

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7126 OF 2017

Ku. Nutan Appasaheb Kamble	...	Petitioner
Versus		
The State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 11218 OF 2017

Naresh Govind Parab	...	Petitioner
Versus		
The State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 7127 OF 2017

Rajendra Sikandar Naikwadi	...	Petitioner
Versus		
The State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION (ST) NO. 36018 OF 2017

Rajendra Chintaman Shejwal	...	Petitioner
Versus		
The State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 490 OF 2018

Sambhaji Shivaji Patil	...	Petitioner
Versus		
The State of Maharashtra & Ors.	...	Respondents

**WITH
WRIT PETITION NO. 11224 OF 2017**

Vithoji Dinkar Rane	...	Petitioner
Versus		
The State of Maharashtra & Ors.	...	Respondents

Mr. S. A. Rajeshirke for the Petitioners in all Writ Petitions.

Mrs. M. P. Thakur, AGP for the Respondent Nos.1 to 4 – State in all Writ Petitions.

Mr. Shrishail Sakhare for Respondent Nos.5 and 6 in all Writ Petitions.

**CORAM : R. M. SAVANT AND
NITIN W. SAMBRE, JJ.**

DATE : 4th OCTOBER 2018.

P.C.

. With consent all the Writ Petitions are taken up for final disposal. For the sake of convenience, the facts in the Writ Petition No. 7126 of 2017 are referred to for deciding all these Petitions as it is not disputed that the facts in all the Petitions are similar.

2. In all these Writ Petitions, the Petitioners claimed to be entitled to the benefits attached to the post of Full Time Librarian with effect from 1st September 1996, as according to them the relevant criteria of strength of more than 1000 students was fulfilled by them from the

academic year i.e. year 1995-96 till 2006 as prescribed in the policy of the State Government.

3. The facts necessary for deciding the present Petitions are as under :

The Petitioners claimed that the Respondent No.1 – State Government vide its Resolution dated 28th June 1994 prescribed the strength of 1000 to 1500 students for sanction of a post of Full Time Librarian of which the Petitioners are seeking implementation.

According to the Petitioners, they hold requisite qualification and came to be appointed on the post of Librarian by the respective management after following due process of law. The appointment of the Petitioners with the Respondent No.6 as Part Time Librarian with effect from 1st September 1996 and approval of such appointment by the Respondent – Education Officer is not disputed. According to Petitioners, in fact the Petitioners though were appointed as Part Time Librarian, they have rendered all the required services of a Full Time Librarian.

4. According to the Petitioners from the date of their initial appointment the strength of the students with the Respondent No.6 - School in which they were appointed, was more than 1000 students. The

Petitioners have substantiated their claim by placing on record in tabular form the strength of students in school in each Academic year.

5. It is the case of the Petitioners that vide Government Resolution dated 3rd August 2006, the post of the Part Time Librarian were converted to Full Time, however, the benefits thereunder of the post of Full Time Librarian were given from the date of the said Resolution. As such, according to the Petitioners serious prejudice is caused as their earlier service from 1st September 1996 to 31st March 2006 as Part Time Librarian were not taken into account for working out various service benefits.

6. According to the Petitioners, in the identical set of facts, other similarly placed Petitioners sought benefit of the Government Resolution dated 28th June 1994 by filing Writ Petition before this Court and the Benches at Aurangabad and Nagpur, wherein the benefits of the Government Resolution dated 28th June 1994 are extended to the Petitioners by issuing appropriate directions by extending notional pay fixation, time-bound promotion and the other retirement benefits. However, the payment of difference of salary for the post of Full Time Librarian for a period from 1st September 1996 to 31st March 2006 were not issued. As such, the Petitioners have prayed for issuance of similar directions.

7. The Respondent Nos. 1 to 4 filed their Affidavit in-reply and resisted the claim. According to Respondents, 924 posts of part Time Librarian vide Government Resolution dated 3rd August 2006 same were converted into Full Time Librarian, considering the strength of the school for last three years prior to 1st April 2006. In case if the strength is above 1000 students then only the benefits of said Government Resolution was extended. Amongst other the compliance required were the appointment of the Part Time Librarian should be in tune with the Recruitment Rules.

8. According to Respondents, Rider is placed on the right of Part Time Librarian whose services are regularized terming the said appointment as a fresh one with effect from 1st April 2006. According to the Respondent Nos.1 to 4 in addition to the aforesaid, conditions incorporated in the Government Resolution dated 3rd August 2006 speaks of such appointment on the post of Full Time Librarian will be on probation for a period of two years with lowest pay tag in the said category and the salary of the post of Full Time Librarian will be paid from 1st April 2006.

9. According to the learned AGP for Respondent Nos. 1 to 4 since the Government Resolution by virtue of which the approval for appointment of the post of Full Time Librarian was conferred by the Government Resolution dated 3rd August 2006 by creating 924 posts of

Librarian, the grant of approval as a Full Time Librarian and benefits thereunder with effect from 1996 cannot be granted in absence of any policy or any statutory provisions to that effect. As such, it is prayed that the Writ Petition be dismissed.

