

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 1775 OF 2006

Shri Gopalkrishna Shrinivas Kulkarni
At 6-A, Sahyadri Society,
Near Vikas Nagar, Solapur – 413 003.

... Petitioner

v/s

1. The State of Maharashtra, through its
Secretary, School Education &
Employment Department, Mantralaya,
Mumbai.

2. The Dy. Director of Education,
Pune Division, Pune.

3. The Principal, Sangameshwar College
(Junior), Solapur.

... Respondents

Mr.S.G. Kudle for the petitioner.

Ms.S.S. Bhende, A.G.P for the respondent Nos.1 and 2.

***CORAM: MRS. VASANTI A. NAIK &
MRS. MRIDULA BHATKAR, JJ.***

DATED : 9TH MARCH, 2015

ORAL JUDGMENT (Per Mridula Bhatkar, J.):

Heard.

2. In this writ petition, the petitioner seeks a direction from this Court by way of a writ of mandamus that the respondents be

directed to pay the pensionary and retirement benefit from 21st July, 1980, the date on which he was appointed as a part-time Teacher in the college. The petitioner joined services on 21st July, 1980 and worked as a part-time Teacher till 21st July, 1987. In 1987, he was taken as a full-time Teacher and he was superannuated on 31st August, 2005 after completing his service of 25 years and one month, in Sangameshwar Junior College. The respondents held him eligible for the pensionary and retirement benefit from the date when he was made full time Teacher i.e. from 21st July, 1987.

3. It is contended by the learned counsel for the petitioner that the petitioner has worked in two spans in different colleges at the relevant period as a part-time Teacher. He relied on Government Resolution dated 7th June, 1980 wherein, according to him, the Government has considered part-time service rendered by the Teacher to be counted for the purposes of continuity of service as the period of his part-time service i.e. from 1980 to 1987 is also to be considered as continuous service, then he is entitled to get the retirement and the pensionary benefit from the date when he was appointed.

4. The contention of the petitioner is denied by the learned Assistant Government Pleader. She relied on the affidavit in reply filed by the Accounts Officer from the office of the Deputy Director of Education, Pune. It was submitted that clause (v) of the said Government Resolution is applicable to the Teacher who has

rendered his part-time service if in two spans in junior college, then, those two spans are to be counted for the purpose of continuity of service only.

5. Admittedly, the petitioner has worked as a part-time Teacher for initial seven years. A question before us is, whether the part-time service is a pensionable service or not. This issue is not res integra. The Full Bench in *Banke Rai Ambika Rai Sharma vs. State of Maharashtra*, 2006 (6) Mh.L.J. 873 has held that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. But it is governed by the Rules. While dealing with the Bombay University Act and the Government Resolution dated 21.7.1983, the Court has taken a view that part time service under the said resolution is not pensionable. Though the resolution and the scheme which were under consideration before the Full Bench were different, the principle laid down in the said judgment has to be kept on the background while interpreting the Government Resolution which is relied in the present case. Clause (v) of the Government Resolution, which is relied by the learned counsel for the petitioner, reads as follows :-

“(v) The part-time service, if any, during the two spans of services as Junior College teachers, should be counted for the purposes of continuity of service only.”
(emphasis placed).

On plain reading of clause (v), it appears that the clause gives protection to a Teacher who has rendered a part-time service in two spells in junior college and if at all the Teacher is given a technical break in between these two spans, then for the purpose of continuity of service only, clause (v) comes to the help of such Teacher. No petitioner is made full time lecturer by virtue of this clause. The learned counsel for the petitioner has not produced any other material or any other provision of law to substantiate his submission that a part-time service in a college is pensionable. Though qualification of part time lecturer is akin as compared to full time lecturer, there is no bar for part time lecturer to take another part time job. Right of person is always subject to the rules. The pensionary benefits are given to a full time Professor who gives his time or who is retained by the college as a full time Teacher. However, when the petitioner has worked only for part-time and there is no other rule or any provision of law is produced before us to accept the contention that part-time service is pensionable, hence we are unable to accede to the submissions of the learned counsel for the petitioner.

6. Hence, the writ petition stands dismissed with no order as to costs.

(MRIDULA BHATKAR, J.)

(VASANTI A. NAIK, J.)