



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13949 OF 2021

Mangla w/o Arun Ubale,
Age 58 yrs., Occ. Retired,
R/o Siddharth Nagar, Wagh Mala,
Balikashram Road, Ahmednagar,
Tq. & Dist. Ahmednagar.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through it's Principal Secretary,
Education Department,
Mantralaya, Mumbai - 32.
- 2 The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
- 3 The Deputy Director of Education,
Maharashtra State, Pune Division,
17, Dr. Ambedkar Road, Pune.
- 4 The Head Master,
New English School, Parner,
Tq. Parner, Dist. Ahmednagar.

... Respondents

...

Mr. N.B. Narwade, Advocate for petitioner

Dr. Kalpalata B. Patil Bharaswadkar, AGP for respondent Nos.1 and 2

Respondent No.3 - served

Mr. A.V. Hon, Advocate for respondent No.4

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

RESERVED ON : 04th APRIL, 2024

PRONOUNCED ON : 16th APRIL, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Present petition has been filed for following relief :

“(B) By issuing the appropriate Writ or order in the like nature, the Order/letter dated 08.09.2021 issued by the Office Superintendent of learned Education Officer (Secondary), Zilla Parishad, Ahmednagar bearing Outward No.122/2021-22, whereby the petitioner is declared not eligible for the pension and pensionary benefits may kindly be quashed and set aside and respondent authorities may kindly be directed to accept the pension proposal of the present petitioner by issuing the necessary certificates as prayed by the petitioner with further direction to the respondent authorities to grant the pension and pensionary benefit to the petitioner.”

3 Heard learned Advocate Mr. N.B. Narwade for the petitioner, learned AGP Dr. Kalpalata B. Patil Bharaswadkar for respondent Nos.1 and 2 and learned Advocate Mr. A.V. Hon for respondent No.4.

4 Learned Advocate for the petitioner submits that the petitioner has retired as Full-time Librarian from respondent No.4 school. She was appointed as Part-time Librarian at Navbharat Vidyalaya, Dehere, Tq. Nagar, Dist. Ahmednagar with effect from 25.04.1995. The said order was passed by Secretary to Ahmednagar Zilla Maratha Vidya Prasarak Samaj, Ahmednagar. Approval was granted to her appointment by order dated 06.02.1996. Thereafter, she came to be appointed as Full-time Librarian by the same institute from 05.02.2007. The said appointment was also got approval by order dated 19.06.2013. She states that at the time of appointment her name was 'Gaikwad Anju Popatrao', but subsequently due to marriage her name was changed as 'Mangla Arun Ubale'. Entry to that effect has been taken in the Official Gazette. At the time of initial appointment with Navbharat Vidyalaya, Dehere, Tq. & Dist. Ahmednagar the said school was receiving 100% grant-in-aid. She came to be transferred as a Part-time Librarian on 26.06.2003 to Navnath Vidyalaya, Karanji, Tq. Pathardi, Dist. Ahmednagar, which was also an institution receiving 100% grant-in-aid. She again came to be transferred on 01.08.2007 at Ghodeshwari Madhyamik Vidyalaya, Ghodegaon as a Full-time Librarian, where she served till 2012. Thereafter, in 2012 she was again transferred to Pravara Vidyalaya, Indori, Tq. Akole, Dist. Ahmednagar and again came to be transferred to New English School, Parner on 30.11.2021, where she retired. All the schools

where she was working were receiving 100% grant-in-aid and, therefore, she is entitled to get pension and pensionary benefits. The impugned order dated 08.09.2021 issued by Office Superintendent of Education Officer (Secondary), Zilla Parishad, Ahmednagar deserves to be set aside.

5 Learned Advocate for the petitioner relies on the decision in **Smt. Darshana wd/o Adikrao Gaikwad vs. State of Maharashtra and others** [AIR OnLine 2018 Bom. 532], wherein after relying earlier decisions of this Court and the Hon'ble Apex Court it was held that the services rendered by the employee as a Part-time Librarian, half of the period of said services will have to be taken into consideration in addition to the period for which the petitioner has worked as Full-time Librarian. Thus, even the Part-time Librarian service is required to be considered as qualifying service for grant of pensionary benefits. Similar view was taken in **Smt. Kalpana Jagatrao Dahiwale vs. The State of Maharashtra and others** [2021 (5) ALL MR 4] and **Smt. Vina Vinayak Upasani vs. State of Maharashtra and others** in Writ Petition No.3386 of 2021 decided on 04.08.2021.

6 The facts are not in dispute and well supported by documents. The order of appointment dated 17.04.1995 was for Part-time Librarian, which was then approved by order dated 06.02.1996. Her post was

upgraded by order dated 19.06.2013 and approved. Certificate by Head Master, Navbharat Vidyalaya, Dehere on 06.12.2021 shows that since 1961 the school is receiving 100% grant-in-aid. The transfers have been duly communicated.

7 By communication dated 08.09.2021 the Head Master, New English School, Parner had requested for certificate and no dues certificate, that itself has been refused. Further, we are very much shocked to see that the letter was addressed to Education Officer, on which the executive Superintendent has made a remark and declared that the petitioner is ineligible. That means, the said decision was not taken by the person to whom the communication was addressed. Such practice in Government office has to be deprecated. The said remark appears to be without taking into consideration the entire record and also the point which is not *res integra* in view of the decision in the above said authorities. Therefore, we are of the considered opinion that interference under Article 226 of the Constitution of India is necessary. We, therefore, proceed to pass the following order.

ORDER

1 The Writ Petition stands partly allowed.

2 The remark by Office Superintendent of Education Officer (Secondary), Zilla Parishad, Ahmednagar on the letter dated 08.09.2021 given by the Head Master, New English School, Parner to Education Officer is hereby quashed and set aside.

3 Education Officer himself to decide the issue in view of various decisions of this Court as referred above and to take the said decision within a period of 15 days from today.

4 Education Officer may call any information necessary to decide the request in letter dated 08.09.2021 and then to take further steps within the aforesaid period of 15 days.

5 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)