

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

WRIT PETITION NO. 4667 OF 2021

Smt. Medha Shripad Ghatnekar,
Aged about 67 years, Occ. Nil,
R/o. Shubham Apartment,
Near Hanuman Temple, Gajanan Peth,
Akola.

..PETITIONER

VERSUS

1. State of Maharashtra,
through its Secretary for Urban Development
Department, Mumbai.
2. Municipal Commissioner,
Akola Municipal Corporation,
Akola.
3. Accounts Officer,
Akola Municipal Corporation,
Akola.
4. Education Officer,
Akola Municipal Corporation,
Akola.
5. Deputy Director of Education,
Amravati Division, Amravati.
6. Miss Kavita Dwivedi,
Presently working as
Municipal Commissioner/Administrator,
Akola Municipal Corporation.

Amendment carried
out as per Court's
order dated
16.11.2022
Sd/- C.F.Petitioner
dt/23/11/2022

..RESPONDENTS

Shri S.A.Marathe, Advocate for petitioner.
Shri A.S.Fulzele, Additional Government Pleader for respondent nos. 1 and 5.
Shri S.V. Sohoni, Advocate for respondent nos. 2 to 4 and 6.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.

DATED : 21st MARCH, 2023.

ORAL JUDGMENT : (Per A.S.Chandurkar, J.)

In view of notice for final disposal issued earlier, the writ petition has been heard finally with consent of the learned counsel for the parties by issuing **Rule** and making the same returnable forthwith.

2. The petitioner came to be appointed at the Municipal Corporation Marathi Girls School by the Akola Municipal Corporation, on 24.02.1994. She was aged about 43 years when her appointment was made. On completion of the period of probation, her services came to be confirmed and after considering service of 15 years and 7 months, she retired on superannuation on 30.09.2009. Since the petitioner was not paid her pensionary benefits, she had approached this Court in Writ Petition No.1024 of 2011. By the order dated 11.10.2011 the Municipal Commissioner, Akola Municipal Corporation was directed to consider the issue of age relaxation of the petitioner to enable consideration of her prayer for grant of pension, if her age was relaxed. On 24.11.2011 the Municipal Corporation through its Administrator passed Resolution No.19 and held the petitioner entitled to pensionary benefits, gratuity and other admissible service benefits. It was further stated that approval of the State Government be obtained. On 15.05.2015 the Municipal Corporation forwarded a proposal to the State Government seeking its approval in the matter of age relaxation of the petitioner. During this period the petitioner was receiving an amount of Rs.3,572/- towards pension alongwith Dearness Allowance. On 10.01.2018 the Municipal Commissioner rejected the petitioner's claim for fixation of amount of pension in view of letter of the Government dated 21.11.2017. The said order was thus challenged by the

petitioner in Writ Petition No.5187 of 2018. In the affidavit in reply filed by the Municipal Corporation, it was stated that since the petitioner had rendered service which was less than 16 years, she was being given pensionary benefits as per Clause 5.1 of the Government Resolution Dated 30.10.2009. The said writ petition was disposed of on 18.02.2020 granting liberty to the petitioner to make a representation for fixation of her pension as per the recommendations of the Sixth Pay Commission. Thereafter on 18.03.2021 the Municipal Commissioner passed an order stating therein that the petitioner was not entitled for age relaxation and for pensionary benefits. It is in this backdrop that the petitioner has challenged the order dated 18.03.2021 passed by the Municipal Corporation refusing to grant age relaxation in the matter of petitioner's appointment and thus grant of pensionary benefits to the petitioner. During the pendency of the present writ petition, an order was passed on 23.08.2022 directing the Municipal Commissioner to reconsider the matter and pass an appropriate order accordingly. On 15.09.2022 the Municipal Corporation passed an order refusing to regularise the appointment of the petitioner and grant the petitioner pensionary benefits. By amending the writ petition, the order dated 16.09.2022 is also under challenge.

3. Shri S.A.Marathe, learned counsel for the petitioner submitted that initially on 24.11.2011 the Municipal Corporation had passed a Resolution condoning the age of the petitioner holding her entitled to pensionary benefits. Though the approval of the State Government was sought by the communication dated 21.11.2017, the State Government had in clear terms informed the Municipal Corporation that necessary decision was required to be taken at the level of the

Municipal Corporation itself and there was no need for seeking approval of the State Government. In the light of this communication dated 21.11.2017 nothing further was required to be done by the Municipal Corporation and the petitioner ought to have been paid her pensionary benefits. The Municipal Corporation had unnecessarily sought to re-open the matter notwithstanding the Resolution dated 24.11.2011. Merely because this Court had directed the Municipal Commissioner to re-consider the matter and pass an appropriate order, the same would not mean that the benefits already granted to the petitioner pursuant to the Resolution dated 24.11.2011 could be withdrawn. It was submitted that by the order dated 15.09.2022 the benefits already received by the petitioner were sought to be withdrawn which course was not permissible. In this regard, reference was made to Rule 31 (1) of the Maharashtra Civil Services (Pension) Rules, 1982. The State Government having directed the Municipal Corporation to take a decision on its own level and such Resolution already having been passed, it was not permissible for the Municipal Corporation now to deny the pensionary benefits to the petitioner. The issue with regard to accepting the date of petitioner's appointment despite being overage was not liable to be re-opened. It was thus submitted that the order dated 15.09.2022 was liable to be set aside and the petitioner was entitled to receive pensionary benefits as before.

