



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7019 OF 2023

Balasaheb s/o Bapurao Ingle,
Age-59 years, occu:Service as
Caretaker, R/o-Sant Gadgebaba Nagar,
Karegaon Road, Parbhani,
Taluka and District-Parbhani.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Social Justice & Special Assistance
Department, Mantralaya, Mumbai-32,
- 2) The Commissioner for Welfare
of Handicapped,
Maharashtra State, Pune,
- 3) The Chief Executive Officer,
Zilla Parishad, Parbhani,
- 4) The Social Welfare Officer Group-A,
Zilla Parishad, Parbhani,
- 5) Maharashtra Apang Shikshan Sanstha,
M.I.D.C. Road, Parbhani,
Through its President,
- 6) Rina Karewar (Dhoka) Manovikas Vidyalaya,
M.I.D.C., Parbhani,
Through its Head Master.
- 7) Kanchan Tryambakrao Katruwar,
Karna-Badhir Vidyalaya, Parbhani,
Through its Head Master.

...RESPONDENTS

...
Mr. P.P. More Advocate h/f. Mr. I.D. Maniyar Advocate
for Petitioner.
Ms. M.N. Ghanekar, A.G.P. for Respondent Nos. 1 and 2.
Respondent Nos. 3 to 7 are served.
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**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 23rd APRIL, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed for following relief:-

“(B) By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent nos. 2, 4, 5 and 7 may kindly be directed to take entry of initial date of appointment of petitioner i.e. 01.04.1987 till 31.03.1991 in his service book as continuous till 31.08.2008 and for the purpose of pension by carrying out his pay fixation properly and further the respondent nos. 2, 4, 5 and 7 may kindly be directed to open General Provident Fund account of the petitioner and forward pension proposal of the petitioner as per the Old Pension Scheme i.e. Maharashtra Civil Services (Pension) Rules, 1982 and the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 by considering his services from 01.04.1987 as continuous.”

2. Heard learned Advocate Mr. More holding for learned Advocate Mr. Maniyar for the petitioner and learned AGP Ms. Ghanekar appearing for respondent Nos. 1 and 2. In order to cut short, we would like to say that the learned Advocates appearing

on behalf of the respective parties have argued in support of their respective contentions.

3. The petitioner contends that he was initially appointed as a peon in respondent No.6 school run by respondent No.5 institution on 1st April 1987 and his service came to be continued on year to year basis till 2nd April 1991. The salary of the petitioner came to be released for the academic years 1987-1988 and 1988-1989, however approval to the appointment of the petitioner came to be granted by respondent No.4 by order dated 1st September 1990 for the period from 1st April 1990 to 31st March 1991. After 2nd April 1991 the petitioner and some other employees were not allowed to sign the muster roll and therefore the petitioner and other employees had approached the authorities by making representations in writing against respondent No.5. The concerned authorities directed respondent No.5 to reinstate the petitioner and other employees. Still when there was no fruitful result, the petitioner and others approached this Court by filing Writ Petition No.808 of 1994 seeking directions to allow them to join duties and continue their services. However, the said Writ Petition came to be withdrawn on 8th August 2008. Respondent No.5 had then appointed the petitioner on vacant post of caretaker in respondent No.7 school

by order dated 1st September 2008. When approval was not granted and his salary was not released, the petitioner had filed Appeal No.1 of 2009 before the Appellate Authority, which came to be allowed. The service book of the petitioner came to be prepared and maintained only from 1st September 2008. There is absolutely no entry of earlier service of the petitioner from 1st April 1987 till 31st March 1991. In fact the respondents were duty bound to maintain the said service book as per the actual service rendered by the petitioner. The pay fixation has been done but that has been done by treating subsequent appointment of the petitioner from 1st September 2008 only and therefore the Petition has been filed for aforesaid relief.

4. It appears that the petitioner has made representations periodically, however, important point to be noted is that the petitioner was aware about all the facts. He cannot say that the entries in the service book were not known to him. There were earlier occasions for the petitioner to come to know his date of appointment which was considered by the authorities. As aforesaid, even the pay fixation as per seventh pay commission recommendation has been done from 1st July 2016, taking into consideration his date of appointment as 1st September 2008. At

no earlier point of time i.e. prior to 6th June 2023 (the date on which the present Petition was presented), the petitioner had ever raised objection for not considering his initial appointment and service from 1st April 1987 and not taking entry of the same in the service book. Thus, the Petition suffers from delay and laches. Even it appears that old pension scheme was not made applicable to the petitioner and it can be considered that DCPS Scheme was made applicable to him. These were the implications to the petitioner to consider that his date of appointment was not taken from 1st April 1987.

5. Another fact to be noted is that the appointment order bearing No.1 of 2008 dated 1st September 2008 came to be issued in favour of the petitioner and accordingly the petitioner has joined his services. Writ Petition No.808 of 1994 was for directions to the authorities to allow the petitioner to resume his services, but that Petition was withdrawn by the petitioner and while disposing of the said Writ Petition on 8th August 2008, this Court has clearly observed as follows:-

“Mr. Sonpethkar, learned counsel appearing on behalf of the petitioner states on instructions of petitioner No.1 that the petitioner no.1 may be permitted to withdraw this petition. Writ Petition is accordingly dismissed as withdrawn insofar as

it relates to the reliefs claimed by the petitioner No.1. Petition to proceed in respect of the reliefs of other petitioners.”

6. As stated herein above, the appointment order is produced on record, which came to be issued on 1st September 2008, but that does not refer to the past period of employment of the petitioner. Therefore, it was the fresh employment which the petitioner accepted. Under the said circumstance, there is absolutely no merit in the present Petition and it deserves to be dismissed.

7. Accordingly, the Writ Petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAY24