



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

WRIT PETITION NO.1897/2023

Ayub Khan Habib Khan Pathan

Vs.

The Secretary Education Department Government of Maharashtra, Mantralaya,
Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Mohammad Riyaz Khan, Advocate for petitioner
Shri N.R. Rode, AGP for respondent Nos.1 & 3 to 6
Shri M.I. Dhatri, Advocate for respondent No. 2

CORAM : AVINASH G. GHAROTE AND

SMT. M.S. JAWALKAR, JJ..

DATED : 24/10/2024

1. Heard Mr. Khan, learned Counsel for the petitioner, Shri. M.I. Dhatri, learned Counsel for the respondent No.2 and Shri N.R. Rode, learned Assistant Government Pleader, for respondent Nos. 1 & 3 to 6.

2. The petition seeks to implement the resolution dated 28/12/2004 (page 29), passed by the respondent No. 2, Municipal Council, Chandur Railway, under which, it is claimed that the petitioner and other persons who were working as temporary teachers in the ANAD Urdu Medium School, Chandur Railway, on honorarium since 1998-1999, be absorbed from 01/07/2004, as the said school had been granted 60% aid with effect from 01/07/2004. The petitioner in consequence, also pleaded that he would be governed by the old pension scheme. A further relief of the payment of the arrears of the salary

and other emoluments, which the petition was entitled to on account of the petitioner being appointed as an in-charge headmaster is also being prayed.

3. The petition is opposed by Mr. Dhattrak, learned Counsel for respondent No.2 and by Mr. Rode, learned Assistant Government Pleader for respondent No.1, by contending that consequent to the resolution dated 28/12/2004 (page 29), in fact, the petitioner has chosen to accept absorption as a Shikshan Sevak, and has also foregone any benefit on account of his earlier engagement.

4. Though, the copy of the resolution dated 28/12/2004, (page 29), indicates that a resolution was passed for absorption of the petitioner and persons similarly situated to her by the Zilla Parishad, however, no order of absorption came to be issued thereafter. What is also material to note, is that the petitioner himself has accepted the communication dated 05/08/2006 (page 61), by which, consequent to a proposal by the respondent No. 2, the District Selection Committee interviewed the petitioner, and upon holding that he was eligible for being appointed as a Shikshan Sevak had appointed the petitioner as such by the order dated 05/08/2006 (page 61). The said order of appointment contained a clause that the appointment of the petitioner would not be from any earlier date, but from the date of the order of appointment. Once the petitioner accepted this order of appointment as a Shikshan Sevak on 05/08/2006, it was not permissible for the petitioner to fall back upon the resolution dated

28/12/2004 (page 29), moreover, when the petitioner has specifically agreed that his appointment as a Shikshan Sevak would be from the date of the appointment and the past services rendered by him as a temporary teacher would not be taken into consideration for any purposes.

5. Though, Mr. Khan, learned Counsel for the petitioner submits that representations were given by the petitioner protesting the appointment as a Shikshan Sevak with effect from 05/08/2006, we find that there is no challenge to such appointment for the entire duration of twenty years till the petitioner retired. In that view of the matter, we are not inclined to accept the plea of the petitioner for the enforcement of the resolution dated 28/12/2004, as a result of which, it cannot be held that the old pension scheme would be applicable to the petitioner.

6. Though the petitioner has sought a direction also, for payment of arrears of outstanding dues, there are no details given in the petition in this regard, however, Mr. Dhattrak, learned Counsel for respondent No. 2, submits that in case any arrears are found due on any count, the same would be duly calculated and paid to the petitioner, accepting which, the petition is disposed of in terms of the above statement to that limited extent.

(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)