



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.253 OF 2020

Dr. V.N. Madhu,
60 years,
residing at A-204, Keshav Shrishti
CHS, New Link Road, Chincholi,
Malad (W), Mumbai 400 064.Petitioner

Versus

1. S.S. & L.S. Patkar-Varde College
Through it Headmaster/Principal
S.V. Road, Goregaon (West)
Mumbai, Maharashtra 400 062
2. Chikitsak Samuha,
Through its Secretary
52, Sadavshiv Street,
Cross Lane, Girgaon,
Mumbai- 400 004
3. Deputy Director of Education,
Mumbai Division, Mumbai
Jawahar Balbhavan,
Charni Road, Mumbai-04.
4. State of Maharashtra,
Through its Department of School
Education & Sports,
Hutatma Rajguru Chowk,

Madam Cama Road,
Mantralaya Extention,
Mumbai-400032.

....Respondents

Mr. Mihir Desai, Senior Advocate a/w Ms. Sanskruti Yagnik,
Advocate for the Petitioner.

Mr. Rahul Nerlekar (Through VC), Advocate for Respondent Nos.1
and 2.

Ms. Jyoti Chavan, Additional G.P., for Respondent-State.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

RESERVED ON : 27th MARCH, 2025

PRONOUNCED ON : 17th APRIL, 2025

JUDGEMENT (PER ASHWIN D. BHOBE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally by consent of the parties.

2. Grievance of the Petitioner is that the Respondent Nos. 1 and 2 have refused to compute the qualifying service of the Petitioner w.e.f. 01.09.1989, for the purpose of retiral benefits of service including pension and gratuity. Order dated 03.01.2019 passed by the Under Secretary, Government of Maharashtra, rejecting the request of the Petitioner to consider his service prior to 03.03.1998 is assailed in this petition.

3. **Factual Matrix:-**

(a) On 12.07.1986, Petitioner, a candidate from open category was appointed as Assistant Teacher in Bhavan's Somani College, Mumbai on temporary basis against a reserved vacancy.

(b) Services of the Petitioner as Assistant Teacher (Biology) were terminated by the Respondent Nos.1 and 2 w.e.f. 20.06.1987.

(c) Petitioner questioned the order of termination dated 20.06.1987, before the School Tribunal, Mumbai.

(d) By order dated 20.10.1987, the School Tribunal refused to interfere with the order of termination, however, directed the Respondent Nos.1 and 2 to pay the Petitioner compensation in terms of one month's salary.

(e) Petitioner questioned the order dated 20.10.1987 passed by the School Tribunal, before this Court in Writ Petition No.176 of 1988 (renumbered as Writ Petition No. 4377 of 1997). This Court by an interim order restrained the Respondent Nos.1 and 2 from appointing any person other

than the Petitioner in the Junior College as a teacher in Biology unless and until the Petitioner was absorbed in Patkar College, Goregaon.

(f) Pending the said petition, Respondent Nos.1 and 2 by order dated 01.08.1989, appointed Petitioner as Assistant Teacher (Biology) w.e.f. 01.09.1989.

(g) Writ Petition No.4377 of 1997 was disposed off by enhancing the compensation from one month to six months pay. Challenge of the Petitioner to the termination order 20.06.1987 was negated.

(h) Consequence of the disposal of Writ Petition No.4377 of 1997, appointment of Petitioner as Assistant Teacher made pursuant to order dated 01.08.1989, was terminated on 10.10.1997.

(i) By order dated 03.03.1998, Respondent Nos.1 and 2 appointed the Petitioner as Assistant Teacher (Open Category).

(j) Petitioner retired on 31.07.2017, upon attaining the age of superannuation.

(k) Petitioner is before this Court seeking the following substantial reliefs:

“(a) That the Hon’ble Court be pleased to issue a writ of certiorari or a writ or order or direction in the nature of certiorari or any other appropriate writ or order thereby quashing and setting aside the impugned order dated 3rd January 2019 annexed herein above as Exhibit O.

