(2019) 07 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 6143, 1196, 11207 Of 2016

Umabai APPELLANT

Vs

State Of Maharashtra And Ors RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 6, 9(39), 30, 31
Constitution Of India, 1950 — Article 21

Citation : (2019) 07 BOM CK 0017

Hon'ble Judges : S.V. Gangapurwala, J;A.M. Dhavale, J

Bench : Division Bench

Advocate : Vitthal G. Salgare, P. V. Diggikar, N. S. Kadam, Shrikant K. Patil, Vivek V. Bhavthankar, B. A. Shinde

Final Decision : Allowed

Judgement

S.V. Gangapurwala, J

1. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioners assail the Government Resolution dated 04.10.1983 and the letters dated 02.03.2007 and 09.03.2010, so also order dated 19th July,

2014 issued by respondent Nos. 1 and 3 denying the pension and pensionary benefits to petitioners.

3. All these petitioners except petitioner No. 5 are appointed prior to the impugned Government Resolution dated 04.10.1983. All the petitioners

possess S.S.C. qualification, however, did not possess D. Ed. qualification. All these petitioners retired on attaining age of superannuation. These

petitioners are denied the pensionary benefits on the ground that they did not possess the qualification of trained teacher. Under the Government

Resolution dated 04th October, 1983, the Government took a decision that, assistant teachers appointed on or before 1972, not possessing D. Ed.

qualification, but possessing only S.S.C. qualification shall be deemed to be trained teachers. The petitioners are appointed after the year 1972.

4. The learned counsel for petitioners submit that, providing the cut off date i. e. teachers appointed prior to 01.07.1972 and not possessing

qualification of D. Ed. shall be treated as deemed trained teachers thereby leaving out the teachers appointed after 01.07.1972 is illegal and erroneous.

The said cut off date could not have been provided. The cut off date 01.07.1972 provided in the impugned Government Resolution is unreasonable,

arbitrary and illegal. The learned counsel rely on the judgment of the Apex Court in a case of D. S. Nakara and others Vs. Union of India reported in

(1983) 1 SCC 305. The learned counsel also rely on the judgment of the Division Bench of this Court in a case of Smt. Gokula Vilas Patil Vs. The

Education Officer (Primary) and others reported in Writ Petition No. 5110 of 2012 decided on 13.12.2017. According to the learned counsel the

Maharashtra Civil Services (Pension) Rules nowhere provide that if a person is working on substantive post and is regularly appointed, but does not

possess the qualification of a trained teacher is not eligible for pension. The Executive Instructions cannot override the statutory rules. The learned

counsel rely on the judgment of the Apex Court in the case of State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another reported in

(2013) 12 SCC 210 and the judgment of this Court in Writ Petition No. 3680 of 2004 decided on 25.02.2005 Nishad Sadashiv Pawar and others Vs.

Dnyansadhana College and others and judgment of the Apex Court in the case of P. Dulsi Das and others Vs. Govt. of A. P. and others reported in

2003 AIR (SC) 43. According to the learned counsel, the pension is not a bounty or concession, but the property and a right. The learned counsel rely

on the judgment of the Apex Court in the case of Kerala State Road Transport Corporation Vs. K. O. Varghese and others reported in (2003) 12

SCC 293. Pension is fundamental right within the meaning of Article 21 of the Constitution of India. Reliance is placed by the learned counsel for

petitioners on the judgment of the Apex Court in a case of Salabuddin Mohamed Yunus Vs. State of Andhra Pradesh reported in reported in (1985) 1

SCC 43. The learned counsel further rely on the judgment of the Apex Court in a case of A. P. Srivastava (Dead by L.Rs.) Vs. Union of India reported in (1995) 6 SCC 227 and in the case of Yashwant Hari Katkkar Vs. Union of India and others reported in (1996) 7 SCC 113 to submit that

temporary employee is also entitled for pension and pensionary benefits. Reliance is also placed by the learned counsel on the judgment of the Apex

Court in a case of National Insurance Co. Ltd. and another Vs. Kirpal Singh reported in 2014(5) SCC 189 to submit that, upon completion of ten years

of service employee is entitled for pension and that the provision for payment of pension is beneficial provision and has to be interpreted in favour of

the employee. Reliance is also placed on the order of the Division Bench of this Court in a case of Murlidhar Yadan Tonpe Vs. State of Maharashtra

under judgment dated 16.02.1996 in Writ Petition No. 3255/1997, in a case of Devidas Bhiku Borkar and others Vs. State of Maharashtra and another

vide judgment dated 19.07.2011 in Writ Petition No. 7458 of 2010, in a case of Mahatma Phule Krishi Vidyapeeth Vs. Ganpat S/o Kisan Karle

judgment dated 03.03.2016 in Writ Petition No. 8000 of 2015. So also judgment of the Hon'ble Apex Court in a case ofS tate of Bihar Vs. S. A.

