



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

WRIT PETITION NO.1819 OF 2024

Ramesh Ashanna Polampalli, Dist. Gadchiroli and ors.

-VS-

State of Maharashtra, Thr. Secretary, Rural Development Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri P. S. Kshirsagar, Advocate with Shri Uday Changle, Advocate for petitioners.
Shri D. P. Thakare, Additional Government Pleader for respondent No.1.

CORAM : NTIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : July 01, 2024

1. Heard.
2. The petitioners are questioning the order dated 11/09/2023 whereby the respondent-Chief Executive Officer, Zilla Parishad, Gadchiroli has ruled against the petitioners making them dis-entitled for the pensionary benefits.
3. It appears that total nine employees were granted appointment by the Selection Board as Under Graduate Teachers having possessing M.C.V. C. qualification at the relevant time. Of these nine employees, three employees have expired between 2019 to 2023.
4. The services of these employees came to be terminated vide order dated 29/12/2001 on the ground that the petitioners were not holding the requisite qualification.
5. Writ petition No.74/2002 preferred by the petitioners questioning their termination came to be disposed of with directions that subsequently acquired qualification of H.S.S.C. can be considered

for the purpose of their re-instatement.

6. It appears that accordingly the Zilla Parishad has forwarded a proposal to the State Government who in turn granted approval to the proposal for absorption of the petitioners and as a sequel of which the petitioners' services were absorbed in the employment of respondent No.2-Zilla Parishad.

7. The absorption order is sought to be relied on so as to claim that the order dated 20/06/2006 to that effect has to be termed as continuation of services of the petitioners and not fresh appointment. Shri P. S. Kshirsagar, learned counsel for the petitioners in support of the aforesaid submits that the petitioners were never appointed on probation but were given regular appointment. The order of absorption dated 20/06/2006 is subsequent to the Contributory Pension Scheme (CPS) being brought into effect.

8. As a sequel of above, since absorption was subsequent to the implementation of Contributory Pensions Scheme, respondent No.2-Chief Executive Officer, Zilla Parishad has passed the impugned order thereby making petitioners dis-entitled for pensionary benefit as such this petition.

9. The contention of Shri P. S. Kshirsagar, learned counsel is that even if the order of absorption is of 2006, the Court is required to be sensitive to the approval granted by the State Government to such order of absorption and the fact that the petitioners were not re-appointed thereby making them liable for probation. It is claimed that the petitioners have acquired requisite qualification to be appointed as untrained teachers. In such an eventuality the contention is such that the academic status of the petitioners at the most may have impact over

the pay-scale and not the pensionary benefit. He would claim that for the purpose of pension, the services of the petitioners at the entry point that is in 2000 will have to be considered and not their qualification. So as to substantiate the aforesaid contention, reliance is placed on Division Bench judgment delivered at Aurangabad Bench in Writ Petition No.858/2017 (*Ashok Vasantrao Bochare vs. The State of Maharashtra and ors.*) dated 10/10/2019 which is followed in Writ Petition No.1987/2022 (*Raju Parmeshwar Agose and ors. vs. The State of Maharashtra and ors.*) decided on 30/01/2024 by this Court.

10. In addition to above, the counsel for the petitioners has invited our attention to the Government Resolution dated 02/02/2024 whereby the State Government has amended its policy to be implemented in regard to the Contributory Pension Scheme. According to him the amended policy contemplates the option to be exercised by the employees who were appointed pursuant to the advertisement which was issued prior to the cut-off date which has been referred to in the Contributory Pension Scheme. It is further urged that in any case the initial entry in the employment of the petitioners was pursuant to the selection process undergone by them and that being so they have every right to exercise the option of earlier pension scheme and not the Contributory Pension Scheme.

11. As against this, Shri D. P. Thakare, learned Additional Government Pleader would urge that the Court is required to be sensitive to the termination of services of the petitioners after they having found to be not qualified. According to him even though the word 'absorption' is used in the fresh appointment order issued in 2006, same has to be read in conjunction with the conditions which are incorporated in the appointment order which speaks of the fresh appointment and the petitioners having been not entitled for the benefit

out of the earlier services rendered by them.

12. The learned Additional Government would urge that the condition of improvement of qualification incorporated in the order of 2006 granting appointment to the petitioners postulates that the petitioners were granted fresh appointment and not in continuation of the earlier order of appointment of 2000.

13. Be that as it may, we are sensitive to the fact that the petitioners' services were approved in 2006 subsequent to the order of approval by the State Government. This Court in case of *Ashok Vasantrao Bochare* (supra) has already taken a view that what is relevant in the matter of extending the benefit of earlier pension scheme is (a) the date of initial entry in service and (b) not the fact about the candidates like the petitioners being not qualified.

14. In that view of the matter, issue notice to the respondents, returnable on 26/08/2024.

15. Shri D. P. Thakare, learned Additional Government Pleader waives service of notice for respondent No.1.

16. We direct the respondent No.1 to file response by the returnable date.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)