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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3306 OF 2017

The State of Maharashtra & Ors ...Petitioners

Vs.

Jaishri Bhujangrao Sathe & Ors. ...Respondents

WITH

INTERIM APPLICATION (ST) NO.17773 OF 2022

IN

WRIT PETITION NO.3306 OF 2017

Jaishri Bhujangrao Sathe & Ors. ...Applicants

IN THE MATTER BETWEEN:

The State of Maharashtra & Ors ...Petitioners

Vs.

Jaishri Bhujangrao Sathe & Ors. ...Respondents

...

Mr. B. V. Samant, Addl. G.P. a/w Ms. S. S. Bhende, AGP for the Petitioner-State.

Mrs. Asha Rakh (through VC) a/w Mr. Deepak Pote for the Applicants in IA(ST) No.17773/2022 & for Respondent Nos.1 to 4 in WP/3306/2017.

...

CORAM : A.S. CHANDURKAR &

JITENDRA JAIN, JJ

DATE : 22nd MARCH 2024.

PC. :

1. Heard. The challenge raised in this writ petition is to the order dated 26/07/2016 passed by the learned Member, Maharashtra Administrative Tribunal in Original Application No.139 of 2013. By the

said order, the original application preferred by the respondents seeking a declaration with regard to entitlement of family pension came to be allowed.

2. The predecessor of the respondents came to be appointed on temporary basis as a Lecturer at the Government Education College, Ambejogai on 28/08/1987. It was his case that though the appointment was on temporary basis, he was treated as any other Government servant. He was transferred after about 10 years to Pannel. During the course of service, he was placed under suspension on 28/01/2004. Though a departmental enquiry was sought to be held the same could not be completed since he expired on 28th August 2011. Since the present respondents sought appointment on compassionate basis and also the relief of family pension with other retiral benefits, they preferred Original Application No.139 of 2013. The relief insofar as compassionate appointment was not pressed. The learned Member found that the respondents were entitled for the benefit of family pension in the light of the fact that though the initial appointment of the predecessor was on temporary basis, he had discharged duties as a regular employee till the time he was placed under suspension. Since the enquiry could not be completed in view of his death, it was held that there was no reason to deny the pensionary benefits especially when his death had occurred more than 20 years after he was engaged on 28th August 1987. Being

aggrieved, the petitioners have challenged the said order.

3. We have heard Ms. S.S. Bhende, learned Assistant Government Pleader for the petitioners as well as Mrs. Asha Rakh, learned counsel for the respondents. Having perused the impugned order and having given due consideration to the submissions as made we find that there is no reason to interfere with the order passed by the Maharashtra Administrative Tribunal. It is not in dispute that though the predecessor of the respondents was appointed on temporary basis he continued in service until he was placed under suspension on 28th January 2004. When the departmental enquiry was under way, he expired on 28th August 2011. The Tribunal found that under Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 qualifying service of a Government servant commenced from his appointment even in a temporary capacity. This issue was considered by the Tribunal in Original Application No.308 of 2012 (*Shri Sunil Sadashiv Padave Vs. The Commissioner, State Intelligence Department, dated 19/06/2015*). That decision of the Tribunal came to be challenged before this Court in Writ Petition No.163 of 2016 (*The Commissioner, State Intelligence Department, M.S.; Mumbai Vs. Sunil Sadashiv Padave*). In paragraph 6 of the said judgment it has been held as under:

“The only contention raised by the Petitioner before the Respondent had actually retired was that although the period of

service in temporary capacity can be counted as qualifying service, the employee having not been made permanent and his service not having been regularized at the time he sought retirement, he would not be entitled to any pension. Evidently Rule 30 envisages and takes within its sweep the services rendered in temporary capacity. It is by way of a proviso that it is provided that at the time of retirement, the employee should hold substantively a permanent post in Government service or hold a suspended lien or certificate of permanency. It is nowhere asserted or established as a fact that the Respondent was, at the time seeking retirement, not holding the post which was substantively a permanent post in Government service. The second proviso to Rule 30 of Pension Rules makes it clear that in cases where a temporary Government servant retires voluntarily after completion of twenty years qualifying service, he shall be eligible for grant of retirement pension, retirement gratuity and family pension at the same scales as admissible to a permanent Government servant. Therefore, the stand adopted by the Petitioner even before the Respondent was allowed to retire, does not appear to be proper or valid.”

From the aforesaid it becomes clear that notwithstanding service being rendered in a temporary capacity, that cannot be a reason for

denying grant of pensionary benefits. The Tribunal, therefore, relied upon this decision while concluding that the respondents were entitled for the benefit of family pension.

4. It is also to be noted that though the predecessor of the respondents was placed under suspension by an order dated 28th January 2004, the departmental enquiry could not be concluded till his demise on 28th August 2011. The period spent under suspension cannot be excluded from consideration while determining the period of qualifying service. It would have been a different matter if on the conclusion of the departmental enquiry, the services of the employee were terminated prior to completion of the period of qualifying service. When the predecessor of the respondents expired on 28th August 2011 he had put in more than 20 years of service. The conclusion recorded by the Tribunal that he had rendered qualifying service for being entitled for pensionary benefits, therefore, cannot be faulted.

5. For aforesaid reasons, we do not find that the Tribunal committed any error that warrants interference by this Court in exercise of writ jurisdiction.

6. The writ petition is, therefore, dismissed with no order as to costs. The interim application is also disposed of.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]