



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

WRIT PETITION NO.5596 OF 2023

Vijay Mahadeo Deshpande, Ashti, Dist. Gadchiroli and ors.

-VS-

State of Maharashtra, Thr. Secretary, Dept. of Rural Development, Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri P N. Shende, Advocate for petitioners.
Ms Deepali Sapkal, Assistant Government Pleader for respondent No.1.
Shri A. W. Paunikar, Advocate for respondent Nos.2 and 3.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : December 01, 2023

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Heard the learned counsel for the parties.

The prayer in the petition is for issuance of directions to respondent Nos.2 and 3 to release the regular pension and other benefits in favour of the petitioners as per the recommendations of the 7th Pay Commission from the date of the petitioners' voluntary retirement and to continue to pay regular pension and other benefits.

2. Shri P N. Shende, learned counsel for the petitioners would invite our attention to the fact that selection and appointment of the petitioners who were holding D-Ed qualification on the post of untrained Primary Teacher was through Staff Selection Commission. According him, the petitioners were granted voluntary retirement prior to their superannuation hence retirement benefits are not extended to

the petitioners. The learned counsel would invite our attention to the oral judgment of this Court in Writ Petition No.2035/2022 (*Smt Anjali Wd/o Madhukar Kando and anr. vs. State of Maharashtra and anr.*) dated 03/04/2023 wherein reliance was placed on the judgment of Division Bench at Aurangabad in Writ Petition No.6143/2016 (*Smt Umabai W/o Ramkrishna Deshmukh vs. The State of Maharashtra and ors. with connected writ petition*) dated 04/07/2019. It is further claimed that this Court has already considered the said judgment in number of other orders and has granted the similar relief.

3. When confronted, the learned counsel for the respondents would submit that the petitioners sought voluntary retirement. That being so, the benefits were not granted to the petitioners. Apart from above, Shri A. W. Paunikar, learned counsel for respondent Nos.2 and 3 would submit that in the facts and circumstances this Court may pass appropriate orders in the matter.

4. We have looked into the rival contentions raised by the parties so also the issue dwelt on by the Aurangabad Bench in Writ Petition No.6143/2016 (*Smt Umabai W/o Ramkrishna Deshmukh vs. The State of Maharashtra and ors. with connected writ petition*). The fact remains that the petitioners' entitlement to the retirement benefits as per the service conditions is not a disputed question of fact. Merely because the petitioners have opted for voluntary retirement that by

itself would not disqualify them for claiming pension and other benefits particularly when the petitioners have already rendered pensionable service and have made themselves entitled for other retirement benefits.

5. Apart from above respondents have not invited our attention to any disqualification of the petitioners to claim relief. Rightly so pointed out by Shri P. N. Shende, the learned counsel for the petitioners, the issue is covered by the judgment of Division Bench at Aurangabad in *Smt Umabai W/o Ramkrishna Deshmukh* (supra) and the judgment in *Anjali W/o Madhukar Kando* (supra). That being so, the writ petition is allowed in terms of prayer clause (A).

6. We direct the petitioners to complete all the necessary procedure within a period of six weeks from today. Once the petitioners make necessary compliance, all the benefits including pensionary benefits be released in favour of the petitioners as are admissible in law as expeditiously as possible and in any case within a period of three months thereof.

7. The writ petition is disposed of with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)