
(2002) 09 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 1971 of 1990

Purshottam Trivedi

APPELLANT

Vs

Zilla Parishad and Another

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Citation : (2003) 1 ALLMR 665 : (2003) 2 BomCR 307 : (2003) 1 MhLj 437

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : S.R. Deshpande, for the Appellant; V.V. Naik and K.S. Dhote, AGP, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—The petitioner claims that he was confirmed before 31-12-1965 on account of which his age of superannuation should to 60 years, but he was retired from service with effect from 1-1-1988. The petitioner, therefore, approached this Court in the month of June 1990 seeking to challenge the retirement with effect from 1-1-1988.

2. We have heard learned advocates appearing on behalf of both sides. Learned advocate for the petitioner, relying upon the judgment of Division Bench of this Court in Mrs. Susheela Sudhakar Pathak v. The Chief Executive Officer, ZP, Buldana and Ors., Writ Petition No. 510 of 1996, decided on 19th March 1998, has submitted before us that the case of the petitioner is covered by the said judgment and that the petitioner's retirement/superannuation should have been on completion of 60 years instead of 58 years when he was ordered to be superannuated.

3. On the other hand, learned Advocate for respondent No. 1 urged before us that the judgment of the Division Bench referred to above, cannot be applied to the case of petitioner since in the case of petitioner, there was a fresh selection by the Subordinate Services Selection Board and after the said selection, the

petitioner was appointed on temporary basis in terms of order dated 7th August 1962 and the appointment was subject to final selection by the District Selection Board. It appears that the District Selection Board did not meet and the petitioner had retired. Learned AGP also urged before us that it was altogether a new appointment of the petitioner and no benefit of any earlier service could be extended to the petitioner so as to attract the superannuation age of 60 years which was provided in case of employees who were confirmed prior to 31-12-1965. Therefore, both the learned Advocates for respondent have urged before us that the petitioner was not entitled to continue beyond 58 years and no interference is called for.

4. The petitioner had joined service as Primary School Teacher on 9-9-1947 and he continued to work as Primary School Teacher till 24-6-1951. Thereafter the petitioner was appointed as English Teacher with effect from 25-6-1951 in the Middle School run by Janpath Sabha. He was transferred to Kotha on 13-6-1952 where he joined on 21-6-1952 and worked upto 31-3-1953. The petitioner was then appointed as Primary School Teacher on 1-4-1953 and he worked as such till 9-7-1953. Thereafter on being appointed as English Teacher at Akola Bazar, the petitioner worked upto 15-6-1954 when he was transferred to Kotha where he worked upto 1-7-1957. Petitioner was then transferred to Pimpalgaon. Petitioner then passed his B.A. examination in 1958. He continued to work at Pimpalgaon from 7-7-1953 till 30-6-1960. Petitioner was thereafter sent for BT Training at Amravati from 1-7-1960 to 31-3-1961. Upon formation of Zilla Parishad, the petitioner was appointed on 7-8-1962 in Zilla Parishad High School. There is no doubt that the appointment under this order dated 7-8-1962 (Annexure B) was stated to be provisional on purely temporary basis and subject till vacancy exists or till he is finally selected by the District Selection Board. It is an admitted fact that the petitioner continued in service and retired on 1-1-1988. This order further shows that the petitioner was selected by the Selection Board appointed by the Chief Executive Officer for employment in the Government Department. A copy of this order was forwarded to the Head master where the petitioner was working, for information and necessary action and the joining reports were to be awaited. It appears that after the formation of Zilla Parishad, Selection Board was appointed in order to determine the suitability of the teachers already working in Janpath Sabha schools and the Selection Board selected the petitioner for the same. In the circumstances, it cannot be said that it was a fresh appointment as argued by learned Advocate for respondents, but it was an appointment made after determining the suitability of the petitioner who was earlier working in Janpath Sabha School. In these circumstances, the service rendered by the petitioner prior to the appointment on 7th August 1962 cannot be totally wiped out. Admittedly, the petitioner was appointed in the High School on 7-8-1962. Under Rule 7 of the MP Secondary School Code which was in force at the relevant time, if a teacher continued for a period of two years, unless the appointing authority for reasons to be recorded in writing otherwise directed, such a teacher was deemed to have been confirmed in that appointment. Rule 7

