



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

WRIT PETITION NO. 5689 OF 2023

Shri Shankarrao S/o Bajirao Kulsange,
Aged about 81 years, Occ. Nil(Retired Teacher),
R/o. Vivekanand Colony,
New Yashwant Nagar, Hinganghat,
Tah. Hinganghat, Dist. Wardha. **PETITIONER**

// VERSUS //

- 1) **The State of Maharashtra,**
Through its Secretary,
Department of Education and Sports,
Mantralaya, Mumbai.
- 2) **The State of Maharashtra,**
Through its Secretary,
Department of Education and Sports,
Mantralaya, Mumbai.
- 3) **Municipal Council** through
its Chief Officer, Hinganghat,
Tah and Dist. Hinganghat.
- 4) **Gangabai Bulakidas Mohata,**
Municipal High School,
Through its Headmaster, Hinganghat,
Tah. Hinganghat, Dist. Wardha. **RESPONDENTS**

Mr. Omkar Deshpande, Advocate for the Petitioner.
Mr. A. V. Palshikar, Assistant Government Pleader for
Respondent Nos.1 and 2.
Mr. Sagar Katkar, Advocate for Respondent No.3.

**CORAM : MRS. M. S. JAWALKAR AND
RAJ D. WAKODE, JJ.**

DATE ON RESERVING THE JUDGMENT : 25.09.2025
DATE ON PRONOUNCING THE JUDGMENT : 10.10.2025

JUDGMENT : (Per – M. S. JAWALKAR, J.)

1. Heard. **Rule.** Rule is made returnable forthwith. Matter is taken up for final hearing at the stage of admission by consent of the parties and at the request of parties.

2. By this Petition, the Petitioner has challenged the legality, validity and propriety of the Order dated 23/12/2020 passed by the Respondent No. 4 – Gangabai Bulakidas Mohata, Municipal High School, Hinganghat, thereby rejecting the fixation and disbursement of pension to the Petitioner as per Selection Grade.

3. The contention of the Petitioner is that the Petitioner belongs to Gond Community (Adivasi) which is recognized Schedule Tribe under the Constitution (Scheduled Tribes) Order 1956. The Petitioner has been appointed as ‘Assistant Teacher’ in Patel Gujrati Primary School, Hinganghat on 04/01/1965.

Thereafter, the Petitioner rendered his continuous and unblemished services and finally was absorbed in service by the Respondent No.3. The Petitioner was the only teacher in Respondent No.4 School who has completed his education till 7th class External Examination and Matriculation in Gujarati Medium and Diploma. The Petitioner was having all requisite qualification and was Senior Trained Teacher at the time of appointment.

4. It is further contended that Respondent No.3 resolved to continue the services of the Petitioner as Assistant Teacher in its meeting dated 19/11/1970. Thereafter the Petitioner was promoted to the post of Middle School Teacher and was asked to join the Respondent No. 4 High School by the Respondent No. 3 vide its order dated 14/08/1987. The Petitioner continued his services as per the order dated 04/01/1965, however, entry to that effect was not taken in the Service Book of the Petitioner maintained by Respondent No.3. Therefore the Petitioner made several representations to the Respondent No.4 to incorporate entry of correct date in service

book of the Petitioner. The Petitioner rendered his service as Assistant Teacher at Patel Gujarati Primary School from 04/01/1965 to 13/08/1987 and thereafter as Middle School Teacher at the Respondent No. 4 School till his superannuation and retired on 30/06/2000.

5. The Petitioner further contended that since there was a break in the services of the Petitioner from 1965 to 1970, the Petitioner submitted a representation to the Deputy Director of Education, Nagpur Division whereby the Deputy Director condoned the break in service of the Petitioner vide order dated 03/04/2002 and directed the Respondent No.3 to take entry in service book of the Petitioner as well as requested the Accountant General-II, Nagpur to take into consideration the continuous service of the Petitioner for the period of 04/01/1965 to 02/09/1970 and re-fix the pension. In view of these communications, entries were made in service book of the Petitioner and same was duly signed by the Respondent No.4 on 03/06/2003. After retirement of the Petitioner, the service from 04/01/1965 to 02/09/1970 was not taken into account

therefore the Petitioner made a representation to the Respondent No.3 for necessary corrections be made in service book of the Petitioner and his salary be fixed taking into consideration his initial appointment from 04/01/1965 as the break in service was condoned by the Dy. Director of Education, Nagpur but the Respondent No.3 informed that the break in service of the Petitioner was condoned only for the purpose of getting benefit in pension and not for other purposes. The Petitioner once again submitted a representation to the Respondent No.3 but no heed was paid to him, therefore the Petitioner filed a Writ Petition No. 178/2004 before this Court.

