IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8678 OF 2012

Sou. Shashikala Balkrishna Nerlikar .. Petitioner

Versus

The Secretary, Social Welfare, Cultural,
Sports and Special Assistance
Department and ors .. Respondents

...

Mr.A.M. Kulkarni for the petitioner.
Mrs.S.D. Vyas 'B' Panel Counsel for the StateV.P. Mali, AGP for the State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.

RESERVED ON : 14th AUGUST 2018

PRONOUNCED ON : 7th SEPTEMBER 2018

<u>JUDGMENT:</u>- (Per SMT.BHARATI H. DANGRE, J)

1 The petitioner, a primary teacher who has superannuated on attaining the age of superannuation on 31st January 1994, has approached this Court seeking issuance of directions to the respondent nos.1 to 3 to grant her pension in

terms of the Maharashtra Civil Services (Pension) Rules 1981. She has also sought direction for payment of arrears of the pension along with interest at the rate of 18% from the date of filing of the proposal in the office of the social welfare officer.

The petitioner has impleaded the Secretary, Social Welfare, Cultural Sports and Special Assistance Department, State of Maharashtra along with the Commissioner, Handicap Welfare Department as respondent nos.1 and 2 respectively. The Social Welfare Officer, Pune has been impleaded as respondent no.3. The Educational Institution which runs the Special School is also impleaded as respondent no.4 along with the Principal of the School at Pune.

2. The grievance raised by the petitioner through this petition is that she has been denied the benefits of the pension scheme inspite of her rendering the qualifying service making her eligible for availing the benefits under the Maharashtra Civil Services (Pension) Rules 1981. According to the petitioner, she was appointed in the respondent no.5 school as a primary teacher and the said school is run by respondent no.4

at Dhayari. The petitioner was appointed in the said capacity from 1st November 1983. According to the petitioner, she worked in the said capacity till date of superannuation i.e. 31st January 1994 and total service rendered by her is 10 years 2 months. It is the case of the petitioner that she had rendered satisfactory services and it was so certified by issuing a letter of appreciation in her favour. The petitioner states that the muster roll maintained by the respondent no.4 reflectS that the petitioner had rendered her services, though she was not paid salary for certain period out of the total service rendered by her and inspite of this, according to her, admittedly, the service rendered by her is of 9 years 7 months. The petitioner, therefore, makes a grievance that though she is entitled for pension as per Rule 110(3) of the Maharashtra Civil Services (Pension) Rules 1981, and the pension proposal of the petitioner was forwarded by respondent no.4 to respondent no.3, it came to be rejected by an intimation that the service rendered by the petitioner on the sanctioned post was only for a period of 8 years 2 months and this service did not make her eligible to avail the benefits of pension. The petitioner has placed on record the letter dated 6th November 2007 at 'Annexure D' to the petition.

Attempt of the petitioner is to compare her case with that of one Smt.Nirmala Gole and the contention is in pursuance of a decision of this Hon'ble Court, in her case, by taking recourse to Rule 110(3), where her service was admittedly rendered for 9 years and 7 months, she was held entitled for the pension. The case of the petitioner is that based on the said judgment delivered by this Court in Writ Petition No.3278 of 2001 in case of Nirmala Gole, the petitioner preferred repeated representations and sought redressal of her grievance through Registered Association of retired teachers, but she was deprived of the benefit of the judgment delivered by this Hon'ble Court in a similar situation.

3 It is not in dispute that the petitioner has superannuated on 31st January 1994. She approached this Court and raised a grievance about non-payment of pension in terms of the Maharashtra Civil Services (Pension) Rules 1982 and sought direction for payment of arrears and the interest by

filing the present writ petition on 13th July 2012.

This Hon'ble Court on 31st January 2013 was pleased to issue notice to the respondents and indicated that the petition would be disposed of finally at the admission stage itself. During the pendency of the petition, this Court vide order dated 6th December 2013 directed the Addl. Government Pleader representing the State to seek instructions from the Commissioner for Disability, Maharashtra State, Pune about the decision on the representation. This Court was informed on 13th December 2013 that the Commissioner has taken a decision on the representation of the petitioner and has rejected the same. However, since the decision of the Commissioner was not final, the matter was further referred to the State Government for necessary action. This Court, therefore, directed the State Government to take a decision in terms of the order of Commissioner and communicate the same to the petitioner. The decision of the State Government was communicated to the petitioner which negated the claim of the petitioner and the petitioner sought leave of this Court to amend the petition to raise a challenge to the said decision.

