

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.1036/2021 (S.B.)

Smt. Sushila W/o Vishnu Dahore,
Aged about 65 years,
Occ. Retired, R/o V.M.Dahore,
Revenue Colony, Nagardas Road,
Malegaon, Dist. Washim.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Women & Child Development,
Mantralaya, Mumbai- 400 032.
- 2) The Divisional Commissioner,
Amravati Division, Amravati.
- 3) The Chief Executive Officer,
Zilla Parishad, Washim.
- 4) The Deputy Chief Executive Officer,
Child Development, Zilla Parishad,
Washim.

Respondents

Shri G.G.Bade, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents 1 & 2.

Shri K.S.Malokar, Id. counsel for the R-3 & 4.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 02nd April, 2024.

Judgment is pronounced on 12th April, 2024.

Heard Shri G.G.Bade, ld. counsel for the applicant, Shri S.A.Sainis, ld. P.O. for the respondents 1 & 2 and Shri K.S.Malokar, ld. counsel for the respondents 3 & 4.

2. The applicant was appointed as Balwadi Teacher vide order dated 29.10.1992 (A-1). Thereafter, fresh appointment orders were issued to her on 12.07.1993 and 14.02.1995 (A-2) collectively. Under the scheme of the Government, she was appointed as Supervisor by order dated 12.12.2003 (A-3) and she was relieved on 20.12.2003 to join the post. She retired on superannuation on 30.06.2013 (A-5). She made representations to consider her services as Balwadi Teacher as pensionable service, and to condone the deficiency in service as per Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982. By the impugned communications the applicant was informed as under:-

उपरोक्त विषयानुसार आपण एकात्मिक बाल विकास सेवा योजना कार्यालय मालेगाव येथुन पर्यवेक्षिका या पदावरून नियत वयोमानाने सेवानिवृत्त झालेल्या आहेत. आंगणवाडी वरील आंगणवाडी सेविका या पदाची सेवा पेंशनसाठी ग्राह्य धरण्याबाबत विनंती अर्ज या कार्यालयास प्राप्त झालेला आहे. पर्यवेक्षिका या पदावरील आपली एकुण सेवा हि ९ वर्ष ६ महिने पुर्ण झालेली असुन त्यानुसार लाभ सुध्दा नियमानुसार आपणास अदा करण्यात आलेले आहे.

तथापी आंगणवाडी वरिल आंगणवाडी सेविका या पदाची सेवा हि पर्यवेक्षिका या संवर्गाची पदोन्नतीमधुन पदे भरतांना स्पर्धात्मक लेखी परिक्षेकरीता ग्राह्य

धरण्यात येते. पर्यवेक्षिका या पदावरील आपला सेवाकाळ हा १० वर्षांपेक्षा कमी आहे. आंगणवाडी वरील आंगणवाडी सेविका या पदाची सेवा मानधनी तसेच तात्पुरत्या स्वरूपाची असल्यामुळे नियमानुसार पर्यवेक्षिका या पदाकरीता पेंशनसाठी ग्राह्य धरता येणार नाही. करीता आपले माहितीस्तव.

उपरोक्त विषयानुसार आपण एकात्मिक बाल विकास सेवा योजना कार्यालय मालेगांव येथुन पर्यवेक्षिका या पदावरून नियत वयोमानाने सेवानिवृत्त झालेल्या आहेत. आंगणवाडी वरील आंगणवाडी सेविका या पदाची सेवा पेंशनसाठी ग्राह्य धरण्याबाबत विनंती अर्ज या कार्यालयास संदर्भान्वये प्राप्त झालेला आहे. पर्यवेक्षिका या पदावरील एकुण सेवा हि ९ वर्ष ६ महिने पुर्ण झालेली असुन त्यानुसार लाभ सुध्दा मिळण्याबाबत नमुद आहे.

तथापी या कार्यालयाचे पत्र क्रमांक ७२० दिनांक ९/९/२०१५ नुसार सदर प्रकरणी आपणास कळविण्यात आलेले आहे. तथापी संदर्भीय पत्रासोबत जोडण्यात आलेले शासनाचे पत्र आपले प्रकरणास लागु होणार नाही अशी या कार्यालयाची धारण आहे. करीता आपले माहितीस्तव.

Hence, this Original Application.

3. The respondents have not filed reply though sufficient time was granted therefor.

4. The applicant has relied on Rule 54 of the Maharashtra Civil Services, Rules 1982 which reads as under:-

54. Condonation of deficiency and addition in service

Government may, for special reasons to be recorded in writing-

(1) condone a deficiency, which may not ordinarily exceed one year, in the period of service qualifying for pension performed by a Government servant in order to qualify him to receive a Retiring Pension or to receive a pension as distinct from a gratuity; or

(2) make an addition, which may not ordinarily exceed one year, to the period of service qualifying for pension, performed by a retiring Government servant which under the provisions of these rules may be counted for pension.

Note- The power under sub-rule (1) shall be exercised only in respect of low paid Government servants retiring on Invalid or Compensation pension.

5. The applicant has further relied on the following observations of the **Hon'ble Bombay High Court in Arun K. Dhobe Vs. State of Maharashtra & Ors. (Judgment of Nagpur Bench dated 12.02.2020 in W.P. No. 4581/2019):-**

"4] The Deputy Director of Education has obviously judged the case of petitioner with reference to Clause -(1) under Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982. Obviously, it applies only in respect of low paid Government Servants retiring on invalid or compensation pension. The petitioner is not the low paid Government Servant. The petitioner is working as an Assistant Teacher, which falls in Class-III post and would, therefore, be governed by Clause- (2) of Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 reproduced above, which enables the Competent Authority to make addition, which may not ordinarily exceed one year, to the period of service qualifying for pension, performed by a retiring Government Servant which under the provisions of these Rules may be counted for pension. The petitioner is running short of five months and two days to complete the period of qualifying service of ten years for getting pension. The Deputy Director of Education shall examine the matter from this aspect of the matter".

6. The applicant has also relied on the following observations of this Bench in common judgment dated 01.08.2023 in O.A. Nos. 08, 11 & 15/2023:-

It may be reiterated that the Note to Rule 54 comes into play only when deficiency in the period of service qualifying for pension is sought to be

*condoned as provided under Rule 54(1). The Note will not come into play if question of addition to the period of service qualifying for pension is to be decided. The clarification contained in G.R. dt.03/11/2008 makes the qualifying note to the Rule applicable to both the sub-rules when it is plainly applicable only to Rule 54(1). In **Arun K. Dhobe Vs. State of Maharashtra & Ors.** case (supra), it is held that Class-III employees would be governed by Rule 54(2). In view of this authoritative pronouncement representations of the applicants ought to have been considered in the light of Rule 54 (2) alone without adverting to Rule 54(1), Note to rule 54 & clarification in G.R. dt.03/11/2008.*

In view of the factual and legal position discussed hereinabove, following order shall meet ends of justice. The O.A. is allowed in the following terms. The applicant may make a representation to the Government to make an addition to the period of her service as provided under Rule 54 (2) of the Maharashtra Civil Services (Pension) Rules, 1982 within one month from today. On such representation being made, it shall be decided on its own merits, and in the light of observations made in this judgment, within two months from the date of receipt thereof. The decision shall be communicated to the applicant forthwith. No order as to costs.

Member (J)

Dated :- 12/04/2024

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 12/04/2024
and pronounced on

Uploaded on : 15/04/2024