

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

WRIT PETITION NO. 2311 OF 2013

1. Satish Ganpatrao Patil,
Age 40 Years, Occ. Librarian,
2. Tukaram Dhondiram Patil,
Age 40 Years, Occ. Librarian,
3. Narayan Ranba Aadsule,
Age 38 Years, Occ. Librarian,
4. Ravindra Govindrao Gomare,
Age 35 Years, Occ. Librarian,
5. Madhav Shahajirao Jadhav,
Age 52 Years, Occ. Librarian,
6. Madhav Babuwan Irale,
Age 37 Years, Occ. Librarian,
7. Umakant Siddheshwar Swami,
Age 38 Years, Occ. Librarian,
8. Shivkant Suresh Swami,
Age 37 Years, Occ. Librarian,
9. Madhav Baburao Jadhav,
Age 45 Years, Occ. Librarian,
10. Radhesham Nandkishor Lature,
Age 35 Years, Occ. Librarian,
11. Sanjay Nalshetty Bondge,
Age 37 Years, Occ. Librarian,

All residents of C/o Shivaji
Vidhyalaya, Nilanga,
District Latur.

..Petitioners

VERSUS

1. The State of Maharashtra
through it's Secretary, School
Education and Sports Department,
State of Maharashtra, Mantralaya,
Mumbai 32.

2. The Principal Secretary,
School Education and Sports
Department, Mantralay, Mumbai 32.

3. The Director of Education
(Secondary), Pune.

4. The Dy. Director of Education,
Dy. Director of Education, Latur.

5. The Education Officer (Secondary),
Zilla Parishad, Latur. Dist. Latur.

..Respondents

...
Advocate / AGP appearing for-
Petitioners : Shri R.J.Godbole
Respondents : Smt. A.V.Gondhalekar
...

CORAM : **MOHIT S. SHAH, C.J. &**
 RAVINDRA V.GHUGE, J.

Reserved on : March 24, 2015
Pronounced on : March 31, 2015

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

1. Heard learned Advocates for the respective parties.

2. Rule. Rule made returnable forthwith by consent of the
parties.

3. The petitioners, by this petition, filed under Article 226 read with Articles 14 and 21 of the Constitution of India, seek to challenge Clause 3 of the Government Resolution No. SSN-1702/9/2002/MA.SHI-2, dated 3.8.2006 (hereinafter referred to as “the said GR”).

4. The petitioners, in this petition, have prayed as under:-

“(A) By issuing a appropriate writ or order or directions this Hon'ble Court may be pleased to declare and consider the services of petitioners as part time librarians and further it may be hold that, the petitioners are governed under the Old Pension Scheme i.e. Maharashtra civil Services (Pension Rules) 1982 and Maharashtra Civil Services (Commutation of Pension) Rules 1984 & the General Provident Fund which are applicable to the Librarians, who came to be appointed prior to 01./11/2005 & entitled for pensionary benefits as per scheme, which is prevalent prior to 1.11.2005.

ALTERNATIVELY

By issuing a writ of mandamus or any other writ, order or directions this Hon'ble Court may be pleased to quash and set aside the word fresh in clause no.03 of impugned Govt. Resolution No. SSN-1702/9/2002/MA.SHI-2, dated 3.8.2006 by substituting / deleting the same and it may be pleased to hold that present petitioners are promoted from part time librarians to full time librarians.

(B) Pending hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the respondents that, the petitioners be governed under the Old Pension Scheme i.e. Maharashtra Civil Services (Pension Rules) 1982 and Maharashtra Civil Services (Commutation of Pension) Rules - 1984 & the General Provident Fund which are applicable to the Librarians, who are appointed prior to 1.11.2005 & be given pensionary benefits."

5. It is not in dispute that the petitioners were working as Part-time Librarians in different aided schools, situated at different places, in District Latur. The Chipalunkar Committee, constituted by the State had considered the strength of students as the basis for appointments of Full-time and Part-time Librarians in various schools. By the recommendations of the said Committee, the condition of the strength of students for appointment of Part-time Librarians was scaled down from a minimum of 1000 students per School to 500 students. Similarly, the Committee recommended the scaling down of the strength of students from 1500 to 1000 for appointment of Full-time Librarian in each School.

