

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10589 OF 2026

Durgesh Pandit Hole

...Petitioner

Vs

The Education Inspector (North Zone) Brihanmumbai
Secondary Education Department & Ors.

...Respondents

Mr. Saurabh Pakale with Mr. Nilesh Desai and i/b. Ms. Padmaja Malgaonkar for
Petitioner.

Ms. P. N. Diwan , AGP for State.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.
DATE: 17 AUGUST 2026

P.C.

1. We have heard learned counsel for the parties.
2. The grievance of the petitioner in the present petition is that the petitioner has been denied the benefits under the Old Pension Scheme (OPS) and has instead been subjected to the Defined Contributory Pension Scheme (DCPS)/National Pension Scheme (NPS), by ignoring his 12 years of continuous, approved and 100% aided part-time service. The petitioner was appointed on part-time service with effect from 13 June 1996 and continued in such service till 12 June 2008. It is the petitioner's contention that, in terms of Note 1 to Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982, read with the Government Resolutions dated 31 January 2001 and 10 June 2005, 50% of his approved part-time service, i.e. 6 years, is required to be counted towards his

qualifying service. Consequently, the petitioner contends that, on reckoning 50% of his part-time service, his qualifying service is required to be counted from a date well prior to 31 October 2005, which is the cut-off date for applicability of the DCPS. According to the petitioner, he is hence entitled to the benefits of the Old Pension Scheme and cannot be subjected to the DCPS/NPS.

3. Learned counsel for the petitioner has drawn our attention to the averments as made in the petition to submit that, between 08 August 1994 to 30 April 1996, the petitioner was engaged as a part-time Assistant Teacher on ad-hoc basis. Thereafter, a regular selection process was conducted by the respondent-Management in accordance with Section 5 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977 (“**MEPS Act**”). Pursuant thereto, on 13 June 1996, the petitioner was appointed against a clear, sanctioned and 100% aided part-time vacancy, and an appointment order to that effect was issued in his favour. The said appointment was approved by respondent no.1 by an approval order dated 24 February 1997.

4. It is the petitioner’s case that, accordingly, 1996 to 2008, he rendered continuous, uninterrupted, and blemish-free part time service for 12 consecutive years. During such period, his appointments were regularly renewed, and his name was consistently included in the official Seniority Lists and Sanch Manyata records approved by the Education Department. The petitioner has also contended that, till the academic year 2007-08, he was serving against a duly sanctioned and approved 100% aided part-time post of Assistant Teacher in the

Trained Graduate Scale. During the said period, a sanctioned full-time workload became available in the school pursuant to the approved staffing pattern. The petitioner's position was recognized by the Management and, accordingly, he was granted the regular pay scale. The petitioner superannuated on 30 June 2026. He has stated that, having recently retired after rendering 32 years of service, he is entitled to pension under Old Pension Scheme.

5. In the aforesaid circumstances, Mr. Pakale, learned counsel for the petitioner, would submit that the case of the petitioner is covered by several decisions of this Court wherein the issue of counting part-time service has been considered. Our attention is drawn, in this regard, to the decision in **Jyoti Prakash Chougule vs. State of Maharashtra & Ors.** (Writ Petition No. 2354 of 2012, decided on 07 January 2014). Our attention is also drawn to the recent decision in **Ashok Kakasaheb Chaugule vs. State of Maharashtra & Ors.** (Writ Petition No. 3368 of 2022, decided on 27 March, 2025), wherein this Court considered four decisions on the identical issue. The relevant observations of the Court to the effect that part-time services is required to be counted as part of the total qualifying service, are required to be noted which read thus:-

“6. The learned AGP has vehemently opposed this Petition and submits that neither any prayer put forth by the Petitioner can be considered, nor can it be said that the Petitioner is entitled for the Old Pension Scheme. He submits that the service of the Petitioner as a part-time Assistant Teacher, is of no consequence. He was not paid from the contingency fund. The exceptions to Rule 30 as prescribed under Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 would be squarely applied to this case.

7. He further raises an objection as regards the service of the Petitioner on part-time basis with two establishments. His contention is that the benefit of having worked with Respondent Nos. 4 and 5 from

27th August, 1986 to 28th August, 2007 as a part-time Assistant Teacher, is not to be given to him. There is an overlapping period of employment as a part-time Assistant Teacher when the Petitioner worked with Respondent Nos. 4 and 5 from July, 1991 till February, 2007 and with Respondent Nos. 6 and 7 from July, 1991 till February, 2007. The learned Advocate for the Petitioner submits that the Petitioner would not claim any benefit of the service rendered as a part-time Assistant Teacher with Respondent Nos. 4 and 5, from August, 1986 till February, 2007. He would rely on his part-time service as an Assistant Teacher with Respondent Nos. 6 and 7 from 17th July, 1991 until 15th June, 2007, when he became full-time Assistant Teacher.

8. The issue before us is, as to whether the part-time service of the Petitioner with Respondent Nos. 6 and 7, can be added to the extent of 50% of the said service, to the full-time tenure of the Petitioner (which is of about 10 years, 11 months and 15 days).