4. Shri S. V. Sohoni, learned counsel for the respondent nos. 2 to 4 and 6 supported the stand of the Municipal Corporation. According to him, it was undisputed that when the petitioner was appointed, her age was 43 years. This was beyond the maximum permissible age for appointment. Since the petitioner had

rendered service which was less than 16 years, she was not entitled to any pensionary benefits. Since there was a direction issued to re-consider the case of the petitioner, the same was done and on 15.09.2022 the impugned order came to be passed holding the petitioner ineligible to receive pensionary benefits. On this count, it was submitted that the petitioner was not entitled to any relief whatsoever. It was submitted that there was no merit in the writ petition and the petitioner was not entitled to any relief whatsoever.

5. We have heard the learned counsel for the parties and we have perused the documents on record. It can be seen from the relevant documents that the petitioner came to be appointed on 24.11.1994 as a primary teacher with the Municipal Corporation. Having served for a period of about 15 years and 7 months she superannuated on 30.09.2009. With the passing of Resolution No.19 on 24.11.2011, the Municipal Corporation approved her appointment notwithstanding the fact that she was overage when she was appointed. In the said Resolution it was stated that further approval of the State Government be obtained. The State Government had on 21.11.2017 made it clear that since the Municipal Corporation was the appointing authority of the petitioner, it was not necessary for the appointing authority to obtain the approval of the State Government in this regard. The matter with regard to accepting the age on appointment of the petitioner ought to have been closed and the matter ought to have proceeded further in the light of the Resolution passed by the Municipal Corporation on 24.11.2011. It is only because the petitioner sought revision of her pensionary benefits since she was receiving an amount of Rs.3,572/- per month towards pension that the Municipal

Corporation has sought to re-open the entire matter. Having been appointed about 30 years ago and having superannuated about 15 years ago, there was no justification whatsoever in again re-opening the entire matter, especially the fact that the petitioner was overage when she was appointed. We find that the approach of the Municipal Corporation in this regard unjustified and unbecoming of an ideal employer. It cannot be lost sight of the fact that when the Resolution dated 24.11.2011 was passed, it was the Administrator who was managing the affairs of the Municipal Corporation and it is not the case that for any extraneous reason such Resolution was passed.

6. It is also to be noted that when this Court on 23.08.2022 required the Municipal Commissioner to re-visit the issue by *prima facie* observing that the revision of the petitioner's pension was not correct, it was clearly implied that the Municipal Commissioner was called upon to re-visit the issue of payment of the amount of pension to the petitioner. There was no justification whatsoever on the part of the Municipal Commissioner in seeking to re-open the entire matter and thereafter passing the order dated 15.09.2022. In any event with passage of considerable period of time during which the petitioner did receive partial amount of pension, the re-opening of the entire matter is unwarranted. It is not the case that by misrepresentation of material facts the petitioner secured employment warranting the proceedings to be re-opened. In this context, we may also refer to the provisions of Rule 110(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 that enable the government servant retiring on superannuation before completing qualifying service of 20 years but after completing the service of 10

years to receive pension which is calculated at 50% of 'pensionable pay'. We therefore find that the initial communication dated 18.03.2021 issued by the Municipal Commissioner of re-considering the proposal for relaxation of the petitioner's age on her appointment and thereafter grant of all consequential benefits to be contrary to the Resolution passed by the Municipal Corporation on 24.11.2011. Similarly the impugned communication dated 15.09.2022 denying benefit to the petitioner is also liable to be set aside on the same ground.

7. Accordingly, the following order is passed:

- (i) The communications dated 18.03.2021 and 15.09.2022 issued by the Municipal Commissioner, Akola Municipal Corporation, Akola to the extent benefit is denied to the petitioner are set aside. The last paragraph of the order dated 15.09.2022 shall continue to operate. It is directed that the Municipal Corporation is bound by its Resolution bearing No.19 dated 24.11.2011 and that in view of communication dated 21.11.2017 approval of the State Government is not necessary in this regard.
- (ii) The Municipal Corporation shall release the petitioner's pension with revision, as permissible, including arrears thereof within a period of three months from receiving the copy of this order.
- (iii) Applicability of Rule 110(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 can also be taken into consideration in this regard.
- (iv) Rule is made absolute in aforesaid terms with no order as to costs.

(M.W.CHANDWANI, J.)

(A.S.CHANDURKAR, J.)

Andurkar