(b) That the Hon’ble Court be pleased to issue a writ of mandamus or a writ or order or direction in the nature of mandamus or any other appropriate writ or order directing the Respondents herein to forward the proposal of retiral benefits of the Petitioner including that of pension and gratuity by counting the qualifying service of the Petition w.e.f. 1st September 1989;

(c) That the Hon’ble Court be pleased to issue a writ of mandamus or a writ or order or direction in the nature of mandamus or any other appropriate writ or order directing the Respondents herein to process and release within 3 months to the Petitioner, by computing the qualifying services of the Petitioner w.e.f. 1st September 1989, all retiral benefits of service including pension and gratuity benefits with interest at the rate of 12% per annum counted from the date of retirement i.e. 1st August, 2017”

4. Respondents have appeared through their respective Counsels.

5. On 27.01.2025, this Court passed the following order:

“1. The Petitioner after having superannuated sought the condonation of break in service for the purpose of conferring certain retiral benefits which prayer is denied vide impugned order dated 3rd October, 2019.

2. Looking into the facts that the Petitioner stood superannuated in 2017 and the terminal benefits are not released, we deem it appropriate to grant four weeks’ time by way of last chance to file affidavit in reply.

3. List the Petition on 3rd March, 2025.”

6. Respondents though opposed the Petition, however, have not filed reply.

7. Mr. Mihir Desai, learned Senior Counsel on behalf of the Petitioner, has advanced the following arguments:

(i) Though the services of the Petitioner was terminated on 20.06.1987, this Court in Writ Petition No. 4377 of 1997, had restrained the Respondent Nos.1 and 2 from appointing any other person unless the Petitioner was absorbed. Petitioner joined as an Assistant Teacher (Biology) w.e.f. 01.09.1989. By order dated 10.10.1997, this Court allowed the Writ Petition No. 4377 of 1997 by enhancing the compensation from one month to six months salary, consequently the Petitioner’s

services were immediately terminated w.e.f. 10.10.1997. Petitioner has restricted his claim for counting of his service for retiral benefits w.e.f. 01.09.1989. It is, therefore, the contention of the Petitioner that the period from 01.09.1989 till the time the Petitioner retired on 30.07.2017, is required to be counted as qualifying service of the Petitioner for retiral and other benefits.

(ii) Petitioner has worked on one and the same post w.e.f. 01.09.1989 with break in service between 10.10.1997 to 02.03.1998. Petitioner was given benefit of service of increments, senior scale and seniority. He submits that the break in service period from 10.10.1997 to 02.03.1998 (4 months and 23 days) is required to be condoned.

(iii) Impugned order dated 03.01.2019 shows complete non-application of mind and as such, is untenable.

(iv) Reliance is placed on Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 (**MCSR**) to submit that the Petitioner at the time of retirement was holding a permanent post, as such the qualifying service of the Petitioner would commence from the date she took charge of the said post to

which she was first appointed either substantively or in an officiating or temporary capacity. Petitioner's appointment w.e.f. 01.08.1989, even if considered on temporary capacity, the same would be Petitioner's initial date of appointment, consequently the qualifying service would commence from 01.08.1989. He contends that Petitioner has been working on the same post from 1989. He places reliance on the decision of this Court in the case *Pratima Dave versus State of Maharashtra and Others*,¹.

8. On the other hand, Ms. Jyoti Chavan, learned Additional G.P. for the Respondent-State has advanced the following arguments:

(i) Services of the Petitioner was terminated on 20.06.1987. Termination of the Petitioner was maintained by this Court in Writ Petition No.4377 of 1997. This Court had not passed any interim order directing re-instatement or appointment of the Petitioner during the pendency of Writ Petition No.4377 of 1997. On the contrary, this Court in its final order dated 10.10.1997 has observed that denial of re-instatement of the Petitioner was justified since the

¹ Writ Petition No.1317 of 2017 decided on 11 December, 2017.

Petitioner was not holding the post on regular basis and he was merely discharging the duties.

(ii) Appointment of the Petitioner by the Respondent Nos.1 and 2 w.e.f. 03.03.1998 is a fresh appointment, which is evident from the order dated 03.03.1998.

(iii) For the said reasons, the Respondents submit that there would be no occasion for computing the qualifying service of the Petitioner prior to 03.03.1998. Rule 30 of MCSR would not assist the case of the Petitioner. The impugned order has considered all the said aspect and has rejected the request made by the Petitioner. Services of the Petitioner prior to 03.03.1998 is of no consequence

(iv) Decision in the case of Pratima Dave (supra) is distinguishable on facts, as such, not applicable to the case of the Petitioner.

9. From the rival contentions, the question that falls for consideration is whether the service rendered by the Petitioner w.e.f. 01.08.1989 till 10.10.1997 can be considered for computing the qualifying service of the Petitioner for retiral benefits/pension? Whether the Petitioner would be entitled to condonation of break of

service for the period of 4 months and 23 days (10.10.1997 to 02.03.1998)?

