



- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3463 OF 2024

Zahoorunnisa Begum d/o Mohd. Abdul Rahim,
Age-64 years, Occu-Pensioner,
R/o Afreen, Hina Nagar, Times Colony,
Aurangabad 9923840571

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Education and Sports Department
Mantralaya, Mumbai – 400 032.

2. The Commissioner,
Municipal Corporation, Aurangabad

3. The Education Officer,
Municipal Corporation, Aurangabad

4. The Chief Accounts and Finance Officer,
Municipal Corporation, Aurangabad

-- RESPONDENTS

Mrs.A.N.Ansari, Advocate for the Petitioner.
Mr.K.K.Naik, AGP for Respondent No.1.
Mr.S.P. Urgunde, Advocate for Respondent Nos. 2 to 4.

**(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)**

DATE : JULY 24, 2024

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by

the consent of the parties.

2. The Petitioner has put forth prayer clause B, B-1 and C, as under :-

“B. To quash and set aside orders dated 01.09.2023 passed by Respondent No.2 and the order dated 31.01.2024 passed by Respondent No.4, by issuing any appropriate writ order or direction as the case may be.

B-1. To quash and set aside the order dated 13.12.2022 passed by the Respondent No.3, i.e. Education Officer Municipal Corporation, Aurangabad, and the Respondent be directed to release the benefits of 7th Pay Commission, forthwith to the Petitioner, by issuing any appropriate writ order or direction as the case may be.

C. The Respondents be directed to grant the benefits, of 7th Pay Commission from 01.01.2016 onwards, in the salary, pension and retirement benefits with interest, forthwith, by issuing any appropriate writ order or direction as the case may be.”

3. We have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the Petition paper book with their assistance. The Municipal Corporation has filed an affidavit in reply dated 15.07.2024 and has vehemently

opposed this Petition.

4. The Petitioner was appointed as an 'Assistant Teacher' (Primary), vide the appointment order dated 30.09.1989. She was discontinued from employment vide the termination order dated 10.03.2003, since she did not produce the validity certificate of her claim of belonging to Chhapparband community, which is found in families professing the Mohammedan religion. Since she was disengaged, she approached the Division Bench of this Court (Coram: A.P. Deshpande and R.M.Borde, JJ.) in Writ Petition No.1199/2003. By judgment dated 17.10.2006, this Court arrived at a finding on fact as is noticed in paragraph Nos. 2 and 3 of the said judgment, which read thus :-

"2. So far as the contention raised by the petitioner that her appointment is not against a vacancy prescribed for reserved category, has been seriously controverted by the respondent Nos. 2 to 4. It is the contention of the respondents that the petitioner had been appointed against a post reserved for V.J.N.T. reserved category. It is further contention of the respondents that as the petitioner has availed the benefits of her caste for securing employment, on invalidation of her caste claim, the Petitioner has no right to continue in the employment.

3. It appears that on 1.9.2003, this writ petition was listed for hearing on interim relief and this court had an occasion to go through the original record pertaining to the selection of the petitioner. On perusal of the record, it is observed by the Division Bench of this Court, that the petitioner has availed of the benefit of reservation while securing employment. The appointment of the petitioner is clearly against a post available for V.J.N.T. category and as such, this court refused to grant interim relief. In view of the observations made by this court in order dated 1.9.2003, on perusal of the original record that the petitioner has secured employment as against a post reserved for V.J.N.T. category, it is not open for the petitioner to contend that she has not availed of the benefit of reservation while securing employment. The petitioner in this petition, has not challenged the decision rendered by the Caste Scrutiny Committee invalidating her caste claim. The limited prayer made by the petitioner is in respect of protecting her services and the challenge is to the order of termination, based on a Full Bench judgment delivered by this court reported in 2003(4) Mh.L.J. 233 in the matter of 'Prakash Namdeorao Kedar and others Vs. Union of India and others'.

