



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

WRIT PETITION NO. 1686 OF 2024

1. Lok Shikshan Mandal,
Hinganghat through its President,
Office at Gandhi Ward,
Hinganghat, Tah. Hinganghat,
Dist. Wardha.

2. Rajesh s/o.Vinayakrao Satpute,
aged about 58 years, Occ.
Service at N.M. Ghatwai High
School and Science/Arts Junior College,
Wadner, Tahsil Hinganghat,
District Wardha,
r/o. Vivekanand Colony,
New Yashwant Nagar, Hinganghat,
Tahsil Hinganghat, Dist. Wardha.

....PETITIONERS

...V E R S U S...

1. State of Maharashtra,
through its secretary,
Department of Education,
Mantralaya, Mumbai 32,

2. Education Officer (Secondary),
Zilla Parishad, Wardha Block No. 3,
First Floor, New Building, Civil Lines,
Wardha 442 001,
New Building Civil Lines,
Wardha 442 001,
Tahsil and District Wardha
Email: sec.edu.wrd@gmail.com

.....RESPONDENTS

Mr. M.R. Joharapurkar, counsel for petitioners,
Mr. H.R. Dhumale, AGP for respondent Nos. 1 and 2/State.

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

CLOSED FOR JUDGMENT ON : 12.06.2024

PRONOUNCED ON : 09.07.2024

JUDGMENT (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. Petitioner No. 2, being dissatisfied with the order dated 15.02.2021, passed by respondent No. 2 – Education Officer, thereby rejecting a proposal for approval to the reappointment of petitioner No. 2, has preferred this petition.

3. On 01.01.1991, petitioner No. 2 was appointed as an assistant teacher run by petitioner No. 1 Society. On 01/02/1991, his services were approved by respondent No.2 Education officer. His services were confirmed w.e.f. from 01/01/1992, which was approved on 05.6.1993 w.e.f. 01/01/1993. From 05/06/1993, petitioner No.2's services were upgraded to those of a junior college teacher. Deputy Director of Education, Nagpur, granted approval to the said up-gradation on 31/03/1993. On 07.07.2011, he was promoted to Assistant

Headmaster. Thereafter, on 31.05.2013, he was promoted to Headmaster. The proposal was approved by respondent No. 2-Education Officer.

4. On 31.01.2024, the petitioner became superannuated. Before his superannuation, on 11.12.2023, he moved an application to Petitioner No. 1 for granting reemployment till the end of the second academic session of 2023-24. Having considered the request, on 30.12.2023, the Managing Body passed a resolution, thereby granting permission to re-employment/reappointment for the petitioner till the end of the second academic session of 2023-24.

5. Pursuant to the said resolution, petitioner No. 1 forwarded a proposal for grant of approval to the services of petitioner No. 2. However, vide communication dated 15.02.2024, respondent No. 2 rejected the said proposal.

6. Learned advocate for the petitioners vehemently contended that in view of Sub-rules (2) and (3) of Rule 17 of the Maharashtra Employees of Private Schools (Conditions of

Service), Rules, 1981 (the “*Rules*” for short), petitioner No. 1 is empowered for reappointment of petitioner No.2 on the post of Headmaster till the end of the second academic session. So also, the learned counsel further contends that his case is covered by the judgment of this Court passed in Writ Petition No. 5224/2024 (*Gorakh s/o. Shankarrao Bhagat Vs. State of Maharashtra and Others*) delivered on 26.03.2015 (“*Gorakh Bhagat*”) and therefore, petitioner No. 2 is entitled to the relief as claimed. Our attention is also drawn to the dictum laid down in the case of *Ashok Ram Parhad and Others Vs. State of Maharashtra and Others* reported in *2023 SCC OnLine SC 265* (“*Ashok Ram Pralhad*”) and submitted that in view of the dictum laid down in the above judgment, Government Resolution cannot override the statutory rules. Hence, he urged that the impugned order appears contrary to Sub-Rules (2) and (3) of Rule 17, the Rules, and the law laid down by this Court and the Hon’ble Apex Court.

