

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5032 OF 2017

Shri. Vijay Jotiba Patil

...Petitioner

Versus

The President, Shri. Gangeshwar S.P.
Mandal, Kharavate And Ors.

...Respondents

Mr. Saurabh Pakale i/b Nilesh Desai for the Petitioner.

Mr. B.V. Samant, Addl. G.P. a/w Ms. T.J. Kapre. AGP for the
Respondent No.3/State.

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

DATE : 21 MARCH 2024

P.C. :

. Heard the learned counsel for the parties.

2. According to the Petitioner, the Petitioner was appointed in the services of Respondent Nos. 1 and 2 as Shikshan Sevak/Assistant Teacher. On 13 April 2006, the Respondent/Management issued a notice of termination and Petitioner was terminated. The Petitioner filed an appeal in the School Tribunal challenging his termination. The School Tribunal by order dated 20 December 2008 allowed the Appeal and set aside the order of termination dated 13 April 2006 and directed the Respondent/Management to reinstate the Petitioner

with full back wages and continuity of service. Accordingly the Petitioner was reinstated on 5 January 2017. The Respondent/Management forwarded the Petitioner's proposal wherein the approval was sought from 18 June 2005, when according to the Petitioner, it should have been from 29 August 2003. By order dated 25 January 2017, the proposal for Petitioner's continuation of services from 18 June 2005 was rejected. The Education Officer (Secondary) held that the Petitioner's services should be considered from 12 July 2006 and accordingly passed an order on 24 February 2009. Taking note of these developments by the impugned order, the Petitioner's services were considered from 12 July 2006.

3. Thereafter, considering the Petitioner to be governed by the new Defined Contribution Pension Scheme and not by the old pension scheme, the Respondent commenced recovery of the monthly contribution under the new scheme. The Petitioner thereafter filed present petition in which interim order was passed on 26 April 2017 directing that no recovery should be made pursuant to the impugned order.

4. Learned counsel for the Petitioner submitted that there is no logic or reasoning as to why Petitioner's services are considered from the order of termination dated 13 April 2006 when it should have been either from 29 August 2003 or 18 June 2005 (as per the proposal). The learned counsel submitted that if the services of the

Petitioner are to be considered from either of the said date, the Petitioner would fall in the old pension scheme and there is no necessity for recovery of monthly contribution for new pension scheme.

5. The learned AGP sought to point out that the Petitioner was initially appointed only on the temporary basis and approval was not granted for the said period and therefore, the Petitioner was not in continuous services till the year 2006 and the approval is granted to the Petitioner w.e.f. 12 July 2006.

6. We note that in the order passed by the School Tribunal, stand of the Education Officer is recorded, where he had opposed the appeal stating that the Petitioner was appointed against the reserved post and by calling list from the Employment Exchange, interviews were conducted and the Petitioner was appointed and therefore, there is no approval for Petitioner's appointment. This is one aspect that arises. Second is in respect of the date from which the Petitioner's appointment should be considered i.e. 18 June 2005 or 12 July 2006.

7. We note that the impugned order has solely gone by date of termination with no other reasoning in the impugned order. Even while considering the Petitioner as being governed by the new Pension Scheme, no opportunity has been given to the Petitioner and it is only in a form issued, the Petitioner is treated as being covered

by new Pension Scheme.

8. Since these various issues arise which require consideration by the Education Officer, we direct that the order dated 25 January 2017 be treated as *prima facie* opinion of the Education Officer. We permit the Petitioner and Respondent/Management to submit their reply. The Petitioner and the Respondent/Management will submit their reply to the Education Officer treating the communication dated 25 January 2017 as a show cause notice, within a period of 4 weeks. Thereafter, the Education Officer, after giving an opportunity to the Petitioner and Respondent-Management, will pass a reasoned order. Till the decision is so taken by the Education Officer and for a period of 4 weeks thereafter, in case the order is adverse, the interim order passed in this petition will continue for two weeks.

9. Writ Petition is disposed of in the aforesaid terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)