6. The petitioners submit that by virtue of the said GR, they were absorbed as Full-time Librarians. All the Part-time Librarians, appointed on sanctioned posts, prior to 1.11.2005, who fulfilled the

requirements for appointment of Full-time Librarians, were given the benefit of the said GR.

7. The petitioners submit that their part time services were covered by the Maharashtra Civil Services (Computation of Pensions) Rules, 1984 and the General Provident Fund Scheme. The appointment of the petitioners as Part-time Librarians was in accordance with Rule 9(5), Schedule “D” of the Maharashtra Employees of Private Schools Rules, 1981 (hereinafter referred to as the “1981 Rules”). The terms and conditions of their service are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the “MEPS Act”).

8. The petitioners contend that the State of Maharashtra introduced a new pension scheme on 31.10.2005, which is known as “Defined Contributory Pension Scheme” (hereinafter referred to as the “New Pension Scheme”). The said Scheme was made applicable to employees who are recruited on 1.11.2005 or thereafter. This is evidenced by the Government Resolution dated 31.10.2005.

9. The petitioners take an exception to Clause 3 of the said GR

dated 3.8.2006. Clauses 3 and 4 of the said GR, in verbatim, read as under:-

"३. पटपडताळणी नुसार विहित पटसंख्येची अट पूर्ण करणाऱ्या शाळांमधील उक्त अर्धवेळ ग्रंथपालांचा सहानुभूतीपूर्वक विचार करून पूर्णवेळ ग्रंथपाल म्हणून नियुक्ती करावयाची असल्याने विहित निकष पूर्ण करणाऱ्या ९२४ शाळांमध्ये पूर्णवेळ ग्रंथपालांची पदे उन्नयनाणे नव्याने निर्माण करण्यात येत असल्याने या पूर्णवेळ ग्रंथपाल पदावरील विहित अटी पूर्ण करणाऱ्या अर्धवेळ ग्रंथपालांची पूर्णवेळ ग्रंथपाल म्हणून नियुक्ती ही नवीन नियुक्ती असेल. ही पदोन्नती नाही.

४. उक्त पदावरील नियुक्ती ही नवीन नियुक्ती २ वर्षांच्या परिविक्षाधीन कालावधीसहित असल्याने ग्रंथपाल पदासाठी अनुज्ञेय वेतनश्रेणीच्या किमान वेतन टप्प्यावर संबंधीत व्यक्तीची मूळ वेतनश्रेणीवर नियुक्ती होईल. सदर व्यक्तीने अर्धवेळ ग्रंथपाल म्हणून केलेली नियमित सेवा नवीन पूर्णवेळ पदावरील आगाऊ वेतनवाढीसाठी ग्राह्य असणार नाही."

10. The petitioners contend that the State Government has created 924 posts for Full-time Librarians. The absorption of those Part-time Librarians, who fulfilled the conditions of appointment, as Full-time Librarians was treated as fresh appointment as Full-time Librarians. The said appointments were subject to a two year probation period.

11. Grievance of the petitioners is that Clause 3 of the said GR, though has led to the absorption of the petitioners as Full-time Librarians, renders the said appointments as fresh appointments with effect from 1.4.2006. Clause 4 of the said GR provides for Salary Scale as Full-time Librarians with effect from 1.4.2006. It specifically provides that the said GR will have no retrospective effect and the Part-time Librarians, who have been appointed as Full-time Librarians, shall not be entitled to retrospective effect of the Salary Scale. Thus, their past service as Part-time Librarians, is excluded.

12. The petitioners have, therefore, raised a grievance as regards the pensionary benefits that would be available to them under the New Pension Scheme, thereby resulting in wiping out the effect of their earlier service as Part-time Librarians. It is claimed that this amounts to discrimination against the petitioners under Articles 14 and 21 of the Constitution of India.

