



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

WRIT PETITION NO. 206 OF 2023

Adarsh Bahuudeshiya Mandal

Ambedkar Ward, Bhandara,

Through its Secretary.

.... **PETITIONER**

// VERSUS //

- 1) **State of Maharashtra,**
Through Principal Secretary,
Department of Education, Mantralaya,
Mumbai.
- 2) **Education Officer (Secondary),**
Zilla Parishad Bhandara.
- 3) **Office of Accountant General**
(A & E)-II, Nagpur, Maharashtra.
- 4) **Moreshwar S/o Pandurang Wazade,**
(Dead) through his Legal Representatives :
 - 4(i) **Smt. Hemlata w/o Late Shri**
Moreshwar Wazade, Age : years,
 - 4(ii) **Sahil s/o Late Shri**
Moreshwar Wazade, Age : years,
 - 4(iii) **Sagar s/o Late Shri**
Moreshwar Wazade, Age : years,
All R/o. Pragati Colony,
Station Road, Bhandara.

.... **RESPONDENTS**

Mr. A. C. Dharmadhikari, Advocate for the Petitioner.
Mrs. S. S. Jachak, Additional Government Pleader for
Respondent No.1 to 3.
Mr. R. S. Parsodkar, Advocate for the Respondent No.4.

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

DATE ON RESERVING THE JUDGMENT : 26.09.2025
DATE ON PRONOUNCING THE JUDGMENT : 26.11.2025

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. The Petitioner challenges the impugned
communication dated 12.09.2022 by Respondent No.2,
Education Officer (Secondary), Zilla Parishad, Bhandara, which
refused the request to stop pension benefits to Respondent No.4,
who was terminated after a departmental enquiry and found
guilty of charges. Despite repeated representations, Respondent
Nos.1 to 3 have not acted to discontinue the benefits of
Respondent No.4.

3. The Petitioner submitted that it is Society duly Registered under Bombay Public Trust Act, running primary and secondary schools in Maharashtra, and that Respondent No. 4, who is a terminated employee of the school, was serving as an 'Assistant Teacher' in Nisha Vidyalaya from 05.08.1995, due to retire on 31.03.2022. The Petitioner submitted that in 2018, respondent No. 4 intentionally cut the CCTV wires, leading to a criminal complaint and registration of Misc. Criminal Case No. 153/2018, before the Chief Judicial Magistrate, Bhandara.

4. The Petitioner further submitted that an Administrator was appointed on 09.01.2018, against which the Petitioner challenged by filing an appeal on 12.02.2018. The Petitioner submitted that a show cause notice was issued to Respondent No. 4 for misappropriation and misconduct, and upon an unsatisfactory reply, a departmental enquiry was initiated.

5. The Petitioner submitted that Respondent No. 4 filed a Writ Petition No. 3484/2020, and this Court granted interim

relief on 17.12.2020, restraining adverse action against the Respondent No.4.

6. The Petitioner further submitted that although the enquiry was completed, it could not be finalized because of the Court's stay order dated 17.12.2020. The Petitioner's appeal against appointment of the Administrator was challenged before the Minister, whose dismissal order dated 12.02.2021 was contested in Writ Petition No. 1279/2021, whereby this Court stayed the order on 09.03.2021.

7. The petitioner further submitted that on 25.03.2022, Writ Petition No. 3484/2020 was decided, permitting the Petitioner to proceed with the enquiry and pass an order, but the effect of such order was directed to remain in abeyance pending disposal of Writ Petition No. 1279/2021, with enforceability dependent on the outcome of that petition.

8. The Petitioner submits that after the Court's order dated 25.03.2022, the Management held a meeting on 26.03.2022 and terminated Respondent No. 4 on 28.03.2022.

Later, on 08.07.2022, the Court set aside the earlier orders appointing an Administrator and directed a fresh enquiry for the year 2022–2023.

9. The Petitioner submits that on 18.08.2022, the Director of Education was directed to complete this inspection within three months. With the Administrator's appointment cancelled, the termination dated 28.03.2022 automatically came into effect, as the appointment of Administrator was contrary to the provisions of Maharashtra Education Institutions (Management) Act, 196.

10. The Petitioner submits that Respondent No. 4 refused to accept the termination order both personally and by registered post sent on 11.08.2022, which is treated as valid service.

11. The petitioner submits that requests were made to the Education Officer to stop Respondent No.4's pension since the termination had become effective, but despite this, the

Education Officer issued the impugned Communication dated 12.09.2022.

