

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

WRIT PETITION 2812 OF 2010

Pandhari Bhilan Landge,
 Aged 61 yrs, Occ. Service,
 R/o. Asgaon Chauras,
 Tahsil Paoni, District Bhandara

.....**PETITIONER**

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

1. State of Maharashtra
 Department of Education,
 Mantralaya, Mumbai, through
 its Secretary,
2. Dy. Director of Education,
 Nagpur Region, Old Moress College,
 Compound, Nagpur.
3. Education Officer (Secondary),
 Zilla Parishad Gondia,
 District Gondia

..RESPONDENTS

 Mr. P.N. Shende, counsel for petitioner,
 Mr. S.M. Ukey, Addl.GP for respondents/State.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 01.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. The short question involved in the petition is whether the petitioner is entitled to have the pension fixed considering the qualifying service as 20 years and more or the qualifying service is

required to be restricted to the period 27.5.1994 which is the date of absorption of the petitioner in Dr. Bhabha Vidyalaya, Zarpada, District Gondia till the date of retirement that is 30.8.2006.

3. Facts lie in an extremely narrow compass.

4. Petitioner was appointed as Assistant Teacher on 1.9.1978. The petitioner was declared surplus on 8.5.1989 in view of the reduction of strength of students.

5. It is not in dispute that it was only on 27.5.1994 that the petitioner was absorbed in Dr. Bhabha Vidyalaya, Zarpada. It is irrefutable that Rule 26(1)(i and ii) comes into play inasmuch as the section was reduced due to reduction in the strength of students.

6. Sub-rule 2 of Rule 26 provides that an employee, who is vulnerable to retrenchment under Sub-rule(1) shall be absorbed by the Education Officer, and till such time the employee is absorbed, the management shall not be permitted to effect the retrenchment on accounts of reasons mentioned in Sub-rule(1). Before us, it is not in dispute that the absorption of the petitioner

was in view of Sub-rule (iii) of Rule 26(2).

7. Considering that the relationship as employer and employee did not snap, and the petitioner is deemed to be in continuous service from the date of the initial appointment that is 1.9.1978, we fail to appreciate how for the purpose of calculating the qualifying service, the date of absorption is taken as the relevant date.

8. We note that, presumably due to a misconception, one of the prayers in the petition is that the break in service be condoned. Such prayer was wholly unnecessary inasmuch as the question of there being any break just does not arise, and as a sequitur, the question of condonation of non-existing break cannot arise. We refrain from making any further observation.

9. Having so observed, we see no impediment in allowing the petition and in directing that for the purpose of pension, the qualifying service be reckoned from 1.7.1978 till the date of superannuation. The pension be re-fixed appropriately within the next eight weeks. The petitioner shall be entitled to arrears for the period from institution of the petition, which shall be calculated

and paid within a period of six weeks from the re-fixation of pension.

10. The petition is allowed in the aforesaid terms.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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