

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

WRIT PETITION NO.2035 OF 2022

1. Smt. Anjali Wd/o. Madhukar Kando,
Aged- 40 Years, Occupation-Housewife.
2. Aman Madhukar Kando,
Aged- 19 Years, Occupation-Nil.

Both the Petitioners are R/o.

Krishnar, Post- Jivangatta,

Tah- Etapalli, Dist- Gadchiroli.

..... **PETITIONERS**

...V E R S U S...

1. State of Maharashtra, through its
Secretary, Department of Rural Development,
Mantralaya, Mumbai-32.
2. Zilla Parishad, Gadchiroli,
through its Chief Executive
Officer.

..... **RESPONDENTS**

Mr. Prashant N. Shende, Advocate for Petitioners.

Mr. S. M. Ukey, Addd GP for Respondent 1/State.

Ms. M. P. Munshi, Advocate for Respondent 2.

CORAM: **ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.**

DATE: **3rd APRIL, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Rule. Rule made returnable forthwith. By consent of
the parties heard finally.

2. The petitioner is aggrieved by the refusal of respondent 2 – Chief Executive Officer, Zilla Parishad, Gadchiroli to release the family pension and other benefits in favour of the petitioner 1.

3. We may extract the substantive prayer in the petition:

- A) *To Direct the Respondent no.2, Chief Executive Officer, Zilla Parishad, Gadchiroli, to forthwith Release the Family Pension and other pensionary benefits, in favour of the Petitioner No.1, as per the existing Pay Scale, i.e. 7th Pay Commission, w.e.f. November 2020, and to continue to pay the Family Pension of the petitioner No.1, in future.*
- B) *To Direct the Respondent no.2, Chief Executive Officer, Zilla Parishad, Gadchiroli, to forthwith grant the benefit of Compassionate appointment, in favour of the Petitioner No.2, against the vacancy of Class-III or Class-IV, in the School or Department of the Respondent no.2-Zilla Parishad.*

4. Brief facts are that the husband of petitioner 1 was appointed as Untrained Primary Teacher on the establishment of respondent 2 and he expired on 31.10.2020. As on the date of death, the husband of the petitioner had completed 28 years of service.

5. According to the petitioner, the deceased husband of the petitioner 1 was recruited by due process of law. By now, it appears to be common ground that the services of the deceased husband of the petitioner 1 are terminated vide order dated 27.05.2020 on the premise that he did not acquire the D.Ed. qualification. Be that as it may, the refusal of the Zilla Parishad to release the pensionary benefits in favour of the petitioners on the premise that the deceased husband of petitioner 1 did not acquire the D.Ed. training qualification and was terminated from service, appears to be absolutely untenable in law. The learned counsel Ms. Munshi fairly does not dispute that the Co-ordinate Benches have already taken a view that if qualifying service is complete, pension cannot be denied on the premise that the employee was working as an Untrained Teacher.

6. In Writ Petition 6143/2016 Government Resolutions dated 04.10.1983 and certain letters and communications issued by the State of Maharashtra were challenged. The petitioners at Aurangabad were denied pensionary benefits on the ground that they did not acquire the qualifications of Trained Teacher. The State relied on the Government Resolution dated 04.10.1983 which protected Assistant Teachers appointed on or before 1972

and who did not acquire the training qualifications, while not extending similar benefit to teachers appointed after 1972.

7. The Bench at Aurangabad considered the issue thus:

7. It has been time and again reiterated by the Apex Court that pension is neither a bounty, nor matter of grace depending upon the sweet will of the employer and that it creates vested right. Pension is not ex-gratia payment, but it is a payment for the past service rendered. Pension is social welfare measure rendering a soci-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension is a deferred compensation for service rendered for a long time gracefully and satisfactorily and as a consideration of his past service. It is a secured health and support to an ex-employee who is no more in a position to work and earn after devoting his prime time of life to the service of the State.

8. The respondents did not dispute that the petitioners herein had put in the qualifying service. The petitioners were duly appointed by following selection process as contemplated under the law. They were appointed on sanctioned and substantive post. Their appointments are approved. They are paid salary as untrained teachers till the date of their superannuation. It is not the case of the respondent No.4 that, the petitioners at the time of securing appointment had played a fraud or suppressed the fact of their qualification. The petitioners never represented that they are trained teachers.

9. *The Maharashtra Zilla Parishad District Services Rules provide that, provisions of the Pension Rule shall apply.*

10. *All the parties agree that the Maharashtra Civil Services (Pension) Rules, 1982 (for short "Pension Rules") is applicable to the case in hand. It is also not disputed that at no point of time any departmental proceedings were initiated against the petitioners, nor they had suffered any disability except the fact that they were untrained teachers.*

11. *Rule 6 of the Pension Rules provide that any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or retired or is discharged or dies, as the case may be. Pensionable service is defined in Rule 9 (39) of the Pension Rules. "Pensionable service means service which qualifies the Government servant performing it to receive a pension from the consolidated fund". Rule 30 of the Pension Rules provides that, subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity, provided that at the time of retirement he shall hold substantive or permanent post in Government service or holds a suspended lien or certificate of permanency. Rule 31 of the Pension Rules deals with conditions subject to which service qualifies. Same reads thus :*

The Maharashtra Civil Services (Pension) Rules, 1982.

1.
2.

31. *Conditions subject to which service qualifies*

- (1) *The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government.*
- (2) *For the purposes of sub rule (1) the expression “service” means service under Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by Government.*
- (3) *In the case of a Government servant belonging to the Central Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the Central Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:*

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed other wise than by deputation to a service or post to which these rules apply.

12. The Pension Rules read in its entirety nowhere stipulates that if a person is appointed on substantive post by following due selection process and completes 10 years or more service till the date of his superannuation and against whom no departmental or judicial proceedings are pending is dis-entitle for pension on the ground that on the date the employee was appointed and retires on attaining age of superannuation was untrained.

8. We find that the present case is squarely covered by what is held by the Co-ordinate Bench in the decision *supra*.

9. We, therefore, allow the petition in terms of prayer clause (A) which reads thus:

A) *To Direct the Respondent no.2, Chief Executive Officer, Zilla Parishad, Gadchiroli, to forthwith Release the Family Pension and other pensionary benefits, in favour of the Petitioner No.1, as per the existing Pay Scale, i.e. 7th Pay Commission, w.e.f. November 2020, and to continue to pay the Family Pension of the petitioner No.1, in future.*

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

NSN