

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

WRIT PETITION NO.4728 OF 2010

Tulsabai w/d Niranjan Gondane,
Aged 60 years, Resident of C/o
Munnalal Varma, Surendragarh,
Near Kiran Medical Store,
Seminary Hills, Nagpur.

... Petitioner

-vs-

1. The Secretary,
Department of Higher and Technical
Education, Mantralaya, Mumbai – 32
2. The Director,
Department of Higher Education,
Maharashtra State, Pune,
3. The Deputy Director,
Department of Higher Education,
Nagpur
4. The Principal/Chairman,
LAD College Hostel, Seminary Hills,
Nagpur 44006
5. Woman's Education Society,
through its President, Seminary Hills,
Nagpur

... Respondents

Ms P. D. Rane, Advocate for petitioner.
Smt S. S. Jachak, Assistant Government Pleader for respondent Nos.1 to 3.
Shri A. A. Naik, Advocate for respondent Nos.4 and 5.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, J.
DATE : August 10, 2023

Oral Judgment : (Per : A. S. Chandurkar, J.)

The petitioner was appointed on the post of maid servant at the respondent No.4-LAD College Hostel on 12/12/1998. On attaining the

age of superannuation the petitioner sought payment of retiral benefits including the amount of pension, provident fund and gratuity. The respondent No.4 refused to grant such benefits to the petitioner. After issuing a legal notice, the present writ petition was filed on 23/09/2010 seeking grant of such benefit.

2. During pendency of the writ petition the petitioner was paid amount of gratuity. Insofar as the claim for provident fund is concerned, the respondent No.4 as well as respondent No.5-Woman's Education Society have preferred Writ Petition No.3439/2013 (*Women's Education Society vs. The Regional Provident Fund Commissioner Intervenors : Munnalal Ramchari Varma and ors.*) challenging the applicability of the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to its establishment. The said writ petition is pending and in those proceedings the amounts due have been deposited in view of interim order passed in the said proceedings on 16/12/2014. For this reason the prayer with regard to grant of amount of provident fund cannot be adjudicated in this proceedings. The petitioner's entitlement for amount of provident fund would depend upon that adjudication. Hence the prayer for grant of pension is being considered in the present writ petition.

3. It is submitted by the learned counsel for the petitioner that since the petitioner was engaged at the hostel which was part of the college being run by the Society and the employees of the said college were entitled for pensionary benefits, the petitioner was also entitled for similar benefits. Inviting attention to various documents placed on record it was submitted that there was no justifiable reason for depriving the petitioner of such pensionary benefits. By referring to the additional affidavit filed on behalf of the petitioner it was urged that one Shri Teklal Jamaiwar who was appointed as Full Time Laboratory Attendant at the college was also receiving pensionary benefits. His initial appointment was as 'Watchman' in the year 1987. Since he was not being paid minimum scale of wages he had filed a complaint before the Industrial Court wherein the proceedings were settled between the parties and he was held entitled to receive financial benefits. He was thereafter appointed as Full Time Laboratory Attendant at the college after which he was held entitled to pensionary benefits. Since the activities of the college and hostel were interlinked with each other and the hostel being part of the facility provided to the students of the college, the petitioner was also entitled to such benefits. In support of her submission, the learned counsel placed reliance on the decision in *Secretary Mahatama Gandhi Mission and anr. vs. Bhartiya Kamgar Sena and ors. (2017) 4 SCC 449* and

prayed for grant of appropriate relief.

4. The learned counsel for respondent Nos.4 and 5 opposed the aforesaid submission. It was submitted that the appointment of the petitioner was not on a sanctioned post nor was the hostel receiving any grant-in-aid. There was no pleading in the writ petition to indicate the basis for being legally entitled to receive pension. The hostel could not be said to be part of the college insofar as Education Society was running various colleges and all girls students taking education in these colleges were entitled to the facility of hostel. There was no document on record to indicate that the petitioner ever worked in the college. Referring to the compromise petition that was relied upon by the learned counsel for the petitioner in complaint ULP No.213/2007 it was submitted that the petitioner was not entitled to any benefit of such compromise. That compromise was applicable to the employees mentioned therein and not the petitioner. Placing reliance on the decisions in *Pradnya Padmakar Damle vs. Municipal Corporation of Greater Mumbai and ors.* **2014 (3) Mh.L.J. 14**, *Union of India and ors. vs. Rakesh Kumar (2001) 4 SCC 309* and *St. Mary's Education Society and anr. vs. Rajendra Prasad Bhargava and ors. (2022) 4 LLJ 241*, it was submitted that in absence of any legal right the petitioner was not entitled to pensionary benefits.

5. We have heard the learned counsel for the parties and with their assistance we have also perused the documents on record. It is seen that the appointment of the petitioner as maid servant is with the hostel that is run by the Society. It is being run on no-grant basis and it is asserted that no employee of the hostel is entitled to or receive any pensionary benefits. There is no statutory entitlement indicated by the petitioner to enable her to claim the amount of pension. The petitioner seeks to rely upon certain instances where employees of the college have been granted certain benefits as well as reliefs in view of the compromise petition. Perusal of the compromise petition in complaint ULP No.213/2007 indicates that it is only the complainant Nos.1 to 4, 11 and 13 therein who have been held entitled to receive amount of Rs.1,50,000/- as *ex-gratia payment*. Though the petitioner had signed the said compromise as complainant No.9, there is no reference to any such benefit granted to her under that compromise. The manner in which the petitioner is not similarly situated as Shri Teklal Jamaiwar has also been indicated in the additional affidavit filed by respondent Nos.4 and 5. We therefore do not find any legal basis whatsoever to hold the petitioner entitled to pensionary benefits in absence of any statutory entitlement in that regard. No rule has been pointed out by the petitioner that would enable the petitioner to be held entitled to receive pensionary benefits. After considering the ratio of the

decisions relied upon by the learned counsel for the parties, we do not find that the petitioner has made out any case for grant of pensionary benefits. By not granting her such benefits, the respondent Nos.4 and 5 have not contravened any statutory enactment.

6. By clarifying that the aspect with regard to entitlement of provident fund has not been considered in the present writ petition in view of pendency of Writ Petition No.3439/2013, the relief prayed for by the petitioner herein as regards grant of pensionary benefits cannot be granted to her.

Rule is thus discharged leaving the parties to bear their own costs.

(Mrs Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)