



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

WRIT PETITION NO. 4408 of 2023

PETITIONER : Mukund Anantrao Deo,
Age – 53 years, Occ: Nil,
R/o Behind Prajakta School,
New Khetan Nagar, Kaulkhed,
Akola, Tq. & Dist. Akola.

VERSUS.

RESPONDENTS : 1. Deputy Director of Education
Amravati, Tq. & Dist. Amravati.

2. Educational Officer (Primary),
Zilla Parishad, Akola, Tq. & Dist. Akola.

3. Superintendent,
Pay Unit (Primary), Education Officer,
Zilla Parishad, Akola
Tq. & Dist. Akola.

4. Shriram Shikshan Sanstha,
Through its President,
Khetan Nagar, Kaulkhed,
Akola, Tq. & Dist. Akola.

5. Shriram Marathi Prathamik Shala,
Through its Headmaster,
Khetan Nagar, Kaulkhed,
Akola, Tq. & Dist. Akola.

Shri A.R. Deshpande, Advocate for petitioner.
Ms N.P. Mehta, Additional Government Pleader for respondent no.1.
Shri B.N. Jaipurkar, Advocate for respondent no.2

CORAM :- A.S.CHANDURKAR AND ABHAY J. MANTRI, JJ.
DATE :- 23rd October, 2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner is aggrieved by the communication dated 14.03.2023 issued by the President of Shriram Shikshan Sanstha, Kaulkhed, Akola informing the petitioner that his request for voluntary retirement had been rejected.

3. The petitioner came to be appointed on the post of Assistant Teacher at Shriram Marathi Primary School-respondent no.5 that was being run by Shriram Shikshan Sanstha, Kaulkhed, Akola a registered public Trust through its President-respondent no.4. On 01.07.1998 his appointment was duly approved. After rendering service of more than 20 years, the petitioner on 07.12.2022 issued a notice indicating his desire to voluntary retire from service on the completion of the notice period of three months. He stated that he had rendered service of 24 years 8 months and 6 days. The petitioner's application was stated to have been considered by the Executive Committee of the public Trust. By the communication dated 14.03.2023 the petitioner was informed that his request had been rejected by the Management. It was further stated that since 07.03.2023 the petitioner remained absent from duty without any permission. Being aggrieved by this communication, the petitioner has challenged the same in the present writ petition.

4. We have heard Shri A.R.Deshpande, learned counsel for the petitioner, Ms N. P. Mehta, learned Additional Government Pleader for the respondent no.1 and Shri B. N. Jaipurkar, learned counsel for the respondent no.2 - Zilla Parishad, Akola. Despite service, the respondent nos. 4 and 5 have not chosen to oppose the prayers made in the writ petition. On 06.10.2023 the proceedings were adjourned to grant an opportunity to the said respondents to contest the same. It appears that the respondent nos. 4 and 5 are not desirous of opposing the prayers made in the writ petition.

5. Having heard the learned counsel for the parties and having perused the documents on record, we are of the view that the impugned communication dated 14.03.2023 issued by the Management is liable to be set aside for the following reasons:

(a) The provisions of Maharashtra Civil Services (Pension) Rules, 1982 (for short, the Rules of 1982) have been made applicable in the matter of voluntary retirement of members of the teaching and non-teaching staff of aided private secondary schools by virtue of Circular dated 09.09.1988. By further Circular dated 09.10.1990 clarification has been issued by the concerned department clarifying that on expiry of notice period of three months, such employee would stand voluntarily retired from service on the next date after completion of three months. Rule 66 of the Rules of 1982

prescribes qualifying service of 20 years. It also stipulates a notice period of three months to be given by an employee seeking to voluntarily retire from service. Admittedly the notice issued by the petitioner on 07.12.2022 seeking to voluntarily retire on completion of period of three months was duly served on the Management prior to expiry of ninety days. This request was not refused by the Management. The period of three months came to an end on 06.03.2023. Thus from 07.03.2023 the petitioner stood retired from service.

(b) The impugned communication issued by the Management is dated 14.03.2023 which is after the period of three months that ended on 06.03.2023. As a consequence of Rule 66 of the Rules of 1982, the petitioner stood retired at the end of 06.03.2023 and the relationship of master and servant came to an end from that date. There was no authority whatsoever with the Management to refuse the request made by the petitioner.

6. From the aforesaid therefore it is clear that the impugned communication dated 14.03.2023 is contrary to what has been stipulated by Rule 66 of the Rules of 1982. At the end of notice period of three months the petitioner stood retired on 06.03.2023.

7. It may be noted that the petitioner was paid salary for the months of March and April 2023. Hence on 19.06.2023 the petitioner issued a communication to the Head Master of the School and sought to return the

amount of Rs.1,62,830/- by issuing a cheque in that regard towards excess payment received by him. In response the Head Master on 23.06.2023 informed the petitioner that since his request for voluntary retirement had been rejected, he should re-join duties. The cheque dated 19.06.2023 that was issued by the petitioner was returned back to him.

8. In aforesaid facts the following order would serve the interest of justice:

(i) The communication dated 14.03.2023 issued by the President of Shriram Shikshan Sanstha, Kaulkhed, Akola rejecting the petitioner's application for voluntary retirement is quashed.

(ii) It is declared that the petitioner stood voluntarily retired from service at the end of 06.03.2023. His pensionary benefits shall be calculated in accordance with the Maharashtra Civil Services (Pension) Rules, 1982 since he has completed requisite qualifying service.

(iii) The petitioner shall within a period of four weeks of receiving copy of this judgment refund the amount of Rs. 1,62,830/- which was initially tendered by him but was returned back by the Management. On receiving this amount, the Management shall take all necessary steps and finalize the pension case of the petitioner in accordance with law. Such steps be taken within a period of four weeks of receiving the amount of Rs. 1,62,830/-.

(iv) The petitioner's pension papers shall be forwarded by the respondent nos. 4 and 5 to the Competent Authority for release of such benefits in accordance with law. The respondent nos. 2 and 3 shall take necessary consequential steps in that regard.

9. Rule is made absolute in aforesaid terms with no order as to costs.

(ABHAY J. MANTRI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.