

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

Writ Petition No. 2130 of 2022

Vitthal S/o Balaji Kankal,
Aged about 74 years, Occ : Nil,
R/o Malsur, Tah. Patur,
District : Akola.

... Petitioner

.. Versus ..

(1) Swami Vivekanand Shikshan
Prasarak Mandal, Malsur, Tah. Patur,
District : Akola, through its President

(2) The Education Officer (Secondary)
Zilla Parishad, Akola, Tah. and
District : Akola

(3) The Headmaster,
Ramsingh Munssing Naik Vidyalaya,
Maisur, Tah. Patur, District : Akola

... Respondents

Mr. S. T. Harkare, Advocate for the petitioner
Mr. S. Zia Quazi, Advocate for respondent 1
Smt. K. S. Joshi, Addl. G. P. for the State/respondent 2

**CORAM : ROHIT B. DEO AND
Y. G. KHOBRAGADE, JJ.**

DATED : 9-1-2023

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

Heard.

2. Rule. Rule made returnable forthwith.

3. Petitioner is assailing the communication dated 20-2-2017 issued by respondent 3 informing the petitioner that he is not entitled to pensionary benefits.

4. Petitioner is further seeking direction against respondent 3 – Headmaster that the pension case be submitted to respondent 2 – Education Officer (Secondary), Zilla Parishad, Akola.

5. We heard learned counsel for the petitioner, Mr. Harkare and learned Additional Government Pleader, Smt. Joshi for respondent 2.

6. We are satisfied that the petition is abuse of the process of law.

7. Petitioner earlier preferred Writ Petition 6037/2014 seeking the same relief which is sought in the present petition, although the words used in the prayer could be slightly different. In Writ Petition 6037/2014, the petitioner sought direction to the Education Officer to release the pension as per the rules. The Division Bench held that the petitioner has abused the process of Court. We may extract the relevant observations of the Division Bench.

“On hearing the learned Counsel for the parties, it appears that the petitioner has abused the process of Court by filing the instant petition. The services of the petitioner were admittedly terminated as early as in the year 1997. The appeal filed by the petitioner against the termination of his services is

still not registered, though more than 17 years have lapsed from the date of the petitioner's termination. The petitioner's services are terminated in the year 1997 and the petitioner was out of service. The order of termination is not yet set aside. The appeal filed by the petitioner against the order of termination, in the year 2007 is also not yet registered. The petitioner would not be entitled to seek any pensionary benefits in the face of the termination of the petitioner in the year 1997. The petitioner has not pointed out any provisions of law that would entitle the petitioner to seek pension despite his termination in the year 1997.

In view of the aforesaid, the writ petition is dismissed with costs."

8. It is not even the case of the petitioner that the Division Bench judgment has not assumed finality. However, the petitioner has persisted in demanding pension and respondent 3 – Headmaster rightly pointed out that he is not entitled to pension. This petition is filed five years after the date, the Headmaster pointed out to the petitioner that the pension is not payable.

9. The petition is frivolous and is dismissed.

10. We were inclined to impose heavy costs, however, since learned counsel Mr. Harkare submits that the petitioner is seriously ill, we refrain.

(Y. G. Khobragade, J.)

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(Rohit B. Deo, J.)