

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 396 OF 2021

Shri Anil Dhondiram Kore]
Age : 58 years, Occ. Retd. Assistant Teacher,]
R/o. Tal. Kagal, Dist. Kolhapur.] ... Petitioner

Versus

1. The State of Maharashtra]
2. The Accountant General,]
State of Maharashtra,]
Maharshi Karve Road, Mumbai-1.]
3. The Deputy Director of Education]
(Secondary & Higher Secondary),]
Kolhapur.]
4. Educational Officer (Secondary)]
Zilla Parishad, Kolhapur.]
5. The Chairman / Secretary]
Shikshan Prasarak Mandal, Kolhapur.]
Tal. Karvir, Dist. Kolhapur.]
6. The Principal,]
Shahu Highschool and Jr. College,]
Kagal, Tal. Kagal. Dist. Kolhapur.] ... Respondents

Mr. S.R. Vasekar i/b. Mr. Satyajeet A. Rajeshirke for the Petitioner.
Mr. A.A. Naik, A.G.P. for the Respondent Nos.1 to 4-State.

Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.

Date : 23rd December 2025.

ORAL JUDGMENT (PER : AJIT B. KADETHANKAR, J.)

1. SUBJECT MATTER:

The Petitioner has raised two moot questions in this Writ Petition as follows :

(i) Whether an employee appointed after the cut off date i.e. 01-11-2005 but while the selection procedure was commenced before such cut of date, shall be entitled for the benefits of old pension scheme ?

AND

(ii) Whether 50% of the part time service tenure can be considered for the grant of pensionary purpose in respect of an employee, who stands accommodated on full time post in continuation of the service ?

2. Heard Mr. Vasekar, learned counsel for the Petitioner and Mr. Naik, learned A.G.P. for the Respondent Nos.1 to 4-State.

3. Considering the nature of prayers averred in the Petition, we deem it appropriate to hear the Writ Petition finally by consent of the parties.

4. **Rule.** Rule made returnable forthwith.

5. Facts in brief:-

5.1 It is not in dispute that after following the due procedure of law, the Petitioner was appointed as a part time teacher in the fully aided school i.e. Shri V.P. Desai Junior College, Kowad, Tal. Chandgad, Dist.

Kolhapur. The Petitioner worked there with effect from 30-06-1995 to 30-11-2005.

5.2 On account of superannuation of one Assistant Teacher namely, V.R. Herwade, one fully aided Full Time post of Assistant Teacher fell vacant (hereinafter referred as 'the subject-matter post" for the sake of convenience) in the aided school and junior college i.e. Respondent No.6, run and administered by the Respondent No.5-School Management.

5.3 The School Management issued an advertisement to fill up the subject matter post in Daily Newspaper Nav-Sandesh on 18-05-2005. After following due process, the School Management appointed the Petitioner as Assistant Teacher on the Full Time subject-matter Post in Mathematics subject.

5.4 It is matter of fact that due to some technical confusion about the nature of post, it was shown that the Petitioner was appointed as Part Time Teacher instead of Full Time Teacher.

5.5 On 17-10-2005 a proposal for approval to the Petitioner's appointment was submitted by the School Management. However, this technical error was noticed by the Deputy Director of Education, whereby the School Management was called upon to submit the proposal for approval as a Full Time Teacher.

5.6 Consequently by correcting the earlier Order, the Petitioner was shown to be appointed as Full Time Assistant Teacher vide Order dated 30-11-2005 with effect from 01-12-2005.

5.7 The School Management and the Principal submitted a proposal seeking approval to the Petitioner's appointment on 03-04-2006 to the Respondent No.3 i.e. the Deputy Director of Education. It reveals that some queries were raised by the Deputy Director of Education and after satisfying those queries, the proposal was re-submitted on 17-04-2006.

5.8 Consequent to the re-submission of the proposal, the Deputy Director of Education was pleased to accord an approval to the appointment of the Petitioner as Full time Assistant Teacher vide Order dated 06-11-2006.

