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wp 14955.17 R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14955 OF 2017

Devaji s/o. Gopala Ingle,
Age 65 years, Occ. Nil,
R/o. Vikas Nagar, Bhokardan,
Dist. Jalna.

.. Petitioner

VERSUS

1. The State of Maharashtra
2. Shipora Shikshan Prasarak Mandal
Shipora Bazar, Tq. Bhokardan,
Dist. Jalna, through its Secretary.
3. The Education Officer (Secondary)
Zilla Parishad, Jalna.
4. Gulabrao s/o. Shankarrao Gawai,
Age Major, Occ. Retired Teacher,
R/o. Shipora Bazar, Tq. Bhokardan,
Dist.

.. Respondents.

Mr. M.R.Wagh, Advocate for the petitioner
Mr. Vivek Dhage, Advocate for respondent Nos. 2 and 4
Mr. S.K. Shirse, AGP for respondent No.1.

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

DATE : 22nd JANUARY, 2024.

Judgment (per S. G. Chapalgaonkar, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

The petitioner approached this court under Article 226 of the Constitution of India thereby seeking directions to grant him the pensionary benefits and for that purpose, issue directions against the President of Trust to forward his pension papers to Education Officer, for onward submission to Accountant General, Nagpur.

2. Mr. M.R. Wagh, learned advocate for the petitioner submits that the petitioner worked as Assistant Teacher under establishment of Zilla Parishad during the period from 1976 to 1980. Thereafter, he was appointed as Head Master in Ram-Rahim Vidyalaya, Shipora Bazar w.e.f. 15.12.1980. He was continued in service till 2002. Although, he completed pensionable service period, the respondents have failed to take necessary steps to release pension and pensionary benefits on the strength of his service of more than 22 years.

3. Mr. Dhage, learned advocate for the respondent Nos. 2 and 4 vehemently submits that the petitioner is not coming with clean hands and his contentions are based on misconception of facts and law. He would submit that the petitioner was dismissed from service vide order dated 18.8.1997 after full fledged inquiry. Thereafter, respondent No.4 Shri G.S. Gavai was appointed as In-charge Head Master vide order dated 22.8.2000. The appointment/approval of the respondent No.4 was challenged by the petitioner by filing W.P. No. 3795 of 2000. Thereafter, the petitioner filed appeal No. 164 of 2000 before the School Tribunal at Aurangabad challenging the order of his termination. However, said appeal was dismissed being barred by limitation. This Court upheld the order of the Tribunal. Thereafter, petitioner filed fresh appeal No. 127 of 2001 before the School Tribunal which was allowed by the School Tribunal vide order dated 18.4.2002. Consequently, termination order

was set aside with further directions to reinstate petitioner in service. The aggrieved respondent Nos. 2 to 4 had preferred W.P. No. 1836 of 2002 before this Court. After hearing the parties, the writ petition came to be allowed and the order passed by the Tribunal was set aside.

The petitioner had assailed said order in LPA No. 5 of 2004 before the Division Bench of this Court which came to be dismissed on 4.12.2006. The aggrieved petitioner had approached the Honourable Supreme Court by way of Special Leave to Appeal (Civil) No. 7295 of 2007, which came to be dismissed vide order dated 12.7.2011. Consequently, the order of petitioner's dismissal from service attained finality. As such, the petitioner lost his entitlement for pension under provisions of the Maharashtra Civil Services (Pension) Rules.

4. We have considered the submissions advanced on behalf of the learned advocates appearing for respective parties. We have perused the record. The thrust of the petitioner's contention appears that the petitioner has completed 22 years of service. Hence, acquired right to receive pension. The learned advocate appearing for the petitioner relying upon the entry in the service book submits that petitioner was reinstated on the post of Head Master in terms of the order dated 20.4.2002. passed by the School Tribunal at Aurangabad. Therefore, he was continued in service even after the alleged dismissal and acquired the right to receive pension. The learned counsel for the petitioner further relies upon the judgment of the Division Bench of this court in the case of *Anna Deoram Londhe vs. State of Maharashtra (1998) 3 Mh.L.J. 435* to contend that the petitioner would be entitled for compassionate pension in terms of Rule 100(1) of the Maharashtra Civil Services (Pension) Rules 1982. We are afraid to accept the contention of the

petitioner. It is not in dispute that the petitioner was dismissed from service after full fledged inquiry and his dismissal from service remained undisturbed upto the Supreme Court of India.

5. Although the petitioner was reinstated in service under the order passed by the School Tribunal, this Court has set aside the order of the Tribunal, consequently, dismissal of the petitioner was maintained. Thereafter, for all practical purposes the petitioner will have to be treated as an employee dismissed from service. At this stage, it is apposite to refer to Rule 45 of the Maharashtra Civil Services (Pension) Rules 1982, which reads thus :-

***“45. Forfeiture of service on dismissal or removal :
Dismissal or removal of Government servant from
service or post entails forfeiture of his past service.”***

It can be gathered from aforesaid rule that in case of dismissal of a Government employee his past service cannot be counted for extending the pensionary benefits. Although, the petitioner had completed 22 years of service which is normally sufficient to make him eligible for pensionary benefits, in view of dismissal from service and consequential forfeiture of past service, the petitioner has lost his right to receive pension.

6. So far as alternate submission advanced on behalf of the petitioner that he is entitled for benefit of compassionate pension, which is available to the removed Government servant, we are unable to accede to such contention for the reason that Rule 101(2) of the Maharashtra Civil Services (Pension) Rules also stipulates that dismissed Government employee is not eligible for compassionate pension. In that view of the

matter, the view taken by this Court in the case of *Anna Deoram Londhe (supra)* would not assist the petitioner for claiming any relief. In the said case, the employee was removed from service on account of conviction for the offence punishable under section 325 of IPC. He was granted liberty to make representation to the Government and apply for compassionate pension under Rule 100 r/w. 101 of the Maharashtra Civil Services (Pension) Rules, 1982. The said representation was rejected by the Government. The Government order of rejection was subject matter of challenge in writ petition. Consequently, this Court directed the Government to grant compassionate pension. However, the case in hand pertains to dismissal of Government employee, hence, falls beyond the ambit and scope of Rule 100 of the Maharashtra Civil Services (Pension) Rules, 1982.

7. In the result, we do not find any merit in the petition. Writ petition is dismissed. Rule is discharged.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-