



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

WRIT PETITION NO.7163 OF 2022

Smt. Pramodhini wd/o Kunjakutti Matheu,
Aged about 79 years,
Occupation – Retired
R/o. Near Circuit House,
Behind Galaxy Hotel, Civil Lines,
Yavatmal, Tq. and District Yavatmal

...PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai – 32
2. Director of Education (Primary)
Directorate of Education,
Maharashtra State, Pune
3. Chief Executive Officer,
Zilla Parishad,
Yavatmal
4. Education Officer (Primary),
Zilla Parishad,
Yavatmal
5. Block Development Officer,
Panchayat Samiti,
Yavatmal

...RESPONDENTS

Mrs. Sunita D. Paul, Advocate for the petitioner.
Mr. S.M. Ukey, AGP for respondent Nos.1 and 2.
Mr. S.C. Bhalerao, Advocate for respondent Nos.3 to 5.

**CORAM : AVINASH G. GHAROTE &
URMILA JOSHI-PHALKE, JJ.**
RESERVED ON : AUGUST 24, 2023
PRONOUNCED ON : SEPTEMBER 05, 2023

JUDGMENT (Per Urmila Joshi-Phalke, J.)

RULE. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the parties.

2. By this petition, the petitioner seeks declaration that she is entitled for pension and all retiral benefits with effect from date of her retirement i.e. 30th June, 2001. She had also claimed arrears of pension.

3. The petitioner was initially appointed in Vasantrao Vidyaniketan English Medium Primary School, Yavatmal as an Untrained Teacher from 30th June, 1973. The school was controlled by Zilla Parishad, Yavatmal. Her initial appointment was for the period from 30th June, 1973 to 30th April, 1974. Thereafter the termination order was issued to her on 05th April, 1974. Thereafter again the appointment was given to her for the period from 30th June, 1975 to 30th April, 1976, 30th June 1976 to 30th April, 1977, 02nd May, 1977 to 31st October, 1977, 02nd November, 1977 to 30th April, 1978, 02nd February, 1979 to 30th April, 1979, 02nd July, 1979 to 31st December, 1979. Respondent No.3 further issued appointment order on 30th January, 1980 appointing her for a

period from 02nd February, 1980 to 31st January, 1981 or till receipt of selection list from Selection Board. She was terminated on 30th January, 1981. Thereafter again she was appointed from 3rd February, 1981 to 31st January, 1982 or till receipt of select list from the Selection Board. Again she was appointed on 2nd February, 1982. Thus, by giving notional breaks, her service was continuous for the period from 30th June, 1973 to 27th January, 1983. Though the post of Primary School Teacher was vacant with the respondents and despite of vacant post, the respondents had continued her services by giving notional breaks till January, 1983. She served as an English Primary School Teacher for a continuous period of 10 years in Vasant Rao Vidyaniketan English Medium Primary School, Yavatmal and thereafter said school was permanently closed down. Therefore, she was absorbed and transferred in the capacity of English Medium Primary Teacher in Panchayat Samiti, Yavatmal. Further she was appointed in Panchayat Samiti School at Pandhari by appointment order dated 13th July 1987. Again the Block Development Officer had issued second appointment order dated 24th June, 1994 appointing her in the same school at Pandhari. Thus, it reveals that she was in continuous service as English Primary Teacher from 13th July, 1987 to 24th June, 1994 i.e. for continuous period of 7 years. Thus, she served for a period of 10 years in Vasant Rao Vidyaniketan English Medium Primary School, Yavatmal and thereafter 7 years as per the appointment

order issued by the Panchayat Samiti, Yavatmal. Despite this service the respondents failed to release the pension and retiral benefits to her. The Block Development Officer, Panchayat Samiti, Yavatmal had issued a letter on 22nd June, 2001 which shows that she retired on attaining the age of superannuation on 30th June, 2001.

4. As per the contention of the petitioner that in view of the judgment of this Court, the untrained Teachers who have worked from 1973 onwards are deemed to be treated as trained Teacher are entitled for pension and other retiral benefits, therefore, she approached to the respondent Nos.3 and 4 contending that she had worked continuously for a period of 28 years as a Primary English Medium Teacher with respondent Nos.3 and 4. Therefore, she is entitled for the retiral benefits including pension etc. Said representations are not considered by respondent Nos.3 and 4, and therefore, she approached to this Court by claiming the retiral benefits.

5. Respondent Nos.3 to 5 by submitting their reply submitted that there was no any provision for payment of pension and other retiral benefits to the untrained Teacher, therefore, same was not paid. The petitioner has not claimed pension till filing of the present petition. As far as the contention of the petitioner is concerned that by giving notional breaks, her service was continuous for 28 years however,

denied the contention that she is entitled to receive the pensionary benefits as she was not the trained Teacher.

6. Heard learned Counsel for the petitioner. She submitted that the petitioner is entitled for the benefit of pension as per the Government Resolution dated 9th March, 2010 and Circular dated 09th March, 2010. There is no dispute that initially the petitioner was appointed in Vasantao Vidyaniketan English Medium Primary School, Yavatmal. Her services was continued by giving her notional breaks in the said school till 1983. Thereafter her services are obtained by the Block Development Officer, Panchayat Samiti by absorbing her. Time to time the appointment letters were issued to her by giving her notional break. In view of the letter dated 22nd June, 2001, the petitioner got retired on reaching at the age of superannuation.