5.9 In due course of time, the Petitioner even stood superannuated on 30-06-2020.

5.10 The Petitioner then filed present Writ Petition seeking direction to add his Part Time service rendered from 1995, and at least from 06-06-2025 in addition to his service as Full Time Teacher with effect from 01-12-2005 till his retirement for the purpose of pensionary benefits.

5.11 During the course of pendency of this Writ Petition, the Petitioner amended the Writ Petition seeking directions to extend the benefits of old pension scheme to the Petitioner in the light of law developed in the field.

6. Petitioner's arguments :

6.1 Mr. Vasekar, learned counsel for the Petitioner would submit that the Petitioner is entitled to be covered by the old pension scheme and 50% of the services he rendered on part time basis should be added for the purpose of pensionary benefits.

6.2 Mr. Vasekar urges that there is no gap in the services of the Petitioner. The Petitioner was initially appointed on Part time basis and the services were duly approved. The next appointment to the post of Assistant Teacher on fully aided institute is also approved by the competent authority. Under such circumstances, the Petitioner's past service on the part time basis needs to be counted for the pensionary benefits. He would add that as per prevailing law, 50% of the part time service tenure could be computed for the purpose of pensionary benefits.

6.3 He would further submit that in the light of the fact that the Petitioner's appointment procedure was initiated much before cut off date i.e. 01-11-2005 for being considered under Old Pension Scheme, he deserves to be considered under the Old Pension Scheme.

6.4. The last submission of Mr. Vasekar, learned Counsel for the Petitioner is that the approval granted to him on consolidate pay as Shikshan Sevak for three years and his consideration for regular pay scale after three years need to be corrected by holding the Petitioner entitled for regular pay scale from the date of his appointment on the post of Shikshan Sevak holding it the post of Assistant Teacher.

6.5 In view of this Mr. Vasekar, learned counsel for the Petitioner prayed to allow the Writ Petition.

7. Respondents arguments :

7.1 Since the proposal for the pensionary benefits was moved through the School Management and as the School Management has not recorded any objection to the Writ Petition, it is evident that the School Management supports the Petitioner's claim.

7.2 Learned A.G.P. representing the Respondent Nos.1 to 4 would fairly submit that the case of the Petitioner can be considered in the light of the law laid down by this Court vide various Judgments and Orders.

7.3 Learned A.G.P. would submit that in view of the law prevailing at the relevant time, the Respondent Authorities could not be said to have erred in passing the Orders under challenge.

8. **Discussion and consideration: -**

8.1 The first moot question (supra) is answered by this Court (Principal Seat) on 03-09-2025 in the case in ***Dr. Rajendra Shankar Mahamuni Vs. Fergusson College & Ors.***¹. The relevant portion of the findings recorded by this Court are as follows :

“5. The controversy arose as to whether candidates whose selection process commenced prior to 31st October 2005, but, were appointed thereafter through the said process, would be entitled to the OPS or the DCPS. In Dnyaneshwar Balasaheb Sonawane v. State of Maharashtra¹, this Court (Coram: Ravindra V. Ghuge and Sandipkumar C. More, JJ.) analyzed the GR dated 31st October, 2005 and concluded as under:

“14. It is thus, clear that recruitment is just an initial process that MAY lead to eventual appointment in service. But, that cannot tantamount to an appointment. In the notification introducing the Amendment Rules, 2005, Rule 2(2) has been introduced by way of an amendment indicating that the Commutation of Pension Rules, 1984 would not apply to government servants who are recruited on or after 1-11-2005. The term “recruitment” has nowhere been defined in the Pension Rules applicable to the government employees.

15. There is no dispute or contra argument that Marathi language is the official language insofar as the Maharashtra State is concerned. The disentitlement clause for being eligible for the old pension scheme, in the

1 2025 SCC OnLine Bom 3171

Marathi version is in the Government Resolution dated 31-10-2005, which is at page 385 of the petition paper book.

