

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

WRIT PETITION NO.10221 OF 2015

Mukund s/o. Bapurao Dhadkar,
Age 65 Years, Occu. Pensioner Librarian,
R/o. Brahama Lane, Amalner,
Tq. Amalner, Dist. Jalgaon

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2] The Additional Chief Secretary
Finance Department,
Mantralaya, Mumbai – 32.
- 3] The Auditor and General
Mumbai Marshi Karve Road,
Mumbai – 20.
- 4] The Education Officer [Secondary],
Zilla Parishad,
Jalgaon, Dist. Jalgaon
- 5] The Head Master
Bhagirath English School,
Tq. & Dist. Jalgaon

RESPONDENTS

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Mr. Vitthal G. Salgare, Advocate for the Petitioner
Mr. S.K.Tambe, AGP for Respondent Nos.1 to 4
Mr. Vinod P. Patil, Advocate for Respondent No.5.

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 08.02.2016
Pronounced on: 11.02.2016

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith, and heard with the consent of the parties.

3] This Writ Petition is filed under Article 226 of the Constitution, seeking directions to the respondent Nos.1 and 2 to consider part time service of 13 Years, 11 months, and 16 days on the post of Part Time Librarian, converting into Full Time service of 7 Years and Plus actual full time service of 17 years, totalling 24 years qualifying service rendered by the petitioner in respondent No.5 School, for the purpose of grant of pension and pensionary benefits, applying the ratio laid down in the Judgment delivered by this Court in Writ Petition No.8289/2013 [Shalini Asaram Akkarbote Vs. The State of Maharashtra & others] decided on 29th April, 2014.

4] It is the case of the petitioner that, he retired as Librarian from the respondent No.5 Bhagirath English School, Jalgaon on 31st July, 2008. He was, initially, appointed as Part time Librarian on 16.08.1977. He continuously worked on the said post on 31st July, 1991,

thereby completing more than 13 years, 11 months and 16 days of service as part time Librarian. He was appointed on the same post as full time Librarian from 1st August, 1991, and was served on the said post up to 31st July, 2008. The grievance of the petitioner is that, his part time service is not counted and converted into full time service, and as a result, said period i.e. from 16.08.1977 till 31st July, 1991 has not been considered and counted, while counting the qualifying service for grant of pension and post retirement benefits.

5] Learned counsel appearing for the petitioner invited our attention to the various documents placed on record, and submits that, the petitioner did work as part time Librarian for the afore-mentioned period for more than 13 years, 11 months and 16 days, is not in dispute. Even thereafter, on the said post he was appointed as full time Librarian, and rendered 17 years service is also not in dispute. The petitioner did possess requisite qualification for the appointment on the post of part time Librarian. It is submitted that, there is provision in Rule 57 Note 1 of the Maharashtra Civil Services [Pension] Rules, 1982 that, in cases of employees paid from contingencies, who are

subsequently brought on regular pensionable establishment by conversion of their posts, one half of their previous continuous service shall be allowed to count for pension. Therefore, said provision could have been made applicable even in the case of the petitioner, but at the relevant time, the respondent authorities did not grant him the benefits of part time Librarian by converting the said service as full time Librarian by counting one-half of the service rendered by the petitioner as part time Librarian.

6] Learned counsel appearing for the petitioner, pressed into service exposition of the Bombay High Court, Bench at Aurangabad, in the case of *Shalini Asaram Akkarbote Vs. The State of Maharashtra* decided on 29th April, 2014, in Writ Petition No.8289/2013 and submits that, in the facts of that case, the Division Bench has taken a view that, the services rendered by the petitioner therein as part time Librarian, half of the period of the total period of said services should be counted, while considering his qualifying service for granting relief of the pensionary benefits. Therefore, the learned counsel appearing for the petitioner submits that, facts of the present case are akin to the facts of the case in the case of *Shalini Asaram*

Akkarbote [cited supra], and therefore, Writ Petition deserves to be allowed.

7] Respondent No.4, namely Vikas s/o. Mahadu Patil, working as Deputy Education Officer [Secondary], Zilla Parishad, Jalgaon, has filed affidavit-in-reply. It is stated in the said affidavit-in-reply that, the State Government has not issued any Circular / Resolution for considering half of the period of service as part time service as Librarian for the purpose of granting pensionary benefits, and therefore, prayer of the petitioner deserves to be rejected. Though other respondents have served, they have not filed reply.

