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wp 1384.23 R.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1384 OF 2023

Shaikh Farid Shamsheer
Age 43 years, Occ. Service,
R/o. Taha Nagar, Faizpur,
Tq. Yawal, Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
through the Secretary School Education,
Mantralaya, Mumbai.
2. The Deputy Director of Education
Nashik Region, Nashik.
3. Education Officer (Secondary)
Zilla Parishad, Jalgaon.
4. Bazam-E-Adab Sanshta
Tq. Yawal, Dist. Jalgaon
through its Secretary/President.
5. Maulana Abdul Kalam Azad
High School & Jr. College, Faizpur,
Tq. Yawal Dist. Jalgaon
through its Head Master.

.. Respondents.

...

Ms. Nayana Patil, Advocate h/f. Mrs. Surekha Mahajan Advocate for
petitioner

Mr. S.J. Salgare, AGP for respondent Nos. 1 to 3.

Mr. Faizal Shaikh Advocate h/f. Mr. N.R. Shaikh Advocate for respondent
Nos. 4 and 5.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.
DATE : 12TH APRIL, 2024**

JUDGMENT: (PER S.G. CHAPALGAONKAR, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioner has approached this Court under Article 226 of the Constitution of India with the following prayer :-

“(B) By issuing the writ of mandamus or any other writ of like nature or order or direction the respondent Nos. 3,4 and 5 may kindly be directed to reconsider the initial date of appointment dated 13.6.2004 for notional pay fixation, so also for time bound promotion and other retiral and pensionary benefits.”

3. The petitioner contends that he holds qualification as M.A. B.Ed. (English). He was appointed as Assistant Teacher on the establishment of Iqra Education Society at Jalgaon vide order dated 13.6.2004. His services were approved by the Education Officer – Respondent NO.3 vide his order dated 27.4.2006. His appointment was on non-grant-in-aid basis. On 11.6.2006, the petitioner resigned his services from Iqra High School and joined services at Maulana Abul Kalam Azad High School at Faijpur w.e.f. 12.6.2006 which receives grant in aid from the state. His services have been approved by the Education Officer vide his order dated 11.12.2006. On completion of period of 3 years as Shikshan Sevak, permanent approval has been granted to him as Assistant Teacher. According to the petitioner, his services with Iqra Education Society for the period from 13.6.2004 till 11.6.2006 needs to be counted for service benefits, including pension in terms of Rule 30 of

the Maharashtra Civil Services (Pension) Rules, 1981. Consequently, he seeks issuance of writ as prayed.

4. The respondent No.4 filed his affidavit in reply contending that he is bound to follow due process of law and supports the contention of the petitioner.

5. We have heard the learned advocates appearing for the respective parties. Perused the record tendered into service for our consideration. Ms. Nayana Patil, learned counsel for the petitioner relying upon Rule 30 of the M.C.S. (Pension) Rules 1982 submits that Rule 30 encompasses service rendered by the petitioner on no grant basis. She would point out that although the services of the petitioner were on non-grant basis, during period from 2004 to 2006, the same school is extended grant in aid of 20% from 1.3.2014. She would further point out that there is gap of one day in changeover of services while he joined respondent No.5 school after resigning from Ekqra Education Society.

6. Mr. S.J. Salgare, learned AGP appearing for respondent Nos. 1 to 3 would submit that admittedly, the petitioner resigned from the services of Iqra Public School in the year 2006 and thereafter joined the respondent No.5 school. The resignation of the services entails forfeiture of services. No benefit of previous service can be attached to the subsequent services of the petitioner. He would further point out that the petitioner was appointed in the respondent No.5 school as Shikshan Sevak in the year 2006 and got permanent approval in the year 2009. Therefore, the previous service of the petitioner with Iqra Education

Society would be of no assistance for claiming pensionary or other service benefits.

7. We have considered submissions, The petitioner specifically admits that before joining respondent No.5 school, he resigned from Ikra Education Society. His first appointment with respondent No.5 school is as a Shikshan Sevak in the year 2006 and after 2009, he has been continued as Assistant Teacher. In view of the unequivocal admission of the petitioner regarding resignation of his services, reference to Rule 46 of the Maharashtra Employees of Private Schools (Conditions of Service Regulation) Rules, 1982 would be necessary. Clause (1) of Rule 46, states that resignation from services or a post entails forfeiture of past service. Although clause (2) of Rule 46 is in the nature of an exception to the general rule, it stipulates that if resignation is submitted to take up, with proper permission, another appointment under the Government where the services qualify, the resignation would not entail forfeiture of past service. Such is not the case here. The petitioner nowhere contends that he resigned services with Ikra education society with proper permission to take another appointment.

8. Pertinently, the services of the petitioner with Ikra Education Society during the period 2004 to 2006 were on non-grant-in-aid basis. The petitioner himself is coming with the case that first time in the year 2014, 20% grant-in-aid is made admissible to said school. As such, services rendered with Ikra Education Society cannot be treated as services on pensionable establishment and qualified as pensionable service. Reference can be given to the judgment of this Court in the matter of *Dr. Rajaram Dhondiba Shingte vs. State of Maharashtra*

reported in (2008)5 Mh.L.J. 211.

9. It is well settled that the services rendered by the employee on pensionable establishment may be considered as qualifying services for grant of pensionary benefits. This Court in the case of ***“Smt. Darshana wd/o. Adikrao Gaikwad (AIR On line 2018 Bom. 532) as well as in the case of “Kalpana Dahiwale Vs. State of Maharashtra (2021(5) All M.R. 44)*** observed that even part-time services on pensionable establishment can be counted as qualifying service for grant of pensionary benefits. However, such is not the case in hand. Firstly petitioner resigned from his past service and suffered disqualification in terms of Rule 46 of the MEPS rules. Secondly, his services itself were not on pensionable establishment as Iqra Education Society was not receiving grant in aid and services of the petitioner were purely on contract on non pensionable private establishment. As such past services enure no benefit to petitioner to pursue his prayers in the petition.

10. For aforesaid reasons, we find, petition sans merit. Same stands dismissed. Rule is discharged.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-