Hassan reported in (2002) 3 SCC 566 and in a case of Union of India Vs. S. Dharmalingam reported in (1994) 1 SCC 179.

5. The learned Assistant Government Pleader submits that, the petitioners admittedly were not possessing qualification as is required under the

Maharashtra Employees of Private Schools (Condition of Service Regulation) Act or the service rules applicable to them. They were untrained

teachers, as such they are not entitled for pensionary benefits. The State Government issued a Government Resolution dated 04th October, 1983 to

consider the situation as existing then that is prior to 1972. All these petitioners are appointed after the year 1972, as such cannot claim the same

benefit. They form a different class. The petitioners possess only S.S.C. qualification. They continued in service as untrained teachers till their

superannuation. The issue of extending pensionary benefits on retirement to untrained teachers was under consideration of the Government of

Maharashtra. The Government of Maharashtra after deliberation issued clarification on 02nd March, 2007 informing that untrained teachers appointed

after 01.07.1972 are not eligible and cannot be considered for pensionary benefits. The Government has taken a consistent stand and policy decision to

refrain from extending pensionary benefits in favour of untrained teachers appointed after 01.07.1972. Said policy is followed till date. The learned A.

G. P. places reliance on the judgment of the Division Bench of this Court in a case of Smt. Gokula Vilas Patil Vs. The Education Officer (Primary)

Sangli and others judgment dated 26.11.2009 in Writ Petition No. 2479 of 2009.

6. We have considered the submissions canvassed by learned counsel for the parties.

7. It has been time and again reiterated by the Apex Court that pension is neither a bounty, nor matter of grace depending upon the sweet will of the

employer and that it creates vested right. Pension is not exÂgratia payment, but it is a payment for the past service rendered. Pension is a social

welfare measure rendering a socioÂeconomic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that

in their old age they would not be left in lurch. Pension is a deferred compensation for service rendered for a long time gracefully and satisfactorily

and as a consideration of his past service. It is a secured health and support to an exÂemployee who is no more in a position to work and earn after

devoting his prime time of life to the service of the State.

8. The respondents did not dispute that the petitioners herein had put in the qualifying service. The petitioners were duly appointed by following

selection process as contemplated under the law. They were appointed on sanctioned and substantive post. Their appointments are approved. They

are paid salary as untrained teachers till the date of their superannuation. It is not the case of the respondent No. 4 that, the petitioners at the time of

securing appointment had played a fraud or suppressed the fact of their qualification. The petitioners never represented that they are trained teachers.

9. The Maharashtra Zilla Parishad District Services Rules provide that, provisions of the Pension Rule shall apply.

10. All the parties agree that the Maharashtra Civil Services (Pension) Rules, 1982 (for short â??Pension Rulesâ??) is applicable to the case in hand. It

is also not disputed that at no point of time any departmental proceedings were initiated against the petitioners, nor they had suffered any disability

except the fact that they were untrained teachers.

11. Rule 6 of the Pension Rules provide that any claim to pension or family pension shall be regulated by the provisions of these rules in force at the

time when a Government servant retires or retired or is discharged or dies, as the case may be. Pensionable service is defined in Rule 9 (39) of the

Pension Rules. â??Pensionable service means service which qualifies the Government servant performing it to receive a pension from the

consolidated fundâ?. Rule 30 of the Pension Rules provides that, subject to the provisions of these rules, qualifying service of a Government servant

shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity,

provided that at the time of retirement he shall hold substantive or permanent post in Government service or holds a suspended lien or certificate of

permanency. Rule 31 of the Pension Rules deals with conditions subject to which service qualifies. Same reads thus :

The Maharashtra Civil Services (Pension) Rules,

1982.

1. â?¦......

2. â?¦......

31. Conditions subject to which service qualifies

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined

by the Government.

(2) For the purposes of sub rule (1) the expression â??serviceâ? means service under Government and paid by Government from the Consolidated

Fund of State or a Local Fund administered by Government but does not include service in a nonÂpensionable establishment unless such service is

treated as qualifying service by Government.