Clause 2(A) of this Government Resolution reads thus :—

“२. (अ) शासनाने आता असा निर्णय घेतला आहे कि १ नोव्हेंबर रोजी किंवा त्यानंतर नियुक्त होणा—या कर्मचा—यांसाठी, सध्या अस्तित्वात असलेल्या निवृत्तीवेतन योजने ऐवजी, केंद्र शासनाच्या धर्तीवर, नवीन “परिभाषित आंदान निवृत्तिवेतन योजना” (Defined Contribution Pension Scheme) खाली नमूद केल्यानुसार लागू करण्यात येईल.”

16. The Marathi word appearing in the Government Resolution dated 31-10-2005 means appointed. The Marathi word does not mean recruitment or process of recruitment. The word “recruitment” in Marathi means which includes the recruitment process, which is the process undertaken for selection and appointment of candidates. We are, therefore, of the view that the Marathi version indicating the word “appointment” would lead to the interpretation of the disentitlement clause as being appointed on or after 1-11-2005. Be that as it may, even if the contention of the learned advocate for the petitioners is accepted, the recruitment process ended on 19-12-2005, which is much after the cut off date 1-11-2005.”

- 6.** *This Court (Coram: Ravindra V. Ghuge and Sanjay A. Deshmukh, JJ.) in Review Application No. 233 of 2023 in Writ Petition No. 1615 of 2023, delivered a judgment at Aurangabad on 12th October, 2023 (Vasant Rao Naik Marathwada Krishi Vidyapeeth, Parbhani v. Ganpat S/o. Maroti Sutare) and interpreted the said GR. It was concluded that*

since Marathi is the Rajyabhasha (State's official language), the Marathi version of the GR needs to be followed. This issue attracted the attention of the Court in Ganpat S/o. Maroti Sutare (supra), in view of the English translation issued by the State Government, which erroneously used the word 'recruitment' ("भरती प्रक्रीया") instead of 'appointment' ("नियुक्ती") as found in the original Marathi version. The relevant paragraphs of the said judgment read as under:

"12. The Marathi version of the Government Resolution, is published in the State language and it is not in dispute that in the event of any discrepancy, the Government Resolution in the State language would prevail. The marathi version was not brought to the notice of the Court in Khilari Rajendra (supra). So also, the judgment delivered in Dnyaneshwar Sonawane (supra) at Aurangabad, wherein the Marathi as well as the English version of the Government Resolution was considered, was not cited before the Court which decided Khilari Rajendra (supra).

13. In the light of the above, we have referred to the judgments of the learned Full Bench of this Court in Vinayak Hari Kulkarni v. State of Maharashtra, (2010) 4 Mah LJ 868 (F.B.) and Kahera Sayed v. State of Maharashtra, (2018) 1 Mah LJ 884 (F.B.). We are, therefore, of the view that it would be advantageous to refer the above inconsistency or difference of opinion on the interpretation and meaning of the Marathi version of the Government Resolution dated 31.10.2005 vis-vis the English version and Rule 2(2) of the M.C.S. (Pension) Rules,

1982, to The Hon'ble The Chief Justice of the Bombay High Court in view of Rule 8 below Chapter I of the Bombay High Court Appellate Side Rules, 1960.

14. We, therefore, frame the following issue for reference:—

While considering the applicability of either the old Pension scheme or the Defined Contribution Pension Scheme, Whether the Word (“नियुक्ती”) (appointment) as set out in the Government Resolution dated 31.10.2005 in the State language Marathi, would be decisive or whether the word “recruitment” (“भरती प्रक्रीया”) appearing in the English version of the Government Resolution dated 31.10.2005, should apply to the situation, considering Sub-Rule (2) of Rule 2 of the M.C.S. (Pension) Rules, 1982?”

