

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 3343 OF 2021

Keda Shankar Sawant

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. Chetan Gajanan Patil for the Petitioner

Mr. K.S. Thorat for the Respondent Nos. 1 to 3 and 6

***CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.***

DATE : 04 JANUARY 2024

P.C. :-

Heard the learned Counsel for the parties. Taken up for disposal forthwith.

2. Leave to amend to challenge the order dated 25 June 2018 granted. Amendment to be carried out within two working days.

3. The Petitioner has now retired and is awaiting his pensionary benefits. By two communications addressed to the

employer, the Respondent – Education Institute which are self-contradictory, the Petitioner has been denied the benefit of pension scheme and instead it has been held by the authorities that the Petitioner would be governed by the Defined Contributory Pension Scheme.

4. The Petitioner was appointed as a Peon with the Respondent No.5 – Junior College run by the Respondent No.4 – Educational Institute. According to the Petitioner he was appointed with effect from 1 March 1981 and made permanent by order dated 11 February 1988. It is stated that the approval was granted to the Petitioner's appointment from time to time for ~~the~~ academic years **1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005 and 2005-2006**. An order came to be issued on 20 January 2008 with corrigendum whereby approval for the Petitioner's appointment was for two years from 2007 to 2009 on probation. Thereafter, by order dated 20 May 2010 approval was granted to the Petitioner's appointment from 15 June 2009 onwards.

5. As per the Government Resolution dated 31 October 2005, the State Government introduced Defined Contributory Pension Scheme for those who are recruited on or after 1 November 2005 in the State Government services. As regard those employees who are recruited before 1 November 2005 the old pension scheme would apply.

6. On 13 November 2017 and 7 March 2018, the Respondent – Educational Institute, employer of the Petitioner wrote to the Respondent No.6, the Deputy Director of Vocational Educational and Training Office to condone the break in the Petitioner's services for a period of six days that was for one day each for the six years from 1999 to 2005. As to this communication, the Respondent No. 6 replied on 25 June 2018 that it is not necessary to condone this break of six days as the Petitioner would in any way eligible for the pensionary benefits having completed the qualifying service.

7. The Respondent – Educational Institute then sent the proposal for the Petitioner's pensionary benefits. The Respondent No.6 to the Respondent – Educational Institute responded to the communication regarding the Petitioner's pensionary benefits on 2 May 2019. In this communication Respondent No.6 stated since the break in the Petitioner's services has not been condoned as per the Scheme, the Petitioner would be governed by the Defined Contributory Pension Scheme New Scheme and not by the Old Pension Scheme. Being aggrieved, the Petitioner is before us.

8. The learned Counsel for the Petitioner submitted that the order of 25 June 2018 was not challenged since it was stated that the Petitioner was entitled to the pensionary benefits and when the

papers were submitted for pension purpose, the impugned order came to be passed which does not taken into consideration various aspects. The learned Counsel for the Petitioner submitted that having appointed on the regular basis after following the due procedure, the Petitioner deemed to have successfully completed probation period and therefore, it was not necessary for the authorities to issue yearly approvals. It was submitted that even assuming there is a break in service, as per Rule 33 of the Maharashtra Civil Services (Pension) Rules, 1982, the entire temporary or officiating service can also be concluded for the purpose of pensionary benefits. Further it is stated that even assuming there was a break in service, it was prior to the concerned date that is 31 October 2005 and therefore, irrelevant as the impugned order has proceeded primarily on the basis that the break in service has not been condoned. Having heard the learned Counsel for the parties, several aspects arise which have been completely missed by the Respondent No.6 in passing the order. First there is an incompatibility of the stand between the communication dated 25 June 2018 and 2 May 2019. In the first communication the Respondent No.6 states that it is not necessary to condone the break in service. When the Respondent No.6 was called to process the pension, the Respondent No.6 in the second communication put forth the very reason for not considering the pensionary benefits for the Petitioner. None of the aspect pointed

out by the Petitioner as above has been taken into consideration. Accordingly, the orders dated 25 June 2018 and 2 May 2019 are quashed and set aside.

9. The proposal of the Respondent – Educational Institute in respect of the Petitioner’s pension papers and proposal for condonation of break in service shall be placed before the Respondent No.6 where the Respondent No.6 will take a decision on both the proposals of the Respondent – Management. The Respondent – Management will supply fresh copies of the proposal which they have already submitted, in case they are not found in the record of the Respondent No.6.

10. The Respondent No.6, after considering the above aspect, will take a decision within a period of six weeks from the date the order is uploaded on the server.

M.M. SATHAYE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date: 2024.01.22
16:20:03 +0530