(3) In the case of a Government servant be longing to the Central Government, who is permanently transferred to a service or post to which these

rules apply, the continuous service rendered under the Central Government in an officiating or temporary capacity, if any, followed without interruption

by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be,

shall qualify:

Provided that nothing contained in this subÂrule shall apply to any such Government servant who is appointed other wise than by deputation to a

service or post to which these rules apply.

12. The Pension Rules read in its entirety nowhere stipulates that if a person is

appointed on substantive post by following due selection process and

completes 10 years or more service till the date of his superannuation and against whom no departmental or judicial proceedings are pending is disÂ?

entitle for pension on the ground that on the date the employee was appointed and retires on attaining age of superannuation was untrained.

13. It is not disputed by respondents that, the petitioners were duly appointed on a substantive and sanctioned posts. They have completed the

minimum period of qualifying service. In fact, most of the petitioners have completed more than 30 years of service and honourably retired on attaining

age of superannuation. They were treated as regular employees, were paid the regular salary, their appointments are approved as per their

qualification. No rule exists in the Pension Rules that would deny the petitioners right to claim pension. The posts these petitioners were holding, were

never declared to be non pensionable or that the posts created by it shall not be qualifying service for pension. In absence of any rules, denying the

right to get pension to the petitioners will not be permissible.

14. The Government Resolution dated 04.10.1983 prescribing that those appointed prior to the cut off date i. e. 01.07.1972 and possessing only S.S.C.

qualification would be deemed trained teachers not those appointed till the date of Government resolution is unreasonable classification as is observed

by the Division Bench of this Court under judgment and order dated 13.12.2017 in a case of Smt. Gokula Vilas Patil Vs. The Education Officer

(Primary) Sangli and others referred to (supra). The Division Bench of this Court at its Principal Seat at Bombay in the said case has observed that,

the cut off date for making the pensionary benefits applicable to the untrained teachers as on 01st July, 1972 cannot be said to have any nexus with

the object sought to be achieved. This Court in the said judgment further observed that, it would have been a different matter, had the State

Government notified the date of Government Resolution or subsequent date as a cut off date for making the pensionary benefits applicable. However,

by the 1983 Government Resolution the State could not have gone backward by nine years to provide a cut off date.

15. The provisions of the Government Resolution dated 04th October, 1983 are self eloquent. It has been observed in the said Government Resolution

that these teachers have rendered laudable service and during their tenure the educational institutions have prospered and the results of such

institutions are also excellent. The Division Bench in the case of Smt. Gokula Vilas Patil Vs. The Education Officer (Primary) Sangli and others

(supra) further observed that, cut off date provided does not have any rational and one could have considered, if the cut off date provided was the

date of Government Resolution or the subsequent date and in clear words observed that the Government Resolution does not have any nexus with the

object. The Division Bench further observed that, by the 1983 Government Resolution, the State could not have gone backward by nine years to

provide a cut of date.

16. Moreover, it would appear that all these petitioners were appointed after following due selection process. Their appointments have been approved

and for all purposes they were treated as regular employees on substantive posts. They have rendered their services till the age of superannuation. Till

the date of retirement these petitioners were at no point of time treated as ineligible for appointments. It is not case that the petitioners have

suppressed or misrepresented about their qualification. The respondents consciously allowed petitioners to render services till they retired on attaining

the age of superannuation. Their service record is unblemished and are appointed after following due selection process. They have rendered their

services to the satisfaction of the institution and the authorities. They were paid salaries from the funds of the State.

17. As these petitioners were treated as regular employees working and officiating on substantive vacant posts till the age of their retirement, they

were allowed to be honorably retired on attaining age of superannuation. Some of them have been promoted as Head Master. Thereafter the

respondents could not have come with the case that these petitioners are not entitled for retiral benefits and pension on the ground that they did not

possess necessary qualification. It would be too late in the day for the State to contend that, these petitioners would not be entitled for retiral and

pensionary benefits on account that they did not possess the required qualification.

18. Considering the aforesaid conspectus and the discussion supra, we direct that the petitioners would be entitled for pension and pensionary benefits.

The respondents shall consider case of the petitioners for pensionary benefits and shall not refuse to grant pensionary benefits to the petitioners on the

ground that they did not possess the necessary qualification. The same shall be considered expeditiously and preferably within a period of four (04)

months from the date of this order.

19. In the light of the above, rule is made absolute in above terms. No costs.