



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION (W) No. 906 of 2021 in
WRIT PETITION NO.420 of 2018

Javed Ahmed s/o Hafiz Bashir Ahmed

Vs

The State of Maharashtra and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. B.G.Kulkarni, Advocate for applicant/petitioner.

Mr. S. M. Ghodeswar, Assistant Government Pleader for respondent nos.1 to 4 and 6.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 2nd JULY, 2024

This is an application for condonation of delay in bringing legal heirs of deceased petitioner on record.

2. For the reasons disclosed in the application and the application is not objected, the delay stands condoned. The application stands disposed of.

CIVIL APPLICATION (W) NO. 905 OF 2021 in
WRIT PETITION NO.420 of 2018

This is an application for permission to bring on record legal heirs of deceased petitioner.

2. For the reasons disclosed in the application, permission is granted to bring on record the legal heirs of deceased petitioner. Necessary amendment be carried out forthwith.

3. The application stands disposed of.

WRIT PETITION NO.420 of 2018

Heard Mr. Kulkarni, learned counsel for the petitioner.

2. It is not in dispute that after the superannuation of the petitioner, he has expired. His legal heirs are pursuing the claim qua entitlement for pay protection.

3. In this background the claim of the petitioner appears to be the earlier posting held by the deceased petitioner was on the post of

Teacher in a Junior College. The deceased petitioner resigned from the said post and joined on the post of 'Head Master' by competing in the process of direct recruitment.

4. Mr. Kulkarni, learned counsel appearing for the petitioner would urge that in view of the service conditions, the provisions of the Maharashtra Civil Services (Pay) Rules are attracted and as such, the petitioner is entitled for pay protection.

5. The fact remains that once the petitioner resigned from the earlier post and opted for a fresh appointment on the post of Headmaster, the petitioner ceases to have any right to claim pay protection unless expressly such benefits are claimed and granted at the time of appointment.

6. Though Mr. Kulkarni has claimed that the petitioner was granted pay protection for certain period viz. for three years, however the same stood withdrawn, it is always open for the respondents to correct their mistake in case of grant of higher pay to which the deceased petitioner was entitled.

7. The petitioner, in our opinion, has not reserved such right or has not contested the same at the very threshold while he was appointed as Headmaster, it cannot be said that the petitioner can claim pay protection.

8. Apart from above, the fact remains that it was voluntary act of the petitioner to resign from the earlier service and opt for fresh appointment on the post of Headmaster.

9. As such, by virtue of his own creation and conduct, the petitioner got himself appointed on the post of Head Master in the School. That being so, it cannot be said that the petitioner has a right to claim pay protection of the earlier employment where he has resigned.

10. For the reasons aforesaid, no case for causing interference in extra ordinary jurisdiction is made out. The writ petition fails and it is dismissed as such.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.