of the said Code reads as under:--

"7. Conditions of service of teachers.--(1) All headmasters and teachers, except those appointed temporarily for a period of not less than one year, shall be on probation for a term of one year which may be extended to two years, if after two years of service, any headmaster or teacher is continued in his appointment, he shall, unless the appointing authority, for reasons to be recorded in writing otherwise directs, be . deemed to have been confirmed in that appointment. On confirmation, the headmaster or the teacher, as the case may be, shall sign a contract of service in the form prescribed in Form HI or IV appended to this Code, as the case may be, as soon as practicable :

Provided that the above provisions shall not apply to the case of any special teacher appointed under a special agreement after taking the sanction of the Board, or to the case of a person already employed on contract in writing executed before the commencement of this Code, unless he agrees to substitute it with the new agreement."

Even as per Annexure 64 vide rule 82 of the Secondary School Code, the petitioner would be deemed to have been confirmed on completion of two years from 7-8-1962, that is to say, before 31-12-1965. The relevant rule under the said Code, reads as under :--

(i). The age of retirement of teachers in Non-Government Secondary Schools in Vidarbha who were confirmed on 31st December 1965 should be 60 years."

5. In fact, all the objections which are taken by the respondents had been considered by the Division Bench in Mrs Susheela Pathak v. The CEO, Zilla Parishad, Buldana (supra) wherein it is pointed out that from 1-5-1962, after the establishment of Zilla Parishads, the Schools run by the erstwhile Janpath Sabha came to be transferred to Zilla Parishads. In the said case, the petitioner was interviewed and selected by the Subordinate Selection Board and from 1-1-1970 she was appointed as Upper Division Teacher. The question of deemed confirmation was also considered by the Division Bench of this Court in para 7 of the said judgment wherein it was held that by virtue of Section 7 of the MP Secondary School Code which was a condition of service of the petitioner, the petitioner must be deemed to have been confirmed in service with effect from 3-7-1961 on which date she had completed two years of service. The judgment in the said case applies to the present case on all fours.

6. In view of the above, we are of the opinion that the petitioner was entitled to continue till the age of 60 years. He was, however, retired on 1-1-1988 and he approached the Court only in June 1990 after the said period of two years was already over. In view of this, though the contention of the petitioner is upheld, we are not inclined to grant back-wages to the petitioner from 1-1-1988 till the age of completion of 60 years but we are of the view that the petitioner should be given notional increments for the said years and his pension should be fixed taking his age of superannuation as 60 years and the petitioner should be given

all pensionary benefits accordingly.

7. Learned Advocate for the petitioner has also submitted before us that there was considerable delay in payment of pension, even taking the date of retirement as 58 years and on delayed payment, petitioner is entitled to interest. In this respect, learned Advocate for the petitioner has pointed out the Government Resolution dated 22nd November 1994 which provides for interest in respect of arrears of pay at the rate of interest payable under the Provident Fund Rules. According to learned Advocate for petitioner, the interest payable on G.P.F. at the relevant time was 12% per annum and he should be paid interest @ 12% per annum. In these circumstances, we direct that in respect of payment of arrears of pension and other dues which were payable to the petitioner taking the age of superannuation as 58 years, but were paid late, the petitioner will be entitled to interest @ 12% per annum from the date they were due till they were paid. The difference, if any, be paid within a period of three months from today. Insofar as arrears resulting on account of order in question is concerned, the arrears be paid within a period of three months. If the arrears are not paid within three months, amount of arrears shall carry interest @ 12% per annum from today onwards.

8. In view of the above, writ petition is allowed and rule is made absolute in the aforesaid terms with no order as to costs. Compliance report shall be filed by respondent No. 1 and the matter be listed on Board after three months for filing compliance report.