10. Considered rival submissions.

11. Vide Government Resolution dated 28th June 1994 the Government of Maharashtra noticed that change needs to be effected in the existing policy of the Government of applying bench mark in the matter of the creation of post *qua* the workload and accordingly constituted a committee headed by the former Director of Education Mr V. V. Chiplunkar. Based on the recommendations, the Government provided for creation of one Part Time Post of Librarian against the strength of 1000 to 1500 students. The said policy was reconsidered by the State Government pursuant to the request made by the Association of Part Time Librarian which has resulted into formulating fresh policy as reflected in the Government Resolution dated 3rd August 2006.

12. Accordingly, the State Government granted permission of conversion of existing 924 posts of Part Time Librarian to Full time Librarian, based on the conditions viz –

- (a) The strength of the students for the last three years before 1st April 2006 should be 1000;
- (b) The appointment of Part Time Librarian should be in accordance with the Recruitment Rules;
- (c) The Part time Librarian should complete five years of his tenure; and
- (d) For calculating the strength of students, only the grant in aid sections will be taken into consideration.
- (e) The appointment of such Part Time Librarian should be approved by the Education Officer.

13. Such schools who were satisfying the aforesaid conditions who are 924 in numbers were permitted to convert their existing posts of Part Time Librarian into Full Time Librarian, however, such conversion was made subject to following conditions :

- (a) That the appointment to the post of Full Time Librarian will be a fresh appointment and not by promotion.
- (b) Initially the appointment will be on probation for a period of two years.
- (c) Tenure of services as a Part Time Librarian will not be considered for granting pay scale.

- (d) The appointment will be on the lowest pay grade in the category of librarian.
- (e) Pay to the post of Full Time Librarian will be entitled from 1st April 2006.
- (f) Creation of post will be subject to the further policy of the Government.

14. The learned Counsel for the Petitioners has rightly invited our attention to the various orders passed at Nagpur Bench and Aurangabad Bench, to be more precise at Nagpur Bench in *Writ Petition No. 6630 of 2013 (Kiran Keshavrao Girhe & Ors. V/s State of Maharashtra & Ors.) with other connected matters, decided on 28th January 2015* and at Aurangabad in *Writ Petition No. 2732 of 2013 (Sayed Khaled Sayed Abdul Hameed V/s The State of Maharashtra & Ors.) decided on 1st April 2015* following the Judgment passed at Nagpur Bench. All these Judgments cover the issue raised before us, however, this Court will not hesitate to add that admittedly the schools where the Petitioners are working are having strength of more than 1000 students from 1996.

15. The schools in which such Part Time Librarian like Petitioners were working having strength of more than 1000 students, preferred Writ Petition No. 5126 of 2012 and Writ Petition No. 1881 of 2012 seeking

similar relief as is prayed in the present Writ Petition. In Writ Petition No. 2281 of 2013 (*Vatsala Nana Desai V/s The Head Master, ShriM.G.Shah Vidyamandir and Junior College, Kolhapur & Ors.*) and other connected matters, the Principal Seat of this Court vide order dated 18th June 2013 has allowed the Petitions thereby granting the revised pay scale to the Petitioners therein in accordance with Government Resolution dated 1st October 1988. In the said case what prevailed upon the Court to grant relief was the qualification of the Petitioners as Bachelor's Degree in Library Science and their appointments since 1979.

16. The aforesaid position is not disputed by the Respondents who have come up with a fresh policy vide the Government Resolution dated 3rd August 2006.

17. Apart from above, the Respondent Nos. 1 to 4 are not in a position to explain as to how the Petitioners' cases are different from the case *referred supra* which are decided at Nagpur Bench and Aurangabad Bench of this Court. The orders delivered in the aforesaid matters at Nagpur Bench and Aurangabad Bench makes it amply clear that the relief prayed in the present Petition is very much covered by the said orders.

18. That being so, in our opinion, the Petitioners are entitled for

the relief prayed in the Petition. As such, we are inclined to issue following directions to the Respondents :

- (i) The Respondent Nos.1 to 4 are directed to grant notional pay fixation, time-bound promotion and other retirement and pensionary benefits to the Petitioners upon considering their full time appointment on the post of Librarian from the date of their initial appointment, having regard to the fact that the strength of the students on such date was 1000 or more.
- (ii) The date on which the strength of the students has crossed 1000 shall be considered for grant of notional pay fixation, for grant of time-bound promotion and other retirement and pensionary benefits which in any case cannot be before the Government Resolution dated 28th June 1994.

19. The aforesaid relief shall be with a rider that the Petitioners will not be entitled for the difference of salary till 2006 i.e. the date on which the Petitioners were conferred with the status of Full Time Librarian pursuant to the Government Resolution dated 3rd August 2006.

20. As such, all the Writ Petitions are allowed in above terms.

(NITIN W. SAMBRE, J.)

(R. M. SAVANT, J.)