her deputation for undergoing the course of M.Sc. Nursing and the said course was not available in Respondent-Thane Municipal Corporation. A show cause notice dated 18 February 2010 was issued to the Petitioner alleging unauthorized absence since 14 September 2009. Petitioner replied the show cause notice on 8 March 2010 requesting that her case be treated as a special case. She contends that no decision was taken on the show cause notice. She however kept on making representations dated 18 August 2011 and 4 October 2011. In the meantime, she completed the M.Sc. Nursing course and was relieved by the Institute on 20 September 2011. She was issued one more show cause notice dated 3 January 2012 for remaining unauthorisedly absent. It was replied by her on 5 January 2012. After receipt of Petitioner's reply she was called for personal hearing on 12 March 2012. The Respondent-Municipal Corporation thereafter passed order dated 8 May 2012 permitting the Petitioner to resume duties however in that order it was directed that the period from 14 September 2009 till resumption of duty shall be treated as "without pay" and that the said period was also not

count as qualifying service for pension. Petitioner has filed present Petition aggrieved by the order dated 8 May 2005.

5 We have heard Mr. Patwardhan, the learned Counsel appearing for the Petitioner and Mr. Limya, the learned Counsel appearing for the Respondent-Municipal Corporation.

6 After having heard the learned Counsels for the parties and on perusal of the records of the case, it is seen that Petitioner had earlier availed study leave from 1 July 1999 to 30 June 2001 for undergoing the course of B.Sc. Nursing. The Respondent-Municipal Corporation has relied upon provisions of the Maharashtra Civil Services (Leave) Rules, 1981. Under rule 81 the maximum permissible leave for undergoing higher studies is only two years. Since Petitioner has already availed study leave during 1 July 1999 to 30 June 2001, she was not eligible to be granted further study leave for undergoing the course of M.Sc. Nursing.

7 Mr. Patwardhan, the learned Counsel for the Petitioner has placed reliance on the No Objection Certificate dated 30 January 2009 and especially the fact that the said Certificate was issued with the approval of the Respondent-Municipal Commissioner. However, perusal of the said Certificate would indicate that the Petitioner was granted permission to apply for the course. The said Certificate does not show that the Petitioner was granted study leave.

8 It is Petitioner's contention that she ought to be given deputation for undergoing M.Sc. Nursing course. We failed to comprehend as to how Petitioner could be deputed to a College for undergoing higher studies. It is not Petitioner's case that she was performing any duties at the Institute where she underwent M.Sc. Nursing course. She did not draw any salary at that Institute. Therefore, there is no question of grant of deputation to Petitioner at the Institute where she underwent M.Sc. Nursing course. There is nothing on record to suggest that the Institute of Nursing Education and Paramedical Sciences made any request to the Respondent-Thane Municipal Corporation for placing services of the Petitioner on deputation. The request of the Petitioner to treat the period as deputation is completely misplaced.

9 We, therefore, do not find any error in the order dated 8 May 2012 passed by the Respondent Municipal Corporation in declining any salary and allowances to Petitioner during the period from 14 September 2009 to 8 May 2012 and in excluding the said period while computing qualifying service for pension. In fact, the Respondent-Municipal Corporation has taken a lenient view and has permitted the Petitioner to resume duties by order dated 8 May 2012 ignoring the fact that she remain unauthorizedly absent for a long period from 14 September 2009 to 8 May 2012. To grant her salary for such period of unauthorized absence would amount to putting a paramount irregularity committed by her.

10 Resultantly, we do not find any merit in the Petition. The Writ Petition is accordingly dismissed without any orders as to costs. Rule is discharged.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

SUDARSHAN
RAJALINGAM
KATKAM

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