6. The W.P. No.178/2004 was disposed of vide order dated 17/03/2016 in view of the statement made by the Respondent No.3 that the services of the petitioner are taken into consideration from 04/01/1965 for grant of pensionary benefits by condoning the break in service and the pension of the petitioner was revised from Rs. 2,600/- to Rs. 2,958/-. It is further contended that thereafter, the Petitioner submitted several representations to Respondent No. 3 and 4 for grant of benefit of Selection Grade stating that he has completed

24 years of service. The Petitioner contended that as per the Government Resolution dated 20th July, 2004, modifying the selection grade pay policy for primary teachers, prompted by challenges in pay disbursement and 2002 Bombay High Court ruling regarding the 25-year service condition. The resolution mandated that selection grade benefits would be paid from 01/04/2004, and required eligible teachers to apply and fix their salary within three months to receive the benefits. The Respondent No. 4, vide communication dated 23/12/2020 rejected the claim of the Petitioner which order/communication is challenged in this Petition.

7. As against this, the Respondent Nos. 3 and 4 submitted that as per the order dated 17/03/2016 passed by this Court in Writ Petition No.178/2004, the pension of the Petitioner was revised from 2,600/- to 2,958/-. The said order was specific for the purpose of condonation of break in service for the purposes of granting pensionary benefits only. It is further contended that vide a communication dated 24/08/2017, by the Additional Treasury Officer to the Respondent No.3 informed that vide order dated 17/03/2016

the pension amount of the Petitioner was rectified as per the 6th Pay Commission and the arrears thereupon were granted to the Petitioner.

8. The contention of the Respondent Nos. 3 and 4 is that the Petitioner again approached the Respondent No.3 for seeking benefits of the Selection Grade stating that he has completed 24 years of service. The Respondent No.4 vide its communication dated 06/05/2024 rejected the prayer of the Petitioner on the ground that as per the Government Resolution dated 20/07/2004 the actual benefits would be granted to the employees from 01/04/2004 and as the Petitioner had retired from services on 30/06/2000 itself said benefits of the G.R. could not be extended to the Petitioner. It is further contended that the petition should be rejected on the ground of delay and laches as the Petitioner has approached this Court after almost 23 years from the date of his retirement. The learned Counsel for the Respondent Nos. 3 and 4 relied on ***Writ Petition No. 2465/2020 (Vishnupant S/o Narayanrao Kashid & Anr. Vs. The State of Maharashtra & Anr.)*** dated **01/09/2023**.

9. Heard both the parties at length. Perused the document placed on record and considered the citation relied on by the Respondents.

10. The Petitioner, by this Petition, claiming selection grade and to fix the pay as per selection grade. The claim of the Petitioner came to be rejected by the Authority on 23/12/2020, whereby the Headmaster informed to the Petitioner that as per order in Writ Petition No.178/2004, break in his service was condoned only for the purposes of pension. As the pensionary benefits are already granted, in view thereof, the claim of the Petitioner for selection grade was rejected.

11. Learned Counsel for Respondents placed reliance on Judgment in ***Writ Petition No.2465/2020*** (supra) wherein this Court in para 17 held as under :

“17. It is well settled that in absence of Rule having been given a retrospective effect, it could not have been given a retrospective effect. The State in exercise of its powers under Article 309 of the Constitution of India may give retrospective effect to a Rule. However, the same must be explicit and clear by making express provision therefor or by necessary implication. But, such retrospectivity of a

Rule cannot be inferred only by way of surmises and conjectures.”

12. This citation is relied on by the Respondents in support of their contention that the Petitioner cannot claim any benefit as per Government Resolution dated 20th July, 2004 as the Petitioner stood retired in the year 2000. The Government Resolution dated 20th July, 2004 is having prospective effect. It also prescribed that the teachers, who has completed 24 years of service from 01/01/1986 to 31/03/2004, are entitled for selection grade. However, they will not get any arrears towards revised pay-scale. In the present matter, as the Petitioner stood retired in the year 2000, he has not completed even 24 years of service if calculated from 01/01/1986, which is the pre-requisite for grant of selection grade. Moreover, since 2004, the Petitioner has not filed any petition praying for grant of selection grade specifically when he has filed Writ Petition No.178/2004 for direction to the Respondents to treat his service as continuous one from 04/01/1965.

13. As such, the Petition is hit by delay and latches. In addition to that, in view of the Government Resolution dated

20th July, 2004, the candidate for getting selection grade is required to complete 24 years of service from 01/01/1986 to 31/03/2004. In this view, the Petitioner could not fit within criteria, as he was already retired in the year 2000 and having no requisite 24 years of service as prescribed in the Government Resolution dated 20th July, 2004.

14. Accordingly, the Petition is devoid of any merit and liable to be dismissed. The Writ Petition stands **dismissed**. No order as to costs.

(RAJ D. WAKODE, J.)

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