12. Per contra the learned Counsel for the Respondent No.2 submitted that Respondent No. 4 had already retired on 31.03.2022, and his pension was sanctioned only after due approval from the Accountant General. The Petitioner informed the Authorities about the alleged termination dated 28.03.2022 only on 12.04.2022, by which time pension had already begun. It was therefore not possible to stop the pension, as it had been legally sanctioned and was already under disbursement. The request made by the Petitioner on 09.07.2022 to halt pension was also belated. It was further submitted that Respondent No.4 passed away on 23.12.2023, and the Petitioner failed to bring his legal heirs on record, affecting the maintainability of the petition.

13. The Respondent No.2 further contended that Respondent No.4's proposal for pension was forwarded on 11.01.2022. The respondent No.2 received confirmation order regarding grant of pension on 15.02.2022 from the Office of

Accountant General. In pursuance of the above referred order dated 08.07.2022, the pension of the Respondent No.4 was started and the same being disbursed in favour of the Respondent No.4. The Respondent No.2 received a communication from the present Petitioner on 09.07.2022 for stopping pension. The respondent No.2 by a communication dated 12.09.2022, informed to the Petitioner that as per guidance sought by the Education Officer, once pension is begin, it cannot be stopped. This communication is under challenged in this petitioner.

14. The legal heirs of Respondent No. 4 contended that the petition is not maintainable because the issue of the Administrator's appointment is still pending before the Director of Education under the order of this Court dated 08.07.2022. They submit that until that proceeding is decided, the Management has no authority to conduct any enquiry or issue any disciplinary order. They further argue that the Petitioner-Society has a history of misusing powers, and that the enquiry against Respondent No. 4 was illegal, *ex parte*, conducted

during lockdown, and no termination order or enquiry report was ever served on him.

15. It is also contended that Respondent No. 4 had already retired on 31.03.2022 and later passed away on 23.12.2023, and since no valid termination was ever communicated to him, his pension cannot be stopped. They submit that retiral benefits are a constitutional right under Article 300-A, relying on the Supreme Court judgment in *State of Jharkhand v. Jitendra Kumar Srivastava, (2013)12 SCC 210* and therefore the petition seeking to discontinue these benefits deserves dismissal. The Respondent No.4 has already passed away before the conclusion of enquiry by the Director of Education.

16. Heard learned Counsel for the parties at length. Perused the documents placed on record and considered the citation placed on by the Petitioner.

17. It is a contention of the Petitioner Management that Respondent No.4 expired on 23.12.2023. It is also contended

that the impugned communication passed by the Education Officer is *per se* illegal against the Government Resolution dated 03.11.2008 and Rule 130 of the Maharashtra Civil Service Rules, 1982 which is specifically adopted by the Institution like the Petitioner's institution, which provides that no gratuity and pensionary benefits shall be paid to the Government servant until the conclusion of the departmental proceedings and judicial proceedings and issue of final orders thereon. The matter was pending against the Respondent No.4 before the Judicial Magistrate, First Class, Bhandara, bearing Criminal Misc. Application No. 300153/2018. A request made by the Petitioner Management on 27.11.2021 for stopping pension on the count that judicial proceedings are pending against the Respondent No.4.

18. In Writ Petition No. 1279/2021, filed by the present Petitioner, the order dated 12.02.2021 passed by Respondent No.2 and the order dated 09.01.2018 passed by Respondent No.3 i.e. Director of Education therein are quashed and set aside. The Respondent No.3 - Director of Education was directed

to conduct a fresh inquiry into the Show Cause Notice dated 04.09.2017. He was further directed that to consider the reply filed by the petitioner dated 26.09.2017. The Respondent No.3 – Director of Education was also directed to consider the present affairs of the School run by the Petitioner before concluding under Section 3(1) of the Maharashtra Educational Institution (Management) Act, 1976.

19. There were two more writ petitions, one filed by the Management along with Manoj Shamrao Wadibhasme, bearing Writ Petition No.114/2022, which came to be partly allowed and Manoj Shamrao Wadibhasme wherein it is declared that he is entitled to the graduate pay scale and second Writ Petition No.4372/2021, filed by Purushottam Harishchandra Lanjewar, which came to be dismissed and Director of Education, Pune is directed to comply the directions given by the learned Single Judge vide order dated 08.07.2022 in Writ Petition No.1279/2024. It appears that the Petitioner Management by the communications dated 26.11.2021, 15.03.2022 informed the Education Officer that proposal of Respondent No.4 shall not be

submitted in view of the fact that there were charges of misappropriation and there is a criminal proceeding pending against the Respondent No.4 before the Judicial Magistrate, First Class, Bhandara. Similar letters issued by the Management to the Education Officer. During the pendency of the present petition, Respondent No.4 expired and his legal heirs were brought on record. The termination never came into effect as there was order by this Court in ***Writ Petition No. 3484/2020*** (*Moreswar S/o Pandurang Wazade Vs. The Director of Education and others*) dated 25.03.2022, wherein para 14, this Court observed as under :

“14. Considering the totality of the circumstances and after the perusal of the order passed in Appeal and that the Petition is pending before the Single Judge, we permit the Respondent No.3 Management to proceed further and pass necessary order for the purpose of record, however the effect of the same shall be kept in abeyance till the decision of the proceedings pending before the learned Single Judge. We make it clear that if Respondent No.3 Management succeeds in their challenge before the learned Single Judge, the order that is kept in abeyance by our order will come into effect from the date of order passed by the Respondent No.3 Management against the Petitioner. If the Respondent No.3 Management fails in their challenge, then consequence would ensue.”

