



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6819 OF 2023

Sugreev s/o. Rokdoba Mekle,
age 49 years, Occ. Retired,
R/o Dhanegaon, Post Sonwati,
Tq. & Dist. Latur.

Petitioner

Versus

1. The State of Maharashtra,
Through it's Secretary,
Social Welfare Department,
Mantralaya, Mumbai 400 032.
2. The Commissioner for Welfare of
Handicapped, Maharashtra State,
3, Church Road, Pune – 411 001.
3. District Social Welfare Officer,
Zilla parishad, Chandrapur,
District Chandrapur.
4. Maharogi Seva Samiti, Varora
At Anandvan, Tq. Varora,
Through it's Secretary.
5. Anand Andh Vidyalaya,
Anandvan, Tq. Varora,
Dist Chandrapur-442914
Through it's Head Master.

Respondents

...

Mr. K. P. Rodge, advocate for petitioner.
Mr. N S Tekale, AGP for Respondent Nos.1 & 2.
Respondent No.3- Served.
Mr. G. J. Pahilwan, Advocate for Respondent Nos.4 & 5.

...

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

....

...

Reserved on : 22nd February, 2024.Decided on : 06th March, 2024.

...

FINAL ORDER :- (Per S.G.Chapalgaonkar, J.)

1. The petitioner approaches this Court under Article 226 of the Constitution of India, seeking directions against respondents to release his salary for the period from 24.8.2007 to 28.2.2019 and grant continuity of service for the aforesaid period. The petitioner further prays that his pension proposal be processed by considering his continuous service from 1.4.1997 to 16.1.2023.

2. The Petitioner contends that, he is physically handicapped person belongs to “Koli Mahadev” Scheduled Tribe. In pursuance of the Advertisement issued by Pratidnya Residential School, Latur he had responded and was appointed with effect from 1.4.1997. His services were duly approved by the District Social Officer from 2000-2001. However, recognition of the school itself was cancelled vide order dated 24.8.2007 passed by Respondent No.2-Commissioner for Welfare of Handicapped. Consequently, petitioner was declared surplus and his name was included in the wait list for absorption in other school. The petitioner was first time given absorption order and he was posted to ‘Kamyani Udyog Kendra, Gokhalenagar, Pune’. Although petitioner reported for joining on 10.10.2016, he was not allowed to join. Even, thereafter, Petitioner was not allowed to join by the Schools where he was sought to be absorbed. Again on 16.2.2018

aaa/-

Respondent no.2 issued order of absorption of petitioner at Residential School, Hipparga, Tq. Mukhed on the post of Peon. Even, Head Master of said school refused to join the petitioner. Lastly, petitioner was absorbed in respondent no.5 School as a Watchman vide order dated 21.2.2019. The petitioner rendered his services till 17.10.2022 and finally tendered his application for voluntary retirement and came to be relieved vide communication dated 16.1.2023 issued by respondent nos.4 and 5. However, the petitioner is not given pensionary or consequential benefits. Therefore, the petitioner approached this Court.

3. It appears that during pendency of the present petition, respondent no.2 addressed a communication dated 5.2.2024 to respondent no.3 accepting claim of the petitioner for continuity of his service. However, referring to Rule 91 (2) of Maharashtra Special School for Handicapped and Training Center Code, 2018, the petitioner's claim for salary from 24.8.2007 to 28.2.2019 came to be negated and further directions are issued to treat his waiting period for absorption as without salary. It appears that in pursuance of the aforesaid communication, respondent no.2 called upon respondent no.5 to submit petitioners proposal for voluntary retirement.

4. Mr. Rodge, learned advocate appearing for the petitioner submits that admittedly, petitioner was a permanent employee, rendered surplus on account of de-recognition of the School. Since 2007, he was waiting for his absorption till he

was actually absorbed on 1.3.2019 in respondent no.5 School. The petitioner rendered his services till acceptance of his voluntary retirement in the year 2021. It is submitted that petitioner would be entitled for salary of his waiting period till his absorption from the date, he become surplus.

5. Learned A.G.P., however, strongly opposes the prayers in the Petition by referring to the affidavit-in-reply filed on behalf of respondent nos.1 to 3. Learned AGP invites our attention to section 91 (2) of Code, 2018 and submit that no salary can be disbursed in respect of the employees of the school, license of which was not in-force. It is further submitted that petitioner has not actually rendered his service; he would not be entitled for back-wages on principal of “No work no pay”. Learned AGP submits that at the most, notional continuity of service of petitioner can be considered for pensionary benefit.

6. Having considered submissions advanced by learned advocates appearing for respective parties and after perusal of record we find that there is no dispute on factual aspects of the matter. Even legal position is well settled by previous judgments delivered by this court. Reference can be given to observations of this Court in **Writ Petition No.5018 of 2015 (Rajendra Kondiba Gaikwad Vs. The State of Maharashtra & others)** dated 22.9.2016, wherein, this Court observed that wait list surplus candidates are entitled for salary from the date of declaration as surplus till absorption. Further

in order dated 20.8.2018 passed in **Writ Petition No.6434 of 2015 (Chandrakant Umakant Hulsurkar Vs. The Commissioner Handicapped Welfare, Maharashtra State)**, this Court observed that, once having been placed in the list of surplus candidates, naturally the employee would be entitled for the continuity and salary. It is trite law that, in such case, principle of 'no work no wages' has no application. Similar view is taken in case of **Sindhudurg Zilla Shikshan Santha Vs. Union of India and others reported in [2016(1) ABR 801]** the surplus permanent teachers held entitle for financial benefits till they are accommodated or absorbed elsewhere after declared as surplus.

7. Considering the aforesaid principle of law espoused by this Court in the aforesaid judgments, we find force in contentions raised by petitioners, hence we proceed to pass the following order.

O R D E R

- i. The Writ Petition is partly allowed.
- ii. The Respondent nos.1 to 3 are directed to release financial benefits/salary dues to the petitioner from the date he declared as surplus till the date of his absorption, so also consider this period for continuity of service and consequential benefits.
- iii. Respondent nos.4 and 5 shall forward the petitioner's proposal to respondent no.3 for

voluntary retirement as well as release of salary dues, pension and terminal benefits, who shall take necessary steps as per rules.

- iv. Writ Petition stands disposed off in aforesaid terms. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

aaa (f)