The permission was accordingly granted by an order passed by this Court on 9th January 2014 and the petitioner amended the writ petition and challenged the decision of the State Government dated 1st January 2014, thereby informing the petitioner that she is not eligible for availing the benefits of pension under the Maharashtra Civil Services (Pension) Rules 1982.

The petition was listed before us on 14th August 2018 and we have heard the learned counsel Shri A.M. Kulkarni for the petitioner and Smt.Vyas, 'B' Panel counsel appearing for respondent State.

4 Perusal of the petition would reveal that the petitioner was appointed as a teacher with effect from 1st November 1983 to carry out the survey of special students in and around Dhayari and its vicinity. By an order issued on 29th March 1984, the petitioner was appointed as a teacher in Dhayari in Karnbadhir Vidyalaya where she rendered her service till 10th June 1984. She was further appointed as a language teacher in Dhayari karnbadhir Vidyalaya where she

continued till 30th November 1985. From 1st February 1985 to 31st January 1994, the petitioner was appointed as Special Teacher in Chinchwad BadhirMuk School, run by the respondent no.4 where she rendered her services till the date of her superannuation i.e. 31st January 1994. The period of service rendered by the petitioner is tabulated in the following chart:

(A)	From 29.3.1984 to 10.06.1984 (In Dhayari Karnbadhir School)	2 M 13 D
(B)	From 11.06.1984 to 30.11.1985 (In Dhayari Karnbadhir School) As Language Teacher Period in Dhayari School	1 Y. 5M. 20 D 1 Y. * M. 03 D.
(C)	From 01.12.1985 to 31.01.1994 (In Chinchwad Badhirmuk School)	8 Y. 2 M. 0 D.
(D)	Total period of service	9 Y. 10 M. 3 D.

The respondent State has filed an affidavit on record and raised no dispute about the service rendered by the petitioner. It is however stated that the petitioner started her service as Special Teacher from 1st April 1985 and she attained the age of superannuation on 31st January 1994 on the said post. The earlier service rendered by the petitioner in Dhayari Karnbadhir Vidyalaya, Pune is not entitled to be counted as the said school had no recognition. The services of the petitioner were then transferred to Chinchwad Badhir Mukh Vidyalaya Chinchwad, with effect from 1st April 1985. As far as the service rendered by the petitioner from 1st November 1983 to 28th March 1984 is concerned, it is stated in the affidavit that the petitioner worked as Survey teacher and did not receive any salary or honorarium from the management and even this service is not entitled to be counted for the purpose of pension. It is categorically stated in the affidavit that the service rendered by the petitioner from 29th March 1984 to 31st March 1985 is not qualified to be counted for the purposes of pension as the special school where the petitioner rendered her services i.e. Dhayari Mukh Badhir School Pune was not recognized by the Government and it received recognition only on 1st April 1985. Under these circumstances, it is the specific stand of the State Government that the total services rendered by the petitioner from 1st April 1985 to 31st November 1985 i.e. 8 months cannot be counted as pensionable service as the said service rendered by her was on 'no grant basis'.

5 The State Government had granted Recognition to

the Special School from 1st April 1985 and it was only thereafter, the services of the petitioner came to be approved and it is only this service which according to the State is eligible to be counted for the purposes of pension. Counting this service from the said date, the petitioner has rendered service of 8 years and 2 months on the sanctioned post but the said service falls short of 10 years which is the minimum qualifying service required to hold one eligible for availing the pensionary benefit under the Maharashtra Civil Services Rules. It is on this ground the petition is opposed.

6 We have carefully perused the impugned decision taken by the State Government on 1st January 2014 and which was communicated to the petitioner through Commissioner, Handicap Welfare Department, Pune. In the impugned decision, it is categorically spelt out that the petitioner had rendered her services from 1st April 1985 to 31st January 1994. The service rendered by her prior to this period i.e. from 29th March 1984 to 31st March 1985 was in a school which was not recognized and therefore, will not be counted for the purposes

of pension.