7. *The said judgment (supra) was not cited before the Bench at the Principal Seat in Khilari Rajendra Eknath v. The State of Maharashtra¹. That Court interpreted the English translation of the GR and concluded that if the recruitment process commenced prior to 31st October, 2005 and the appointment was made thereafter, such candidates would be entitled to the OPS. These circumstances led to the constitution of the Full Bench to resolve the divergent views.*
8. *In the interregnum, before the Full Bench could decide the referred issue, the State of Maharashtra issued a GR dated 2nd February 2024, referring to the GR dated 31st October 2005, and provided that employees could opt for the OPS by making an application to the State Government, which would pass an appropriate order within six months, if their selection process had commenced before 31st October, 2005 and were*

appointed after the said date.

9. *The Full Bench of this Court, at Aurangabad, in Vasant Rao Naik Marathwada Krishi Vidyapeeth Through Its Registrar v. Ganpat Maroti Sutare² observed as under:*

*"5. Learned advocate Mr. Navandar for the review applicant-university would vehemently controvert the situation by adverting our attention to the fact that this government notification has been issued pursuant to the observation of this Court in the matter of Khilari Rajendra Eknath (supra) wherein, in paragraph no. 31, it had hoped and trusted the State government to issue office memorandum in tune with a similar one issued by the Central government on 03-03-2023, clarifying that in all cases where the State government employees have been appointed against a post or vacancy which was advertised/notified for recruitment/appointment prior to the date of notification for Defined Contributory Pension Scheme i.e. 31-10-2005 and expecting the State government to give a one time option to the employees to be governed by the Maharashtra Civil Services (Pension) Rules, 1982. He would submit that since the State government had decided to resort to Defined Contributory Pension Scheme in tune with a similar decision taken by the Central government and has now pursuant to the observations in the matter of **Khilari Rajendra Eknath** has resorted to issuance of a notification for giving a similar benefit of giving a one time option to the employees who are similarly situated, the matter does not remain merely academic.*

6. *In our considered view, the reasons for issuance of notification dated 02-02-2024 are absolutely irrelevant, to consider as to if this notification gives quietus to the issue referred to us. The entire controversy has erupted in view of the dichotomy and particularly in the phrases used in the Marathi government resolution dated 01-11-2005 and its English translation. Ex facie, notification dated 02-02-2024 gives an opportunity to the government officers and employees who had undertaken a recruitment process commenced before 01-11-2005, but their appointment orders have been issued after that date, to exercise the option.*

7. *All such employees where the recruitment process had commenced prior to 01-11-2005, will have an option now to be exercised either to agree, to be governed by the old pension scheme or by the Defined Contributory Pension Scheme. Since this notification does not admit of any exception, in our considered view, it would be applicable to all similarly placed employees, irrespective of the view taken in the matter of Khilari Rajendra Eknath (supra) or a contrary view in the matter of Dnyaneshwar Balasaheb Sonawane. Neither side could demonstrate as to how any employee who is similarly placed would not be covered by the notification dated 02-02-2024.*

8. *We, therefore, find no substance in the submission of the learned advocate Mr. Navandar and feel that it is not necessary to decide the issue referred to us. The government notification dated 02-02-2024 puts at rest the controversy.”*

10. *In the case of the present Petitioner, as noted above, the publication of the advertisement and his selection took place prior to the cut-off date and he was issued with an appointment order on 21st November, 2005. He desires to opt for OPS in view of the GR dated 2nd February, 2024."*

8.2 In the case in hand, the Petitioner was initially appointed on 13-06-1995 in Shri V.P. Desai Junior College, Kowad run by a Management other than the Respondent No.5.

May it be, the Respondent No.5 initiated the selection procedure to fill up the subject matter post of Assistant Teacher (Full Time) in Mathematics subject by publishing an advertisement on 18-05-2005.