13. The learned AGP, on behalf of the respondents has filed an affidavit in reply through the Education Officer (S), Zilla Parishad, Latur. It is submitted that the posts of Full-time Librarians were

sanctioned by the Government vide the said GR. The benefits flowing from the said GR have been willingly accepted by the petitioners. After a passage of about six years, the petitioners have raised a grievance by this petition. The contention that the petitioners have been promoted as Full-time Librarians is wholly misconceived. Clause 3 of the said GR has specifically ruled out such absorption to mean a promotion or up-gradation. It was specifically on the condition that such appointments shall be fresh appointments as Full-time Librarians, that the petitioners have been appointed.

14. It is further submitted that such fresh appointments will be covered by the New Pension Scheme. None of such appointees are entitled to make a claim for arrears of difference of salaries or for considering their past tenures as Part-time Librarians so as to merge them into their fresh appointments.

15. It is further stated that normally, with the creation of new posts, the concerned schools would have filled in the said posts by resorting to the regular procedure of recruitment as is normally followed while filling in any permanent vacant post. If Clause 3 of the said GR is to be set aside or disregarded, none of the petitioners would be appointed as Full-time Librarians since the said posts would

then have to be advertised as a part of following the regular selection process for filling in such permanent posts. In such a situation, the petitioners would have been required to compete with the candidates applying for the said posts.

16. We have considered the submissions of the learned Advocates for the respective sides. It is apparent that the petitioners have accepted the benefits of the said GR without a murmur. This petition is filed on 11.4.2012, which is practically after six years of having enjoyed the benefits of the said GR. It is not the case of the petitioners that they did not have any knowledge about the said GR and especially Clauses 3 and 4 set out therein.

17. In the event, the said 924 posts of Full time Librarians to be appointed in 924 Schools were to be filled in, in regular course, the said Schools would have been obliged to follow the recruitment procedure. As such, the petitioners would have been required to apply, pursuant to an advertisement and compete with several applicants. Their selection as has been guaranteed by the said GR, would then have been subject to the result of the selection process. Thus, it is evident that the petitioners derived the benefits of the said GR by ensuring their appointments as Full-time Librarians.

Having acquired the said benefits and having been conferred with permanency as Full-time Librarians, we do not find that the petitioners are justified in questioning Clause 3 of the said GR.

18. We find that the State Government had decided to create 924 posts of Full-time Librarians and appoint those Part-time Librarians, who were otherwise eligible for being considered to the posts of Full-time Librarian, as fresh appointees. The only ground raised in the petition is that the past tenure of the petitioners as Part-time Librarians has not been taken into account. This contention of the petitioners is based on their belief that the said GR amounts to up-gradation or promotion of the petitioners, which is misconceived.

19. We do not find that this contention of the petitioners deserves any consideration. The State Government had devised a Scheme by the said GR and the petitioners have been the beneficiaries of the said Scheme by virtue of which, they were not required to face any competition from any applicant and were simply appointed on the permanent vacant posts. Upon completion of the probation period, they have been regularized as Full-time Librarians. Clause 3 specifically provides that such appointments shall not amount to 'promotion'.

20. The reliance placed on the judgment of this Court in the case of Shivappa Bhujangappa Bembale Vs.State of Maharashtra and others [2005 (6) Bom.C.R. 437] is mis-placed. In the Shivappa's case (supra), the issue was that the Zilla Parishad had rejected the claim of the employee for pensionary benefits since he had put in less than ten years of service. The Zilla Parishad, had applied Note-2 under Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. This Court had concluded that Note-2 was wrongly applied by the Zilla Parishad as Note-1 under Rule 57 covered the said petitioner.

21. In the instant case, the petitioners who were Part-time Librarians, were practically assured of being appointed as Full-time Librarians under a specified Scheme by the State. Their case, therefore, is not similar to the case of Shivappa (supra). The view taken by the learned Division Bench in the said case is, therefore, not applicable to the case of the petitioners.

22. We, therefore, do not find that Clause 3 or Clause 4 of the said GR is in way arbitrary or violative of Article 14 and/or Article 21 of the Constitution of India. Hence, we are unable to accede to the request of the petitioners. This petition sans merit and is, therefore,

dismissed.

23. In the result, Rule stands discharged. No order as to costs.

CHIEF JUSTICE

RAVINDRA V.GHUGE, J.

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A.K.Losarwar, PS