7. *Per contra*, learned AGP Mr. J.Y. Ghurde strongly opposes the petitioners' claim on the ground that as per

Government Resolution dated 09.11.1995, the employee shall not be entitled to seek the extension after retirement. Therefore, he submits that the order impugned is just and proper and requires no interference. It is argued that granting an extension to the post of Headmaster after retirement would cause great injustice to the other teachers who are aspirants for the said post.

8. We have appreciated the contentions advanced, perused Sub Rules (2) and (3) of Rule 17 of the Rules along with the record and gone through the judgments relied upon by the parties.

9. Having considered the rival contentions, at the outset, a short question of law arises whether, after retirement, an employee can be re-appointed/re-employed in the same post. While considering the controversy, it would be proper to reproduce Sub-Rules (2) and (3) of Rule 17 of the Rules, which reads thus:

(2) [" Where a teacher or Head has attained the age of superannuation in the middle of either of the two academic terms and the Management desires to grant him re-employment beyond the age of superannuation, such

teacher or Head"], may be granted such re-employment till the end of the particular term only, subject to the condition that he is physically and mentally fit for continuance in service.

(3) On re-employment of a person in the manner specified in sub-rule (2) his pay shall not exceed the last pay (including special pay or additional pay, if any), drawn by him at the time of his retirement minus pension (including pension equivalent of death-cum-retirement gratuity or gratuity in lieu of pension). Such pay plus pension (including pension equivalent of death-cum-retirement gratuity or gratuity in lieu of pension) shall not, however, exceed the maximum of the time scale of the post in which he is re-employed. Once the pay is fixed as mentioned above, the incumbent shall be entitled to receive the benefits of annual increment even though the pension (including pension equivalent of death-cum-retirement gratuity or gratuity in lieu of pension) plus pay so fixed exceeds the last pay drawn by him at the time of retirement but the total amount of pay fixed on re-employment plus pension (including pension equivalent of death-cum-retirement gratuity or gratuity in lieu of pension) shall not exceed the maximum of the time scale of the post in which he is re-employed.

10. Bare perusal of Sub-Rule (2), it seems that petitioner No. 1, if it desires to grant re-employment after the age of superannuation, such an employee can be re-appointed subject to his physical fitness. On perusal of the record, it appears that petitioner No. 2 was superannuated on 31.01.2024, i.e., in the middle of the second term, and prior to superannuation, he applied for re-employment till the end of the second academic

session of 2023-24. He also produced the physical fitness certificate on record. After considering Sub Rules (2) and (3) of Rule 17, service record and physical fitness Certificate, petitioner No. 1 has unanimously resolved to grant re-employment till the end of the second academic session. It appears that petitioner No. 1, by following the Sub Rules (2) and (3) of Rule 17, re-employed petitioner No. 2.

11. It reveals that petitioner No.1 Management had every right to grant petitioner No. 2 re-employment after he reached the age of superannuation in the middle of the academic session.

12. Thus, in our view, the present case is covered by the law laid down in *Gorakh Bhagat's case*. Besides, as per the law laid down in the case of *Ashok Ram Pralhad*, Government Resolution cannot override the statutory rules and therefore, passing of an order impugned based on Government Resolution dated 9.11.1995 appears contrary to the settled position of law in this case.

13. Having considered the discussion above, we deem it appropriate to allow the petition.

14. As such, the petition stands allowed.

15. The impugned order dated 15.02.2024, passed by respondent No. 2 – Education Officer, is hereby quashed and set aside.

16. Respondent No. 2 Education Officer is directed to grant approval for the re-employment of petitioner No. 2 till the end of the second academic session of 2023-24.

17. Petitioner No.1 is directed to send the pay bill of petitioner No.2 for the extended period as per Sub-rules (2) and (3) of Rule 17 of the Rules for disbursing his salary for the said reemployment.

18. Rule is made absolute in the terms above.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)