9. We find that the Petitioner's contention is fortified by the law laid down by this Court in *Jyoti Prakash Chougule (supra)* wherein this Court recorded that as the Petitioner was a full-time Assistant Teacher when she retired, after putting in 8 years and 7 months service, the earlier period as a part-time Assistant Teacher, could be added to the extent of 50%, for considering whether the Petitioner was eligible for pension.

10. Similar is the view taken by this Court in *Shalini w/o Asaram Akkarbote (supra)*, wherein this Court recorded that the Petitioner was appointed as a part-time Librarian on 14th June, 1982 and she was granted continuation and permanency with an approval with effect from 1st August, 1997, when the post was converted into full-time service. Since she was granted full-time Librarian appointment and she superannuated as a permanent employee, this Court added the part-time service to the extent of 50 % to her full-time tenure for calculating qualified service. Same is the view taken by this Court in the matter of *Anagha Ashok Bhombe (supra)*. Same is also the view taken by this Court in *Smt. Darshana wd/o Adikrao Gaikwad (supra)*.

11. Keeping in view the above aspect and the law crystallized by this Court in the above cited orders, we find that the Petitioner can be given the advantage to the extent of 50% of his tenure of part-time Assistant Teacher from 17th July, 1991 till 15th June, 2007. It is to the extent of around 8 years of service (50% of 16 years of the service as a part-time Assistant Teacher). This is to be added with the period of 10 years, 11 months and 15 days of permanent full-time service as an Assistant Teacher. In any case, the Petitioner was entitled for the pension. The issue would be that he would have entitled for 50% pension, by virtue of the full time employment alone.

12. We have considered the law laid down by this Court in *Jayashree Narayan Mhaske vs. State of Maharashtra and Ors. (2005 (3) MLJ 5492)*, *Shivappa Bhujangappa Bembale vs. State of Maharashtra and Anr. (2005 (3) Mh. L.J. 709 and Mukund Bapurao Dhadkar vs. State of Maharashtra and anr. (2016 (3) MLJ, 280)*.

13. It is beyond debate that when a person is granted regularization

in employment, the same relates back to the date of his employment even as a temporary, if retirement benefits are to be computed. Considering the various reports cited before us, in identical fact situation, the employees who were on full-time posts at the time of their superannuation, were granted benefits of the earlier part-time service to the extent of 50%.

14. Considering the GR dated 31st October, 2005, clause (4) is indicative of the fact that the employee who was otherwise eligible for pension, should have been appointed in the service of a full aided establishment, prior to 1st November, 2005. The defined contributory pension scheme would be applicable to the candidates who have been appointed on or after 1st November, 2005. The facts before us have already been adverted to in the forgoing paragraphs leaving no room for doubt and we have no hesitation in concluding that the Petitioner would be entitled for the Old Pension Scheme.

15. Hence, this Petition is allowed. The impugned Communication dated 22nd June, 2018 issued by Respondent No.2 refusing pension to the Petitioner, is quashed and set aside. We direct Respondent No.2 to consider the case of the Petitioner as being eligible for pension as per the Old Pension Scheme. Respondent No.2 shall pass a formal order approving the pension as per the Old Pension Scheme, within a period of 15 days from today.

16. Needless to state, the arrears of pension shall be calculated and by including the interest component statutorily prescribed for the delayed payment, which would also be a part of the arrears of a pension. Let the arrears along with interest be paid within a period of 45 days from today. Let the payment of regular pension commence on monthly basis after 45 days. For the said purpose, Respondent Nos. 6 and 7 would forward the proposal of the Petitioner for arrears of pension, interest and regular pension, within 21 days from today. Needless to state, the Petitioner would be entitled for all service benefits available to a retired employee, in the light of the aforesaid conclusion.

17. Rule is made absolute in the above terms.”

6. Learned AGP would not dispute that the proceedings would, in fact, stand covered by the said decisions.

7. In this view of the matter, we are of the opinion that the impugned order dated 01 December 2025, rejecting the petitioner’s proposal seeking condonation of the break in service of the Assistant Teacher for pensionary purposes, cannot be sustained.

8. The petition is accordingly required to be allowed. It is accordingly allowed in terms of the following order:-

ORDER

- i. The impugned communication dated 01 December 2025 issued by respondent no.2 is quashed and set aside.
- ii. Respondent no.2 is directed to consider the case of the petitioner as being eligible for pension as per the Old Pension Scheme and pass a formal order approving the pension as per the Old Scheme, within a period of 15 days from today.
- iii. The arrears of pension shall be calculated by including the interest component statutorily prescribed for the delayed payment, which would also be a part of the arrears of a pension.
- iv. The arrears along with interest be paid within a period of 45 days from today.
- v. The payment of regular pension shall be commenced on monthly basis within a period of one month from today in regard to which a proposal be forwarded within a period of 10 days from today.
- vi. The petitioner shall also be entitled for all service benefits available to a retired employee, in the light of the aforesaid conclusion.
- vii. The petition stands allowed in the aforesaid terms. No costs.

(DR. NEELA GOKHALE, J.)

(G. S. KULKARNI, J.)