

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4060 OF 2015

Jagannath D. Gaikwad.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. V. D. Patil i/b Mr. K. V. Patil for the Petitioner.

Mr. M. V. Mali, AGP for the State.

Coram : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

Date : **June 10, 2016.**

P. C. :

1. Rule. Rule made returnable forthwith. Since the question involved in the petition is in narrow compass, by consent of both sides, petition is heard finally at the stage of admission.

. Respondent Nos.4 and 5 are duly served. Service affidavit to that effect is filed. Despite service, none appeared on behalf of Respondent No. 4 and 5. At any rate, their presence is not necessary for the purpose of disposal of this writ petition as they are supporting the Petitioner.

2. Heard the learned Counsel appearing for the respective parties. The reliefs sought in the petition are as under :

“a) this Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ or directions thereby directing the Respondents to consider proposal of the Petitioner for sanctioning pension, after counting half of the

part-time service of 8 years 5 months 29 days, i.e., 4 years 2 months and 29 days, rendered by the present petitioner.

b) this Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ or direction thereby directing the Respondents to grant Petitioner pension on the basis of qualifying service of 13 years 9 months and 16 days, i.e., including the half of part-time and the full-time service

c) this Hon'ble Court may be pleased to direct the Respondent to pay the pension to the Petitioner from the date of superannuation, i.e., from 30/6/2005 along with appropriate rate of interest.

d) this Hon'ble Court may be pleased to direct the Respondent to grant the Petitioner arrears of pension retirement benefits."

3. The following are the admitted facts between the parties :

. That, the Petitioner holds a degree in M.A.L.T.C. and was therefore eligible for the post of Librarian. The post of Librarian was vacant in Respondent No.4-School. That, *vide* appointment order dated 11th June 1987, the Petitioner was appointed on the said post on part-time basis w.e.f. 15th June 1987. The said appointment of the Petitioner on the post of Librarian on part-time basis was extended from time to time, without any break in service, upto 14th December 1995. That, on 15th December 1995, the Petitioner's services with Respondent No.4 was confirmed to the post of full-time librarian on permanent basis. The full-time appointment of the Petitioner was against the clear, vacant and aided post and was made after following

the procedure prescribed by law. That, on 30th June 2005, the Petitioner supperauannted from the Respondent No.4-School. Thus, the Petitioner was in service with Respondent No. 4-school on the post of librarian on part-time basis for total period of 8 years 5 months and 29 days and on permanent basis for the total period of 9 years 6 months and 16 days. In other words, the Petitioner has worked with Respondent No.4 school for a total period of 18 years, 9 months and 16 days.

4. The Petitioner was denied pension and therefore on 22nd February 2005, he filed representation before Respondent No.3-the Education Officer. The said representation was rejected on 31st March 2005 by the Education Officer. In the year 2010, the Petitioner again made a representation to Respondent No.3 for reconsideration of his claim for grant of pension. However, this representation was rejected by Respondent No.3 on 3rd September 2013 on the ground that the Petitioner has not completed 10 years of permanent service. The Petitioner therefore filed a writ petition in this Court, being Writ Petition No. 2496 of 2014. By the order dated 9th September 2014, this Court directed the Respondents to consider the Petitioner's claim. Respondent No.2 however by his order dated 18th November 2014 has

rejected the Petitioners proposal for pension and therefore present writ petition.

5. Mr. Patil, learned Counsel appearing for the Petitioner relied on the provisions of Rules-30 and 57 of the Maharashtra Civil Services (Pension) Rules, 1982 and the decisions of this Court in Jayshree Narayan Mhaske vs. State of Maharashtra [2005(6) Bom.C.R.382], Shivappa B. Bembale vs. State of Maharashtra [2005(6) Bom. C.R. 437] and Shalini Asaram Akkarbote vs. State of Maharashtra [Judgment dated 29th April 2014 in W.P. (Aurangabad Bench) No. 8289 of 2013]. Relying upon the said provisions and said decisions, Mr. Patil submitted that one half of the services rendered by the Petitioner on temporary basis is required to be computed while considering the qualifying service for pension.

6. Mr. Mali, learned AGP contested the petition. He relied upon the provision of Rule-19 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and submitted that as the Petitioner has not completed 10 years of service on full-time basis, he is not entitled for pension.

7. Having considered the rival submissions and having gone through the relevant provisions and decisions cited, we find merit in the writ petition.

8. This Court in the case of *Shivappa (supra)* while interpreting Rule-57 and also other relevant Rules of Maharashtra Civil Services (Pension) Rules, 1982, in paragraph 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."

9. Upon careful perusal of paragraph Nos. 6 to 8 from the above judgment, 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 10.7.1990, and thereafter on regular cadre as a peon till his retirement on 30.4.1993. 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."

10. In the case of *Jayshree (supra)*, this Court in paragraph

nos.7 and 8, has held thus :

"7. Petitioner's 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 render services as a part-time employee on fixed pay of Rs.30/ per month from 1st April

1971 and he was taken on regular establishment as a peon on 23rd June 1983 and he was asked to compulsorily retire on 19th May 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 1st April 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 23rd June 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.

11. In view of the above decisions and in the light of admitted facts of the present case we find that in addition to the period of service rendered by the Petitioner on permanent full-time basis, half of the period of service rendered by the Petitioner against a part-time post of librarian is required to be considered for computing the pensionary claim of the Petitioner. We accordingly allow the

petition in terms of prayer clauses (a) to (d). Respondent Nos.2 and 3 are directed to compute the pension due and payable to the Petitioner and pay the same along with interest @ 9% p.a. We make it clear that the Petitioner is entitled for pension with effect from his date of retirement, ie., 30th June 2005. Respondent Nos.2 and 3 shall complete the entire exercise within 12 weeks from today. Rule is made absolute accordingly.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]