5. It is, thus, settled and is not an issue that can be re-opened now, that the Petitioner's appointment was as against a post reserved for a V.J.N.T. category and after her claim belonging to Chhapparband community was invalidated, she preferred not to challenge the said conclusion of the Committee. However, in the above backdrop, the Division Bench relied upon a judgment delivered by the Full Bench of

this Court in **Prakash Namdeorao Kedar and Others Vs. Union of India and Others [2003(4) Mh.L.J.233]**.

6. In view of the facts appearing before the Court, the Petitioner tendered an undertaking declaring that she or her successors would not take any benefit of the said caste Chhapparband and would not claim any benefits of reservation, any time in future. Based on such undertaking filed in this Court on 18.10.2006, the Petition was allowed and the order of termination dated 10.03.2003, was quashed and set aside. The Municipal Corporation did not challenge the said judgment before the Hon'ble Supreme Court, is what is conveyed to us.

7. We are aware of the law laid down by the Hon'ble Supreme Court in ***Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others [(2017) 8 SCC 670]***. However, in the instant case, the Division Bench allowed the Petition on the basis of an undertaking tendered by the Petitioner. Her termination was set aside and she was reinstated in service. The Corporation has not challenged the said judgment before the Hon'ble Supreme Court.

8. The issue was put to rest and the Corporation, thereafter, considered the Petitioner purely from the Open Category and granted promotion on the post of Head Mistress from the open category. The Petitioner superannuated on 31.01.2017. She reiterates that none of her descendants would lay any claim of belonging to Chhapparband community for seeking employment and none have sought such benefit even till today.

9. It is in the peculiar facts and circumstances of this case that we arrive at a conclusion that the Municipal Corporation would not be justified in refusing the 7th Pay Commission benefits available to the Petitioner, from 01.01.2016 till 31.01.2017. We, therefore, hold in favour of the Petitioner and conclude that the Corporation is liable to pay her such benefits.

10. One more issue raised in this Petition as regards the order passed by the Corporation dated 31.01.2024, concluding that the Petitioner has been wrongly granted increments while in service. Such increments were granted from 2008 onwards. There is no charge sheet issued to the Petitioner for having indulged in any misdemeanor. After

7 years of retirement, the order dated 31.01.2024, is passed directing recovery of Rs.8,01,417/- from the Petitioner on the pretext that she was inadvertently paid excess amounts.

11. We find that this issue is squarely covered by the Law laid down by the Hon'ble Supreme Court in **Syed Abdul Qadir and others Vs.State of Bihar and others, 2009(3) SCC 475** and **State of Punjab and others Vs.Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696**. As such, the impugned order dated 31.01.2024, deserves to be quashed and set aside.

12. On the point of interest on arrears, the learned Advocate for the Corporation has vehemently canvassed that not a penny of interest deserves to be paid to the Petitioner, since she has deprived employment of an Assistant Teacher, to a genuine candidate belonging to the V.J.N.T. category of a job. In these circumstances, seeking interest is taking advantage after playing a fraud. The Corporation has no money and is very poor.

13. We are unable to appreciate the submissions of the learned

Advocate for the Corporation, since this Court concluded in the judgment dated 17.10.2006, delivered in Writ Petition No.1199/2003, that the Petitioner has not played any fraud and she had given up all the claims in relation to her V.J.N.T. category. The Petitioner was thereafter promoted. She has superannuated with a blot-less service record. When the Corporation promoted her from an open category, it should neither have withheld the benefits under the 7th Pay Commission, nor could have initiated a recovery after 7 years of superannuation. Hence, we are inclined to grant interest @ 6% p.a. on the arrears to be paid to the Petitioner from the date they became payable and the recovery of amount, if already recovered.

14. As such, **this Writ Petition is allowed** in terms of prayer clause B, B-1 and C. We grant 90 days to the Corporation to pay all the arrears/recovered amounts, etc. along with interest @ 6% p.a. Rule is made absolute in the above terms.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)