



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

WRIT PETITION NO. 3893/2021

Augustine S/o. Anthony Thomas

Vs.

The Director of Education (Higher Education) and Ors.

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

Court's or Judge's orders

Mr. P. A. Abhyankar, Advocate for Petitioner.

Ms Mayuri Deshmukh, A.G.P. for Respondent Nos.1 and 2/State.

Mr. S. S. Sanyal, Advocate for Respondent No.3.

CORAM : ANIL S. KILOR AND MRS. VRUSHALI V. JOSHI,JJ.

DATED : 19/08/2025.

1. There are two prayers made in the present petition, (1) to declare that the Old Pension Scheme is applicable to the petitioner taking into consideration the date of appointment of the petitioner and (2) the approval granted to the appointment of the petitioner is not from the date of appointment but it is from the date of grant of such approval.

2. The brief facts of the present case are as under :

The petitioner was appointed as Clerk on compassionate ground in place of his father, who was working as Junior Clerk and died on 17.01.2003. Thereafter, the proposal was forwarded for grant of approval to the appointment of the petitioner. It is to be noted that one Mr. Adhau and the petitioner were appointed on the same date on compassion ground. Mr. Adhau was appointed on the post of Peon, whereas, the petitioner was appointed on the post of Attendant. Though the order of appointment issued to the petitioner is for the post of Clerk-cum-Typist, the proposal for approval

indicates that the appointment was made on the post of Attendant and the approval was sought for the said post.

3. The respondent No.2 vide letter dated 12.05.2008 raised some queries, which were answered by the Management by 03.06.2008. Thereupon, on 02.12.2008, the approval was granted to the petitioner for the post of Clerk from the date of order i.e. 02.12.2008 and not from the date of appointment i.e. 05.09.2003.

4. The petitioner, by way of the present petition, therefore, claims that since he was appointed prior to the year 2005 i.e. on 05.09.2003, is entitled for Old Pension Scheme and further, a direction be issued to the respondent No.2 to grant approval to the appointment of the petitioner as a Clerk with effect from 05.09.2003 and not from 02.12.2008.

5. As far as first prayer for declaration that the petitioner is entitled to receive benefits under the Old Pension Scheme is concerned, the said issue is covered by the judgment of this Court dated 30.06.2023 passed in the case of *Mrs. Anjali w/o. Anil Tanksale Vs. State of Maharashtra (Writ Petition No.2758/2008)*. This Court in the said judgment has relied upon the judgment of the Division Bench of the Madras High Court in **Writ Appeal (MD) 307/2019** (*V. Vasanthi V. The State of Tamil Nadu and Ors.*) to hold that the date of appointment and the date of grant of approval are the two distinct dates. It is further held that the approval of such appointment may be granted either from the date of such appointment or from any other subsequent date depending upon the facts and circumstances of each case like want of vacancy or sanction

etc. It is further held that at any event the date of appointment remained to be the same and if the person is entitled to count service period from the date of appointment for the purpose of pension and if the date of appointment is prior to the cut off date for making the Old Pension Scheme applicable, such benefit shall be granted.

6. In the present matter, there is no dispute about the fact as regards the appointment of the petitioner with effect from 05.09.2003. Therefore, for the purpose of pension, in view of the judgment in case of V. Vasanthi (*supra*), we have no hesitation to hold that the relevant date will be the date of appointment. Accordingly, we are of the opinion that the petitioner is entitled for Old Pension Scheme.

7. As regards the second issue about the date of approval, it is evident from the record that after the appointment of the petitioner along with one Mr. Adhau, both the proposals were forwarded together. However, the proposal of Mr. Adhau was considered and he was granted approval from the date of appointment; whereas, the approval was not granted to the petitioner and on continuous persuasion, it was granted on 02.12.2008. However, there is no reason given by the respondent No.2 for not granting the approval to the petitioner from the date of appointment and why it was granted from 02.12.2008.

8. In absence of any justification or reason for denying the petitioner to grant approval to his appointment as Clerk with effect from his date of appointment, granting approval to the petitioner from

02.12.2008 cannot be justified.

9. In that view of the matter, we are of the opinion that to the extent of issue as regards from which date the petitioner shall be granted approval, the matter be remanded to the respondent No.2 to reconsider the same.

10. While reconsidering this issue, the respondent No.2 is restricted scope to the extent to consider the claim of the petitioner only as regards from which date such approval shall be granted and not beyond the same.

11. In the circumstances, the petition is disposed of in above referred terms.

12. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(ANIL S. KILOR, J.)