8] We have heard the learned counsel appearing for the petitioner, the learned AGP appearing for the respondent – State, and the learned counsel appearing for the other respondents. With their able assistance, perused the grounds taken in the Petition, annexure thereto, reply filed by the respondent No.4, and also additional documents tendered across the bar by the learned counsel appearing for the petitioner. The petitioner has placed on record Certificate issued by the Head Master, wherein it is certified that, the petitioner has passed S.S.C. Examination in March, 1968. Further document is placed on record

showing signature of the Director of Librarian, Maharashtra State, Mumbai-1, wherein it is stated that, the petitioner has successfully completed Librarian Training Course in the Year 1969 with 6 subjects, mentioned in the said certificate. There is also extract from the service record, which shows that, the petitioner was appointed as temporary part time Librarian on 16.08.1977, and thereafter, he was continued on the said post till 31st July, 1991. It further appears that, he was granted permanent approval as part time Librarian in the Year 1983 and on 1st August, 1991, the petitioner was appointed as full time Librarian. His salary is shown in the pay scale of Rs.840-1200/-. The fact that the petitioner was appointed as part time Librarian, and thereafter, as full time Librarian for the afore-mentioned period is not disputed by the respondents. Therefore, it is abundantly clear that, the petitioner was appointed as part time Librarian and thereafter as full time Librarian. It further appears that, while granting pensionary benefits to the petitioner, the respondents have not considered the service rendered by the petitioner as part time Librarian from the year 1977 till 1991. The Bombay High Court Bench at Aurangabad in the case of *Shalini Asaram Akkarbote [cited supra]* had occasion to consider the similar controversy. In para 9 to

11 of the said Judgment, High Court held thus:

*"9. This Court in the case of **Shivappa Bhujangappa Bembale**, supra, while interpreting Rule 57 and also other relevant Rules of Maharashtra Civil Services [Pension] Rules, 1982, in paragraph nos.6 to 8 held thus:-*

"6. The only crux in the present matter as the Zilla Parishad authorities has rejected the claim of present petitioner relying on Note 2, however, considering the factual aspect from the present case as it is seen that the initial appointment order of the present petitioner as part time peon is 24.7.1970; he continued as part time peon till 10.7.1990 and thereafter by order dated 6-7-1990 the petitioner was taken on regular cadre in the pay scale of Rs.750-12-870-DR-14-940 by the Chief Executive Officer, Zilla Parishad. The order passed by the Chief Executive Officer, Zilla Parishad is also on record and the very wording of the said order safely makes it clear that the persons who are working as part time and salary being paid from contingency, those persons are being taken on regular cadre in Class-4 and being fixed in the pay scale of Rs.750-12-870-DR-14-940. After going through the order dated 7-7-1990 it can be said that it is the fresh order giving regular employment to the petitioner, however, as he was already worked as part time peon and being paid from contingency the services being regularised in the pay scale in Class-4 servant. We have gone through the Note 1 and Note 2 of Rule 57 and we

find that the Zilla Parishad has wrongly applied Note 2 in the present matter while rejecting the claim of the petitioner to grant pension, as in fact in the present case, Note 1 of Rule 57 is applicable. Therefore, we find that the claim as set up by the present petitioner that he is entitled for pensionary benefits, is definitely justified."

"7. Mr. Dhage, Advocate, has made reference in respect of order passed in Writ Petition No. 3472/1996 and in a same situation this Court in the said writ petition, has given direction to the respondents to consider the case of petitioner for pensionary benefits within a period of three months and also directed for payment of arrears. We have gone through the said order wherein a reliance is placed on Note 1 of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. Considering the factual aspects in the present case we also find that in the present case Note 1 of Rule 57 is applicable."

"8. We, thus, accordingly direct the respondent No.2 Zilla Parishad to consider the case of present petitioner for giving terminal benefits in view of the above rule and to decide the same within three months from today and the necessary arrears which the petitioner is entitled be accordingly paid."

10. Upon careful perusal of paragraph nos.6 to 8 from the said judgment, supra, the High Court in no uncertain words held that the part-time service on regular cadre as a peon is required to be taken into consideration for the purposes of granting pensionary benefits by taking half of

the said period into account coupled with the period for which the employee has worked on full time post. In the facts of that case, the petitioner therein was appointed as a part time peon in the School from 24.07.1970 till 10.07.1990, and thereafter, on regular cadre as a peon till his retirement on 30.04.1993. In the facts of that case, the High Court considered the total length of service as a part-time peon, which was 20 years, and for the purpose of counting the said period for pensionary benefits has counted half of the period i.e. 10 years, and held that the petitioner therein has spent total period of 13 years in service for the entitlement to pensionary benefits.

11. In case of **Jayshree Narayan Mhaske**, *supra*, High Court in paragraph nos.7 and 8, held thus:-

“7. Petitioners husband was appointed as a part-time servant vide order dated 1st April, 1971 on a fixed pay of Rs.30/- per month. This order does not speak that the amount of Rs.30/- which was being paid to him, was a honorarium, but same is described as his fixed pay. The order further speaks that his services are purely temporary, and liable for termination without notice. So, he was a part-time temporary Government servant. There is no dispute that subsequently, he was brought on regular establishment. Respondents did not produce on record the order by which he was brought on regular establishment. However, they have produced relevant entry from the service-book, which states that he has been promoted from part-time employee to peon, by order dated 23rd June, 1983 in the regular pay scale stated above.