7. In the judgment of this Court in Writ Petition No.4749 of 2016 dated 21st December, 2017 in view of Government Resolution dated 9th March, 2010 it is held that the candidates who had possessed either PSC or SSC and PTC or a Diploma in Education, would be entitled for pensionary benefits. It is further held that all the teachers who would be covered by the Government Circular dated 9th March, 2010 and which has been considered by this Court in Writ Petition No.5110 of 2012 dated 13th December, 2017 which is applicable to the respective

Education Officers for the benefit in accordance with such circular. If all such applications are made, the Education Officer shall decide the same within a period of 3 months of making such application. The said ratio is laid down in Writ Petition No.9434 of 2017 along with the connected petitions decided on 19th March, 2019 wherein also the pensionary benefits was allowed to the teachers. She submitted that thus respondent Nos.3 to 5 were under obligation to provide her pensionary benefits which was not provided, and therefore, she is entitled for the arrears of the pension along with the interest.

8. Shri S.M. Ukey, learned Assistant Government Pleader for respondent Nos.1 and 2 and Shri S.C. Bhalerao, learned Counsel for respondent Nos.3 to 5 submitted that as the petitioner was not a trained Teacher, said benefit was not given to her. The communication issued by respondent Nos.3 and 4 is legal and not faulted with. The petition is without merits and liable to be dismissed.

9. On hearing the learned Counsel for the parties and on perusal of the Government Resolution dated 9th March, 2010 it is found that the Teachers who are appointed after 01st July, 1973 who are the untrained Teachers are entitled for pensionary benefits. This aspect is also considered by this Court in Writ Petition No.4749 of 2016 wherein also it is held that the Government itself had realized it's mistake and issued

the Circular dated 9th March, 2010 which provided that the candidates who had possessed either PSC or SSC and PTC or a Diploma in Education, would be entitled for pensionary benefits. Insofar as the Communication dated 16th August, 2013 deleting the word “PSC” and “or” from the Circular dated 9th March, 2010 is concerned, it has also been held that the said circular was not sustainable in law.

10. It is further held that in view of the policy of the Government, as reflected from the circular dated 09th March, 2010, all such teachers who possess PSC or SSC along with a PTC or a Diploma in Education will have to be treated as trained teachers for the purpose of IVth, Vth and VIth Pay Commission recommendations. It is further held that all the teachers who would be covered by the Government Circular dated 9th March, 2010 and which has been considered in the judgment in Writ Petition No.5110 up 2012 dated 13th December, 2017 to apply to the respective Education Officers for the benefit in accordance with such circular and the benefit was given. The similar issue was raised in Writ Petition No.9434 of 2017 wherein also the benefit of pension was given to the petitioners.

11. As far as the present case is concerned there is no dispute that initially, petitioner was appointed on 30th June, 1973. Said appointment letter is at Annexure-A which shows that her initial appointment was

from 30th June, 1973 till 30th April, 1974. The various communications issued to her which are filed on record shows that from time to time by giving notional breaks, she was continuously appointed in Vasant Rao Vidyaniketan English Medium Primary School, Yavatmal as an untrained Teacher. She was continued in the said school till 1983. Subsequently, she was absorbed in Panchayat Samiti and the Block Development Officer had issued the appointments to her time to time, not only this but by issuing letter on 22nd June, 2001 as she has attained the age of superannuation she was relieved by the Block Development Officer by issuing letter on 22nd June, 2001. This communication sufficiently shows that she had rendered her services approximately for 28 years. Therefore, respondent Nos.3 to 5 were under obligation to give her benefit of pension in view of Government Circular dated 9th March, 2010. She had submitted her representation first time on 29th March, 2022. However, no decision was taken on her representations. Admittedly, first time she claimed the pensionary benefits on 29th March, 2022 though Circular was issued on 9th March, 2010. Thus, there is a delay in claiming the said benefit by the present petitioner.

12. It is well settled that if an application is made to the authority claiming a relief and if the application is not decided within a reasonable time, it would be necessary for the party to approach the Court for seeking the relief claimed in the application.

13. The delay as long as in the present case would result in the dismissal of the petition on the ground of laches if the cause of action is not continuous. It is no doubt, true that the cause of action in case of pensionary benefits continues from month to month but, it is also well settled that in case of delay in filing the writ petition beyond the period of 3 years, the monetary relief could be restricted even in case of pensionary benefits only for a period of 3 years preceding the date of filing of the writ petition. In case where the cause of action is not continuous, a writ petition seeking a particular relief would be barred by laches as mere making of representation to an authority would not stop the period of limitation. The Honourable Apex Court in case of *Jai Dev Gupta Vs. State of H.P. and ors. [AIR 1998 SC 2819]*, *M.R. Gupta Vs. Union of India (UOI) and ors. [AIR 1996 SC 669]*, had considered this issue and it is held that monetary relief can be granted for a period of 3 years preceding the date of filing of the writ petition even if the cause of action is continuous. Monetary benefits payable towards pension are also governed by the same rule.

14. Hence, though the petitioner would be entitled to the benefit of pension, the petitioner would be entitled to the arrears of the family pension only for a period of 3 years preceding the date of filing of the writ petition i.e. from 25th August, 2022.

15. Hence, for the reasons aforesaid, we pass the following order :

- (i) The writ petition is partly allowed.
- (ii) It is hereby declared that the petitioner is entitled to receive the benefit of pension in view of the Government Circular dated 9th March, 2010.
- (iii) Respondent Nos.3 to 5 shall forward the proposal of the petitioner for pension to respondent Nos.1 and 2.
- (iv) Respondent Nos.1 and 2 are directed to pay regular family pension to the petitioner from 01st September, 2023. The arrears of pensionary benefit with effect from 3 years preceding the date of filing the writ petition i.e. 25th August 2019 and it should be paid to the petitioner within a period of 6 weeks. If the aforesaid directions are not complied with, the respondents would be liable to pay the aforesaid amount to the petitioner with interest at the rate of 18% per annum.

16. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)