8.3 The Petitioner was appointed on 06-06-2005, mistakenly recording the appointment as Part Time Teacher. However, in view of the observations and instructions given by the Deputy Director of Education, the Petitioner was upgraded on the Full Time Post vide Order dated 30-11-2005 with effect from 01-12-2005. As such, it is evident that although the Petitioner was appointed on 30-11-2005 on a Full Time Post of Assistant Teacher, the selection process has already begun on 18-05-2005 that is much before the cut off date i.e. prior to 01-11-2005. There is no dispute that the Competent Authority i.e. the Deputy Director of Education has even accorded an approval to the services of the Petitioner.

8.4 In view of this, the Petitioner's case is fully covered by the law laid down by this Court in the case of **Dr. Rajendra Shankar Mahamuni** (supra) so far as for holding him entitle for the old pension scheme.

8.5 Now with regards to the second moot question for considering half of the part time service tenure for computation of pensionary benefits, a useful reference can be made to the Judgment and Order passed by this Court (Nagpur Bench) on 09-07-2018 in **Smt. Darshana Adikrao Gaikwad Vs. State of Maharashtra & Ors.**². Relevant portion from the said Judgment is reproduced as follows :

"7. After taking into consideration several decisions, including the aforesaid decision in the case of Shalini w/o Asaram Akkarbote v. The State of Maharashtra and others, cited supra, it is held in para 11 as under:

"11. In the facts of the present case also, indisputably the petitioner herein has rendered services as part-time Librarian with respondent no.4- School from 24.08.1982 to 30.07.1997 and from 01.08.1997 as full-time Librarian till the date of her superannuation ie. 30.04.2004. Therefore, the services rendered by the petitioner as a part-time Librarian, half of the period of said services will have to be taken into consideration in addition to the period for which the petitioner has worked as full-time Librarian, and accordingly, the petitioner will have to be held entitled for the pensionary benefits."

² Writ Petition No. 5421 of 2017 dated 09-07-2018

Thereafter, different Benches of this Court have reiterated the same view and the ultimate ratio is that 50% of the part-time service rendered is required to be counted for the purposes of determining the pensionable service along with the full-time service rendered by an employee.

8. *In view of above, the petitioner is entitled to the reliefs claimed in the petition, for the reason that 50% of the service rendered by her husband from 1998 to 2009 is to be counted for the purposes of pension along with full-time service rendered from 1-2-2009 to 24-10-2016. Thus, the deceased-employee becomes entitled to pension in accordance with law."*

8.6 Again on 11-03-2020, this Court (Principal Seat) in ***Smt. Prema Narsinha Herkal Vs. State of Maharashtra & Ors.***³ has observed as follows :

- "2. *The Petitioner was appointed as part time librarian in the private aided school on 21st September 1990. She was made full time librarian with effect from 6th November 2006. The Petitioner retired on attaining the age of superannuation with effect from 31st May 2016. The service rendered by the Petitioner on full time basis from 6th November 2006 has been taken into consideration for the purpose of pension. However, the earlier service rendered by her on part time basis has not been counted. The reliance is placed*

³ Writ Petition No. 3719 of 2019 dated 11-03-2020

on Rule 57, Note-1 of the Maharashtra Civil Services (Pension) Rules, 1982. It is further urged that the Petitioner is governed by the pension scheme prevailing prior to 31st October 2015.

3. *The controversy involved in the present case is covered by the decision dated 9th July 2018 given by this Court in Writ Petition No.5421 of 2017 (Nagpur Bench), which takes into consideration the earlier decisions also (consistent view taken by this Court). The decision holds that the Petitioner therein is entitled to claim 50% of the part time services rendered by the employee for the purpose of pension and date of appointment as part time librarian has to be taken into consideration for the purpose of pension. Paragraph 4 of the said decision is relevant and it is reproduced below :*

"4. We have gone through Government Resolution dated 31-10-2005 and we do not find that Clause 4(b) therein makes any distinction between the Part Time and Full Time employees. It states that the decision contained in the said Government Resolution shall mutatis-mutandis apply to the employees who are recruited on or before 1-11-2005, to whom the existing Pension Scheme or General Provident Fund Scheme would be applicable. Undisputedly, the husband of the Petitioner was recruited on 1-7-1998 as a Part Time Librarian and we find that the stand of the Respondents is that Clause 4(b) contains the recruitment as a Full Time employee as on 1-11-2005, is artificial and it is not borne out from the said

Government Resolution."