No document is produced on record to show that payment was made to him out of contingent funds. The entry in the service-book makes mention that he was promoted. Note No.1 deals the cases of employees who were brought on regular pensionable establishment by conversion of their posts. Here in the present case, the petitioners husband is shown to have been promoted and posted as a peon. So, from this order, inference can be drawn that he was in regular employment on substantive post. There was no break in his services since his appointment on 1st April, 1971. Even if it is accepted that as a part-time employee, he was paid out of contingent funds, the fact remains that he was brought on regular establishment in 1983 by way of promotion. So, his case is covered by Note No.1 of Rule 57 of the Pension Rules and the services rendered by him before he was brought on regular establishment needs to be counted while computing his qualifying service.

There appears no specific provision under the Pension Rules which deals the cases of part-time employees. Present petitioners husband was appointed in 1971 as a part-time Class-IV worker and he was promoted and brought on regular establishment by order dated 28-6-1993. In view of this order of promotion, it can be inferred that he was holding a substantive post. If his case is viewed by this angle in view of Rule 20 as he was brought to a post for which these Pension Rules apply, his service shall be subject to Pension Rules. His past service rendered as part-time employee on

substantive post needs to be taken into consideration in view of Note [1] of Rule 57 of the Pension Rules. The respondents admitted that he was on regular establishment from 28-6-1983 to 20-11-1990 and had completed total service of seven years, four months and twenty two days. Subsequently, he was retired compulsorily in 1993 and his absence was also regularised and two weeks period was ordered to be treated as leave and remaining period should be treated as an unauthorised absence. He has rendered about twelve years of service as part-time employee on substantive post. One half of such service needs to be taken into consideration in view of Note [1] of Rule 57 of Pension Rules for the purpose of determination of qualifying service. By addition of such service with regular service, the total service will be more than thirteen years. So, deceased employee was entitled to receive pension as his qualifying service would have been more than ten years."

"8. In view of the above facts and relevant Rules, it is clear that deceased was entitled to retiring pension under Rule 100 of the Pension Rules, which covers the cases of grant of retirement pension to Government servants who have been compulsorily retired. As the deceased husband of the petitioner was entitled to the pension, the petitioner is entitled to receive family pension. So, the decision of the authorities that the deceased was not entitled to the retiring pension and the petitioner also is not entitled to family

pension, is not justified and needs to be set aside by giving directions to the respondents to grant family pension to the petitioner considering the service rendered by her deceased husband from 1st April, 1971 onwards till he was brought on regular establishment by order dated 23rd June, 1983."

Upon conjoint reading of paragraph nos.7 and 8 above, in the facts of that case, the petitioner therein did rendered services as a part-time employee on fixed pay of Rs.30/- per month from 01.04.1971 and he was taken on regular establishment as a peon on 23.06.1983, and he was asked to compulsorily retire on 19.05.1993. While considering the facts of that case, the High Court held that the petitioner therein was appointed as a part-time servant vide order dated 01.04.1971 on fix pay of Rs.30/- per month and he was continued on the said post till he was taken in regular pay scale by order dated 23.06.1983. The Court in paragraph no.7, supra, observed that even if it is accepted that as a part-time employee, he was paid out of contingent funds, the fact remains that he was brought on regular establishment in 1983 by way of promotion. So, his case is covered by Note No.1 of Rule 57 of the Pension Rules and the services rendered by him before he was brought on regular establishment needs to be counted while computing his qualifying service."

9] In the facts of the present case also, indisputably the petitioner herein has rendered services as

part-time Librarian with respondent no.5-School from 16.08.1977 to 31.07.1991 as part time Librarian and from 01.08.1991 to 31.07.2008 as full-time Librarian till the date of his superannuation i.e. 31.07.2008. 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.

10] In the light of discussion herein above, we direct the respondent Nos.1 and 2 to consider the case of the present petitioner for giving him pensionary benefits and to decide the same within three months from today and the necessary arrears which the petitioner is entitled, be accordingly paid.

11] Rule is made absolute in above terms and in terms of prayer clause "A" of the petition, which reads thus:-

A] By writ, order or directions, the respondent no.1 and 2 may kindly be directed to consider his Part Time Service of 13 Years 11

months and 16 days on the post of Part Time Librarian converting into Full Time Service of 7 years and Plus actual Full Time Service of 17 years totalling 24 years qualifying service for the purpose of grant of pension and pensionery benefits in view of the judgment and order passed by this Hon'ble High Court in Writ Petition No.8289/2013 on 29.04.2014.

12] Writ Petition stands disposed of accordingly.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

DDC