



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 WRIT PETITION NO. 2486 OF 2020

RANGNATH LIMBARAO CHIKATKAR,
Age : 62 years, Occu. Pensioner,
Resident of At Post Jawalgaon,
Taluka Ambajogai, District Beed.

...Petitioner

VERSUS

1. THE STATE OF MAHARASHTRA.
Through it's Secretary,
Department of School Education,
Mumbai-400032.
2. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
3. The Education Officer (Secondary),
Zilla Parishad, Beed.
4. The Superintendent,
Pay Unit, Zilla Parishad, Beed.
5. The Head Master,
Shri Hanuman Vidyalaya,
Jawalgaon, Taluka Ambajogai,
District Beed.

...RespondentS

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Shri Sachin S. Deshmukh, Advocate for the Petitioner.
Shri V.M. Kagne, AGP for Respondent Nos.1 to 3/State.
None appears for Respondent Nos.4 and 5, though served.

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 13th June, 2024

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*) :-

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

2. The issue in this petition is as to what would be the date on which the Petitioner would be deemed to have superannuated on completion of 58 years of employment and whether, the 7th pay Commission's recommendations brought into effect from 01.01.2016, would be available to the Petitioner, if he attains the age of superannuation on 31.12.2015. An offshoot of this issue would also be as to whether, the Petitioner, as a superannuated employee, would gain benefits of the 7th pay Commission's recommendations in relation to his retiral benefits and revision of pension from time to time.

3. The Petitioner is undisputedly born on 01.01.1958.

Undisputedly, his retirement is on completion of 58 years. It is equally undisputed that the Petitioner would complete 58 years of age, on 31.12.2015 and would enter his 59th year on 01.01.2016. The 7th pay Commission's recommendations have been undisputedly brought into effect from 01.01.2016.

4. The case of the Petitioner is that he has been forcefully retired from service on 31.12.2015 and that he should have retired on 31/01/2016. He was working as an Assistant Teacher with Respondent No.5 School.

5. Insofar as calculation of the completed years of age of the Petitioner having been born on 01.01.1958, he would complete 58 years of age, on 31.12.2015. There can be no debate that insofar as in-service benefits under the 7th pay Commission's recommendations are concerned, a person in service would be eligible for continued salary benefits and other consequential benefits prescribed under the 7th pay Commission's recommendations. The Petitioner having completed 58 years in employment on 31.12.2015, could not have been continued in employment or his superannuation could not have been

postponed in the light of Rule 17 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, “the MEPS Rules, 1981”).

6. Relevant portion of Rule 17 reads thus:-

- “17. Superannuation and re-employment
(1) An employee, other than Class IV employee, shall retire from service on the date on which he attains the age of 58 years and under no circumstances he shall be granted an extension in service beyond that age. The age of superannuation of a lower grade employee shall be 60 years:*

Provided that, a teacher or a Head of a recognised private secondary school in the Vidarbha Region of the State who was permanent in service on the 31st December 1965, irrespective whether he continues to serve in the same school or has joined [some other school after 31st December 1965] shall retire on the date on which he attains the age of 60 years.

Note: If the date of superannuation of an employee happens to fall in the middle of the month, he shall be continued in service till the last day of the month in which the date of superannuation falls.”

7. A plain reading of the above Note below Rule 17, indicates that if an employee happens to attain the age of superannuation in the middle of the month, he is required to be

continued in service till the last date of the month in which the date of superannuation falls. For example, if the Petitioner is to complete 58 years of age on 15.01.2016, or any time thereafter in the said month, he would have to be continued till 31.01.2016. Nevertheless, Rule 17 of the MEPS Rules, 1981 only talks of the **‘middle of the month’**. There is no clarity on this issue. As such, for reference purpose, we are relying upon Rule 10 of the Maharashtra Civil Services (Pension) Rules 1982, more particularly Note-1 below Rule 10 which prescribes that “*A Government servant whose date of birth is the 1st of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 years or 60 years, as the case may be*”.

8. Since the Petitioner was born on 01.01.1958, there is no controversy that he has completed 58 years of age on 31.12.2015. His superannuation on 31.12.2015 cannot be faulted. The contention of the Petitioner that he should have retired on 31/01/2016, is fallacious. Consequentially, since the 7th pay Commission’s recommendations are made applicable from 01.01.2016, we conclude that he would not be getting the in-

service benefits of the said recommendations as like employees who are in service.

9. The learned Advocate Shri Deshmukh has raised an issue, which needs consideration. He contends that even if the Petitioner may be deemed as superannuated on 31.12.2015, post superannuation he would be entitled for all retiral benefits including pensionary benefits. While calculating pension, if there is any enhancement, as a consequence of the 7th pay Commission's recommendations, applicable to employees who have already superannuated, such benefits will have to be made available to the Petitioner as a pensioner.

10. The learned AGP submits that if there is increase in the pension as per the recommendations of the 7th pay Commission or an increase in the Dearness Allowances impacting the pay structuring which would benefit the superannuated employees, the Department would consider the same and all such benefits, as may be available to the pensioners after applicability of the 7th pay Commission's recommendations, would be made available to the pensioners like the Petitioner.

11. In view of the above, this **Writ Petition is disposed off. Rule is discharged.**

12. Before parting with this matter, we find that there is some ambiguity in the Note below Rule 17(1) of the MEPS Rules, 1981, reproduced above, which indicates that if the date of superannuation of an employee falls in the '***middle of the month***', he will be entitled to continue in service till the last day of the month in which the date of superannuation falls. By way of an illustration, would the 14th day or 15th day of the month amount to be termed as 'middle' of the month? Would the 16th or 17th day of the month be termed as 'after middle' of the month? If the month comprises of 31 days, what should be termed as the 'middle' of the month?

13. Per contra, Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982, makes things very clear in view of the Note-1 below Rule 10, which would indicate that if a Government Employee whose date of birth is the first day of the month, he shall retire from service on afternoon of the last day of

the preceding month on attaining the age of superannuation. If an employee is born on the second day of the said month, he shall be continued till the last day of the month in which his date of superannuation falls. We expect such clarity in the Note below Rule 17 of the MEPS Rules, 1981.

14. In view of the above, since the Note below Rule 17 of the MEPS Rules is devoid of such clarity, we call upon the Principal Secretary, School Education and Sports Department, State of Maharashtra, Mantralaya, Mumbai-400032, to initiate an amendment to the said Note in order to make things clear with regard to the date of superannuation of employees in such schools, on the lines of Note-1 below Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982. Compliance be reported to this Court, within 120 days from today. The learned Registrar (Judicial) shall place a copy of this judgment before the Principal Secretary, School Education and Sports Department, State of Maharashtra, Mantralaya, Mumbai-400032.