4. *The stand taken by the Respondents in their affidavit is that the date of appointment as full time librarian can only be considered, as it is a fresh appointment. This contention has already been rejected. We are also unable to accept this plea that the appointment as full time librarian is a fresh appointment. The services of the Petitioner has to be counted from the first date of appointment and therefore the pension scheme prevailing prior to 1st November 2005 would be applicable to the Petitioner. In the result, writ petition is allowed and the order is passed as under :*

-: O R D E R :-

- 1] *The order dated 11th July 2018 passed by Respondent No.2 refusing to grant pension and other benefits to the Petitioner is hereby quashed and set aside.*
- 2] *The 50% of services rendered by the Petitioner as part time librarian from 21st September 1990 till 6th November 2006 shall be taken into consideration while computing the pensionable service rendered by the Petitioner.*
- 3] *The Petitioner shall be entitled to benefit of pension scheme prevailing prior to 1st November 2005.*
- 4] *All this exercise shall be carried out within the period of four months from today."*

8.7 In view of the findings rendered by this Court in the cited cases (supra), we are unable to accept the objections raised by the Respondent Nos.1 to 3 vide their reply Affidavit. The objections from

para Nos.3 to 7 do not sustain in the light of the findings recorded by this Court (supra). The Respondents could not demonstrate that the appointment of the Petitioner on the Full Time Post of Assistant Teacher was through a selection procedure that was initiated after the cut off date 01-11-2005.

8.8 On the other hand, the appointment Order dated 30-11-2005 annexed at Exhibit C-1 (page 12-A) depicts that it was pursuant to the application filed by the Petitioner on 05-06-2005. The application was obviously in view of the advertisement published by the School Management prior to 05-06-2005. Even the record reveals that the Deputy Director of Education once pointed out that the Petitioner was erroneously shown to have been appointed in a wrong pay-scale that is applicable to Part Time Teacher and hence necessary typographical correction was conducted and the Petitioner was appointed on the subject matter Full Time Post of Assistant Teacher pursuant to the selection procedure that was initiated before the cut off date i.e. 01-11-2005.

9. As such, we find that the Petitioner has made out a successful case to issue necessary directions to the Respondents, as follows:

- (A) The Writ Petition stand allowed.
- (B) The Respondent Nos.5 & 6 shall submit a proposal to the Respondent No.3 for (i) Pension as per the old pension

scheme and (ii) for the purpose of calculating pension, 50% of the Petitioner's Part-Time service immediately preceding his appointment to the Full-Time Post be counted. The Respondent Nos.5 & 6 shall complete this exercise within four weeks from the date of receipt of this Judgment's copy.

- (C) The Respondent No.3 – the Deputy Director of Education shall accordingly submit an appropriate proposal to the Respondent No.2 – the Accountant General for grant of Pension to the Petitioner under old pension scheme and adding 50% of the Part Time service tenure immediately preceding the Petitioner's appointment on Full Time Post, for the purpose of pensionary benefits. The Respondent No.3 shall complete this exercise within four weeks from the receipt of such proposal from the Respondent Nos.5 & 6.
- (D) The Respondent No.2 – the Accountant General shall accordingly re-fix the Petitioner's pensionary benefits and release the arrears as also the regular pension under old pension scheme within a period of eight weeks from the date of receipt of such proposal from the Respondent No.3.
- (E) Writ Petition stands allowed. All contentions kept open.
- (F) Rule is made absolute in above terms.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

OMKAR
SHIVAHAR
KUMBHAKARN

Digitally signed
by OMKAR
SHIVAHAR
KUMBHAKARN
Date:
2025.12.23
19:25:30
+0530