The pensionary service rendered by the petitioner is 8 years 10 months which is less than 10 years and therefore, the petitioner is not eligible for conferment of pay benefits. The State Government has also considered the request of the petitioner to grant relaxation and consider her case as a special case and compare herself to Mrs.Nirmala Gole who was granted relief by this Court. The State Government found that the benefit conferred on Smt.Nirmala Gole cannot be availed by the petitioner and it spelt out that Smt.Gole had rendered the service in an aided school from 12th June 1976 to 30th April 1986 which was aggregating to 9 years and 10 months and therefore, she was extended the benefit of sub-rule (3) of Rule 110 of the Maharashtra Civil Services Rules. However, even if the benefit of Rule 110(3) is extended to the petitioner, still, she would not make up for the qualifying service of 10 years for the purposes of pension.

7 We do not find any illegality in the said decision of the State Government, though the learned counsel for the

petitioner would vehemently submit that the case of Mrs.Gole was identical to that of the petitioner. Perusal of the Government Resolution which was issued in case of Mrs.Nirmala Gole in pursuance to a decision of this Court in WP 3274/01 would reveal that Mrs.Gole had rendered her services in unaided and aided Institute from 12th June 1976 to 30th April 1986 and she had rendered total service of 9 years 10 months. By applying the sub-rule(3) of Rule 110 and since the fraction of service of 10 months was counted as one half year and it was held that she had completed 10 years of service and was held eligible for availing the benefit under Maharashtra Civil Services (Pension) Rules 1982.

As far as the petitioner is concerned, the service rendered by her from 1st December 1985 to 31st January 1994 is of 8 years 2 months and therefore, there is no question of extending the benefit of sub-rule (3) to the case of the petitioner. The service rendered by the petitioner from 29th March 1984 to 31st March 1984 i.e. a period of one year 3 days was in a school which was not recognized and therefore, it cannot be counted for the purpose of pension. From 1st April

1985 to 31st November 1985, the petitioner had rendered the services on an honorarium as a special teacher and this was not counted as a government service. Therefore, the only service which would make her eligible for pension is the one rendered from 1st November 1985 to 31st January 1994 which is a period of 8 years 2 months, when she has rendered her service as a special teacher in Chinchwad Mukhbadir Vidyalaya, Chinchwad, Pune. Perusal of the Maharashtra Civil Services (Pension) Rules 1982 would reveal that the Rules are applicable to all members of services and holders of post whose conditions of service the Government of Maharashtra is competent to prescribe. The term “pensionable service” is assigned a definite connotation under the said Rules and it means service which qualifies the government servant performing it to receive a pension from the consolidated fund. Rule 110 which determines the amount of pension reads thus :

> **110 Amount of pension** (1) In the case of a government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's pay for every completed six monthly

period qualifying service.

(2) (a) In the case of a Government servant retiring on Superannuation, Retiring, Invaid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty percent of the “Pensionable Pay” subject to a maximum of Rs.4,000 per month.

(b) In the case of a Government servant retiring on Superannuation, Retiring Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of thirty-three years but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension, admissible under clause (a) and in no case the amount of pension shall be less than rupees three hundred and seventy five per mensem.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be expressed I whole rupee and where the pension contains a fraction of a rupee, it shall be treated as a completed one-half year and reckoned as qualifying service.

(4)The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2), shall be expressed in whole rupee and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.

Perusal of the said Rule would reveal that period of 10 years is the minimum qualifying service which would make a government servant eligible for pension. Sub-rule (3) of Rule 110 only provides for a contingency wherein calculating the length of qualifying service, a fraction of year equal to three months arises and by this sub-rule, it is directed that it shall be treated as complete one-half year and will be reckoned as qualifying service. The petitioner cannot seek any benefit of sub-rule (3) as the service rendered by her is 8 years and two months and therefore, there is no question of any fraction being counted so as to compute her service of 10 years.

8 The case of Smt.Nirmala Gole was precisely based on sub-rule (3) of Rule 110, since the service rendered by her was 9 years and 10 months. This Court had held that she was eligible for reckoning the period of 10 months to be treated as complete one-half year and therefore, to be reckoned as qualifying service. This is not so in the case of the petitioner and she is falling short of qualifying service, the respondent State had rightly rejected her proposal for grant of pension.

We are clear in our opinion that since sub-rule 3 of Rule 110 cannot come to the rescue of the petitioner as the petitioner has not completed 10 years of qualifying service, which would make her eligible for availing the retirement pension, we cannot in any way, assist the petitioner.

In the result, the writ petition being without any merit and substance is liable to be dismissed and is accordingly dismissed.

No order as to costs.

(SMT. BHARATI H. DANGRE, J.) **(S.C. DHARMADHIKARI, J.)**