

(2013) 07 BOM CK 0176

In the Bombay High Court

Case No : Writ Petition No. 2808 of 2012

Mrs. Charumathi Kannappa Mudaliar

APPELLANT

Vs

Municipal Corporation, Municipal Commissioner Municipal Corporation, Education Officer Municipal Corporation and Keshavji Vasanji Kesharwala Ghatkopar Sarvajanik School

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 5 ABR 219 : (2013) 6 ALLMR 558 : (2013) LabIC 3338 : (2013) 5 MhLj 461

Hon'ble Judges : S.J. Vazifdar, J;M.S. Sonak, J

Bench : Division Bench

Advocate : Rahul G. Walia, for the Appellant; Komal Punjabi for B.M.C.-Respondent Nos. 1 to 3 and Mr. Shailesh More, for the Respondent

Final Decision : Disposed Off

Judgement

M.S. Sonak, J.—By an order dated 25th March, 2013, the parties were put to notice that the matter may be disposed of finally, at the admission stage itself. Accordingly, Rule. Rule is made returnable forthwith with the consent of all the parties.

2. The petitioner, who possesses the qualifications of B.A. and B.Ed. (Physical Education & History) was appointed as an Assistant Trained Teacher with respondent No. 4 School (recognized and aided school) with effect from 7th June, 1982. The Education Officer-respondent No. 3 approved the appointment of the petitioner with effect from 7th June, 1983 and the petitioner was confirmed in service with effect from 13th June, 1983.

3. The petitioner, right from the date of her initial appointment and upto the date of her retirement, upon attaining the age of superannuation, i.e., upto 31st October, 2009 was paid salary and other benefits payable to an Assistant Trained Teacher.

4. There is no dispute that the service conditions of the petitioner entitle her to draw pension upon superannuation. However, for a period of about two years, no pension was paid to the petitioner. Ultimately, pension payments commenced on the basis that the petitioner had superannuated as an Assistant Untrained Teacher. There is a difference in the pay scales of Assistant Trained Teachers and Assistant Untrained Teachers. This difference, naturally persists in the matter of payment of pensionary benefits as well.

5. The impugned action was defended on the basis that the petitioner's initial appointment as an Assistant Trained Teacher was defective. The defect stated was that the qualifications for the appointment of Assistant Trained Teacher was SSC/HSC with Diploma in Education (D.Ed), whereas the petitioner's qualifications were B.A., B.Ed. (Physical Education and History). The petitioner's qualifications were not only in the relevant field but were admittedly higher than the requisite qualifications. Despite the same, the petitioner's initial appointment almost 27 years prior to the date of her superannuation was not only virtually annulled, but the respondents even seek recovery of the difference in pay between trained and untrained teachers and further resist the payment of pension and other pensionary benefits commensurate to the post of Assistant Trained Teacher.

6. In our judgment, respondents action is totally unreasonable, arbitrary and violative of Article 14 of the Constitution of India. There is no dispute that the petitioner possessed qualifications of B.A. and B.Ed., which are much higher than the minimum prescribed qualifications of SSC/HSC with D.Ed. It is not the respondents case that possessing higher qualifications disqualifies a candidate from occupying the post. Nor is it contended that the qualifications possessed by the petitioner are either not appropriate or have no nexus with the post held by her for almost 27 years. The petitioner's appointment was duly approved and the petitioner throughout her service period was treated as the Assistant Trained Teacher, which clearly she was. The petitioner during her entire service period has been paid salary of an Assistant Trained Teacher. In these circumstances, we find absolutely no justification on the part of the respondents even to suggest that the petitioner's initial appointment, made 27 years prior to the date of her superannuation, was in any manner defective. In the context of the post of Assistant Trained Teacher, the possession of degree of B.A. and B.Ed. cannot be said to be qualifications, which have no nexus with the post or the duties assigned to the post. This has rightly not even been the case of the respondents. Accordingly, we find no justification in permitting the respondents to recover any alleged arrears or to deny pension or pensionary benefits commensurate to the post of the Assistant Trained Teachers to the petitioner.

7. In some what similar circumstance, a Division Bench of this Court in case of Baptist Anthony Rumao Vs. Municipal Corporation of Greater Mumbai & ors. (Writ Petition No. 1029 of 2012) decided on 26th July, 2012, expressed distress at the Municipal Corporation of Greater Bombay seeking to make recoveries and

denying pensions to a Teacher on the ground that his initial appointment 28 years prior to the date of his superannuation, was defective and that such a teacher was only entitled to be appointed as Assistant Untrained Teacher. The Teacher in the said case, had in fact, expired after attaining the age of superannuation and arrears were sought to be recovered from the widow and pension was proposed to be paid to the widow commensurate to the post of the Assistant Un-trained Teacher. The Division Bench restrained the MCGM from making any recoveries and further directed that pension be paid commensurate to the post of Assistant Trained Teacher. Directions were also given to pay interest of 12% per annum upon the arrears. The Division Bench, at paragraph "2" made the following observations:

2...Treating the deceased employee as an untrained teacher and directing the recovery of such salary from the date of appointment until her retirement is ex-facie an arbitrary requisition made without application of mind. It is distressing as to how such a requisition could be made by the Municipal Corporation, particularly after the employee has died upon superannuation from service, having rendered 28 years service as a primary teacher.

8. The issue is, therefore, no longer res-integra. In fact, the case of the present petitioner is upon a better footing than the Teacher in Writ Petition No. 1029 of 2012. Any attempt to recover the difference from the petitioner, on the basis that the petitioner should have been appointed only as Assistant Untrained Teacher is ex-facie, illegal and unjustified. So also the denial of pension and pensionary benefits commensurate to the post of Assistant Trained Teacher, in which post the petitioner has actually discharged the duties for a period of almost 27 years prior to her superannuation, is also arbitrary, illegal and unjustified. The impugned communication dated 29th December, 2011, which directs recoveries is liable to be quashed and set aside.

9. The petitioner was not even heard or offered any opportunity to show cause prior to the respondents arriving at unilateral decision to treat her as the Assistant Untrained Teacher. Undoubtedly, the decision visits the petitioner with civil consequences, inasmuch as it involves recovery of money and denial of pension commensurate to the post of Assistant Trained Teacher. Merely because, this was attempted to be done after the petitioner had attained the age of superannuation, by itself is no reason to avoid compliance with the principles of natural justice and fair play. In any case, we do not base our decision only upon the failure on the part of the respondents to comply with the principles of natural justice and fair play. We have decided the case on merits.

10. In the case of D.S. Nakara and Others Vs. Union of India (UOI), , in the context of pension, the Supreme Court has made following observations:

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been

swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad Vs. The State of Bihar and Others*, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab and Another Vs. Iqbal Singh*, .

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life....

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

11. In the circumstances, Rule is made absolute in terms of prayer clauses (a), (b) and (c). However, the interest shall be at the rate of 12% per annum. The order shall be complied with by 15th September, 2013. Needless to add that the interest will be paid only on the arrears, i.e., the differential amount. There shall be no order as to costs. The Writ Petition is, accordingly, disposed off.