Analysis:-

10. Facts as far as the initial appointment being on 12.07.1986, termination of the said services being on 20.06.1987, Petitioner being appointed on 01.08.1989 , thereafter, terminated on 10.10.1997 and subsequently, appointed as a full-time teacher on 03.03.1998 are not in dispute.

11. The controversy revolves around the period from 01.08.1989 till 10.10.1997, which period according to the Petitioner is required to be considered for the purpose of qualifying service while computing the service benefits of the Petitioner.

12. Challenge to the termination of the services of the Petitioner by Respondent No.1 was pending in Writ Petition No.176 of 1988 as on 01.09.1989 (i.e the date when the Petitioner was appointed as a temporary Assistant Teacher by order dated 01.08.1989). Reference to the interim order dated 25.07.1989 and observations made in the final order dated 10.10.1997 passed in Writ Petition No. 4377 of 1997 would be useful, as such, are

extracted herein below:

Order dated 25.07.1989 :

“That pending the hearing and final disposal of the Petition Respondent nos.1 and 2, their Committee Members, Office Bearers, Servants and Agents be prevented by an order and injunction of this Hon’ble Court, from appointing any person other than the Petitioner in Junior College as a Teacher in biology unless and until the Petitioner is absorbed in the said Patkar College, Goregaon (W), Bombay, 400 062.”

Paragraph No.5 of the order dated 10.10.1997

“5. Lastly it is urged that if there is a reinstatement after setting aside the termination, the petitioner could be declared surplus, having regard to the work load and then under the scheme of provisions of the Act he could be absorbed in any other school. We are not in a position to appreciate and examine this aspect of the matter. It is reported that the petitioner is continued by virtue of our interim order. In the meanwhile, due to change in circumstances or in case of any work load, if the petitioner could be accommodated by Management, petitioner is at liberty to approach the Management. However, we are not in a position to direct any

reinstatement.”

13. Aforesaid facts sufficiently establish that the initial appointment of the Petitioner made on 12.07.1986 on temporary basis was against a reserved post, which appointment was terminated on the ground that the appointment of the Petitioner was not against a clear vacancy. Further, the request made by the Petitioner for re-instatement in view of the changed circumstances was turned down by this Court in Writ Petition No. 4377 of 1997. Services of the Petitioner which were procured w.e.f. 01.09.1989, were immediately terminated upon disposal of Writ Petition No. 4377 of 1997.

14. Respondent Nos.1 and 2 vide appointment order dated 03.03.1998 have issued appointment to the Petitioner on a clear vacancy. Said appointment of the Petitioner w.e.f. 03.03.1998 will have to be treated as a fresh appointment.

15. Provisions of Rule 30 of the MCSR, would not assist the case of the Petitioner for the reason that the appointment of the Petitioner w.e.f. 01.09.1989 was not after undergoing the process of selection as required in terms of law. The said appointment made

vide order dated 01.08.1989 cannot be construed to be an appointment made under orders of this Court. Even otherwise, services of the Petitioner were immediately terminated on disposal of Writ Petition No. 4377 of 1997.

16. In the case of Pratima Dave (supra), initial appointment of the Petitioner was after undergoing the process of selection by duly constituting Selection Committee. As the post against which the Petitioner was appointed was for a reserved category, the Petitioner not being from the reserved category his initial appointment was for 1 year. Said appointment was continued on the same post on year to year basis for unavailability of the reserved category. It was upon the proposal of de-reservation of the said post that Petitioner was subsequently through regular selection process appointed to the post of professor against an open category. In the said facts, this Court dealt with the contentions of the Petitioner with reference Rule 30 of MCSR and gave benefit to the Petitioner by computing his initial appointment as qualifying service.

Facts in the instant case are distinguishable and as such, the decision in the case of Pratima Dave (supra) would not assist the Petitioner.

17. Petitioner's appointment prior to 03.03.1998 not being in accordance with law, as observed herein above, the contention of the Petitioner with regard to break in service for the period 10.10.1997 to 02.03.1998 would be inconsequential, more so, when the appointment of the Petitioner made on 03.03.1998 is a fresh appointment.

18. Impugned order has considered the relevant facts and we do not find an infirmity in the reasons given by the Under Secretary for holding the Petitioner being entitled to pension w.e.f. 03.03.1998 to 31.08.2017. Petition is devoid of merits.

19. For the reasons recorded herein above, **the Petition is dismissed.**

20. **Rule discharged.** There shall be no orders as to cost.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)