20. The learned Single Judge in Writ Petition No.1279/2021, directed the Respondent No.3 therein - Director of Education, Pune to conduct a fresh inquiry into the Show Cause Notice dated 04.09.2017 and the order dated 12.02.2021 passed by the Respondent No.2 – the Hon'ble Minister, Department of School Education & Sports, Mumbai as well as the order dated 09.01.2018, passed by the Director of Education were quashed and set aside. The Director of Education was directed to conduct the fresh inquiry, however, there is no direction in respect of termination of Respondent No.4 herein. In fact, he was not a party to the Writ Petition No. 1279/2021. In the above referred Writ Petition No. 1279/2021, appointment of Administrator over the Petitioner society was under challenge and the petition was partly allowed.

21. In view of the order passed in Writ Petition No. 1279/2021, which came to be partly allowed and directions were given to conduct a fresh inquiry to the Director of Education. As observed above, there was no any finding about termination of Moreshwar Pandurang Wazade. It appears that in

Writ Petition No. 3484/2020, the Management was allowed to proceed further and pass necessary orders for the purpose of record, however the effect of the same shall be kept in abeyance till the decision of the proceedings pending before the learned Single Judge. It was also made clear that if Management succeeds in their challenge before the learned Single Judge, the order that is kept in abeyance by order of this Court will come into effect against the petitioner (Respondent No.4 herein) from the date of order passed by the Respondent No.3. If the Respondent No.3 Management fails in their challenge, then consequence would ensue. However, the Writ Petition No.1279/2021 is partly allowed and the impugned communications were quashed and set aside and fresh inquiry was directed to be conducted. Therefore, till the decision of Director of Education giving clear verdict that there is no necessity to appoint Administrator and the Management is allowed to manage the Institution till that date, the order of termination will not take effect. Thus, the order passed is not totally in favour of the Management but it was partly allowed. In view thereof, the effect to the order could not have been given.

In view of the death of Respondent No.4 during the pendency of the present petition, the criminal proceedings which were pending before the Judicial Magistrate, First Class, Bhandara ought to have abated, however, there is no judgment/order placed on record about the decision in criminal proceedings. Similarly Management has not placed any document whether the fresh enquiry is conducted by the Director of Education.

22. We find various submission of legal heirs of Respondent No.4 that since no termination order is served on Respondent No.4 - Late Moreshwar Pandurang Wazade, there was no service of inquiry report and termination order to Late Moreshwar Pandurang Wazade, the said order becomes *non est* and inconsequential.

23. There is nothing on record to show that inquiry report and termination order was served to the Respondent No.4. Though it is clear that the same was tried to serve personally as well as register post, but it was not accepted by the Respondent No.4. If the postal envelopes are seen, in some envelop, it is only 'intimation is to be given' and in some

envelop, there is a remark that 'door locked intimation given' and in one envelop there is a remark of 'shifted', however on the some envelop, remark is 'refused to accept'. On these various remarks, it cannot be conclusively established that the proper notice or termination order was served on the Respondent No.4.

24. The learned Counsel for the legal heirs of Respondent No.4 relied on the Judgment of the Hon'ble Apex Court in case of ***State of Jharkhand Vs. Jitendra Kumar Srivastava, 2013 12 SCC 210***, wherein the Hon'ble Apex Court held as under :

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property".

Article 300-A of the Constitution of India reads as under :

"300-A. Persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the

umbrage of administrative instruction cannot be countenanced.”

25. In our considered opinion, the Respondent No.4 was not served with the termination order in view of the Judgment passed in Writ Petition No.3484/2020. The Respondent No.4 – Moreshwar Pandurang Wazade served with the Institution for 27 years. As such, he is entitled for all retiral benefits. Thus, whatever pensionary benefits the Respondent No.4 in his lifetime would have received, similarly after his death, the legal heirs of Respondent No.4 are entitled for the same.

26. As such, the writ petition is devoid of any merit and liable to be dismissed. It is **dismissed**. No order as to costs.

(RAJ D. WAKODE, J.)

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