

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

WRIT PETITION NO. 813 OF 2020

Vijay S/o Govind Rajurkar,
Aged about 62 years, Occ : Retired,
R/o Ward No. 1, PO Taroda, Taroda,
Wardha.

.....**PETITIONER**

...V E R S U S...

- (1) The State of Maharashtra,
Department of School Education,
Through its Secretary,
Mantralaya, Mumbai.
- (2) The Education Officer (Secondary),
Zilla Parishad, Wardha.
- (3) Accountant General, Accounts and
Audit Department, Civil Lines,
Nagpur.
- (4) The Headmaster Smt. Sirekuwar
Devi, Mohata Vidyalaya, Hinganghat,
District : Wardha.
- (5) Deputy Director of Education
Nagpur Division, Nagpur

.....**RESPONDENTS**

Ms. S. S. Dashputre, Advocate for the petitioner
Mr. S. M. Ukey, Addl. G.P for respondents 1 to 3 and 5
Mr. P. P. Thakare, Advocate for respondent 4

CORAM : ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 20-03-2023

ORAL JUDGMENT (PER : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The grievance of the petitioner is that he is erroneously denied retiral benefits on the premise that he has not completed qualifying service.

3. The grievance falls for consideration in the backdrop of facts which are few and brief.

The petitioner was appointed with the Sanjay Gandhi Adiwasi Vidyalaya as Assistant Teacher on 6-11-1987. Sanjay Gandhi Adiwasi Vidyalaya closed down in 1997, and it was on 1999 that the petitioner was absorbed in respondent 4 - school. Petitioner was terminated by the management of respondent 4 – school on 6-1-2001. He assailed the termination in appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the learned tribunal stayed the termination order, with the result that the petitioner continued in service. The learned tribunal delivered the judgment on 11-11-2010. The order of termination is quashed and set aside and the petitioner is held entitled to continuity

in service and full back wages. We note that the Education Officer (Secondary), Zilla Parisahd, Wardha is party to the appeal.

4. The petitioner applied for voluntary retirement and the management accepted the request with the result that he stood superannuated with effect from 8-11-2014. On 22-7-2015, the management forwarded the pension case, which was rejected vide order dated 4-9-2018 on the ground that the petitioner did not complete the qualifying service of 20 years.

5. It appears from the averments in the petition, as also one of the prayer clauses, that the petitioner laboured under the impression that the period from 2004 to 2014 of his employment may have to be treated as extra ordinary leave as per Rule 47(2) of the Maharashtra Civil Services (Pension) Rules, 1982. The reason why the petitioner nurtured such apprehension was that he, notwithstanding the order of the Tribunal which stayed the termination, did not as a fact work with the school from 2004 to 2014. While the suggestion of the management appears to be that the petitioner did not join or report to the duty, the counter narrative of the petitioner is that he was not permitted to resume duty.

6. We are not required to delve deeper in the reasons which

led to the situation where the petitioner did not work. We find that the tribunal has granted continuity of service, after setting aside the order of termination. The judgment of the tribunal has assumed finality. We further find that the period which has lapsed from the discontinuation due to the closure of the Sanjay Gandhi Adiwasi Vidyalaya and the absorption of the petitioner shall also have to be considered in as much as the relationship of employee - employer did not snap. In any view of the matter, the qualifying service of the petitioner shall have to be considered from the date of initial appointment to 2014.

7. In view of our observations and findings supra, we see no difficulty in allowing the petition and declaring that the petitioner shall be considered for pension on the basis that he has rendered service from 6-11-1987 till his superannuation in the year 2014. We further clarify that the petitioner shall not be entitled to salary or any other financial benefits and the said period of service shall be counted only for the purpose of fixation of pension.

8. The petition is partly allowed in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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YUVRAJ WASNIK
Signing Date: 21.03.2023 17:49