

Pradnya Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1669 OF 2014**

Shri Ashok Laxman Sasthe and Ors. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

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Mr. N. V. Bandiwadekar a/w Vinayak Kumbhar I/b. Mandar G. Bagkar for petitioner.

Mr. S.S. Panchpor, A.G.P. Writ Cell R. No.1 to 3.

Milind Deshmukh for respondent No.4.

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**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

**RESERVED ON : 25th FEBRUARY, 2019
PRONOUNCED ON : 27th JUNE, 2019**

JUDGMENT (PER M.S.KARNIK, J.):

. Rule. Rule is made returnable forthwith by consent of the parties and heard finally.

2. By this Petition filed under Articles 226 and 227 of the Constitution of India the petitioners pray for an appropriate direction to the respondents to count the service rendered by the petitioners on part time basis for a period about 10 years for the

purposes of increments, seniority, pension and for granting higher scale.

3. The facts of the case in brief are as under :-

The petitioner No.1 is qualified M.A., M.Ed., D.P. He was initially appointed on clock hour basis for three years i.e. 1993-1994, 1994-1995 and 1995-1996. From the year 1996 onwards the petitioner No.1 came to be appointed as a part time teacher every year for a period of one academic year at a time. The appointment was approved on year to year basis but there was no formal break in service. He continued in service from 1996 to 15.12.2005 as a part time teacher. The petitioner No.1 was appointed on full time basis w.e.f. 16.12.2005 after the post was converted into a full time post. The appointment of the petitioner was approved as a full time teacher by the Deputy Director of Education from 16.12.2005.

4. In so far as the petitioner No.2 is concerned he was appointed as a part time Shikshan Sevak in 2003-2004 and in the year 2004-2005. Petitioner No.2 is M.Sc. B.Ed. From the

year 2005 onwards the petitioner No.2 was appointed as part time teacher in regular scale in the Junior College and his approval has been drawn as part time teacher in Junior College Scale. The said appointment from 2005 to 2010 continued on year to year basis as a part time teacher in regular scale and approvals have been accordingly granted. The post became full time in the year 2010 when the petitioner No.2 was appointed as full time teacher and his appointment also came to be approved.

5. The Petitioner No.3 was appointed as Shikshan Sevak on honorarium in Chatrapati Shivaji College from 2002 to 2006. He was appointed as part time teacher from 2005 onwards. By an order dated 07.09.2013 the petitioner No.3 came to be appointed as full time Junior College teacher in Karamveer Bhaurao Patil Vidyalaya, Vashi.

6. It is the case of the petitioners that though they have put in long years of part time service before their appointment as full time teachers they are placed in starting scale as a full

time teacher and no benefit of earlier service is given to them. The petitioners came across a Government Resolution dated 31.08.1979 in respect of Senior College Teachers giving the benefit of the service rendered by them on part time basis on being appointed as full time teachers in the Senior College. However no such Government Resolution is issued in respect of Junior Colleges and the employees serving in the Junior Colleges.

7. Learned counsel for the petitioners would submit that part time service rendered by these petitioners cannot be treated as completely different service or a service of which no benefit can be given to the petitioners, particularly when such benefit has been made available to the teachers serving in Senior College. Learned counsel would further submit that considering the principles of equality enshrined under Article 14 of the Constitution of India, it is necessary that such benefits be also extended to persons like the petitioners who have rendered long service as part time teachers.

8. Learned counsel for the petitioners would rely upon the decision of this Court in the case of **Jyoti Prakash Chougule Vs. State of Maharashtra and others** rendered in Writ Petition No.2354 of 2012, **Shivappa s/o Bhujangappa Bembale Vs. State of Maharashtra and another** reported in 2005(3) Mh.L.J. 709 and **Babaso Ganpati Aoute Vs. State of Maharashtra and others** rendered in Writ Petition No.8832 of 2015 in support of his submissions.

9. Learned A.G.P. appearing on behalf of respondent Nos.1 and 2 invited our attention to the affidavit in reply filed by Shri Ajitkumar Rajaram Potdar, Assistant Director of Education, Kolhapur Region, Kolhapur dated 21.03.2016. The stand is, when the teachers in Senior College and Junior College form two different groups, these teachers cannot be considered as similarly situated teachers. It is their stand that Government Resolution dated 31.08.1979 is a matter of policy and ipso facto the benefits available to the Senior College teachers cannot be made available to Junior College teachers. It is the specific stand that no orders in respect of teachers in

Junior College are issued by the respondent No.1-State and hence the part time service rendered by the petitioner cannot be considered for any purpose including pension.

10. We have heard learned counsel for the parties. We have gone through the Petition and also perused the annexures to the Petition. We have gone through the affidavit in reply and rejoinder filed.

11. The undisputed facts are that the petitioner No.1 was appointed on clock hour basis for three years i.e. 1993-1994, 1994-1995 and 1995-1996. Thereafter the petitioner was appointed as part time teacher w.e.f. 1996. He was appointed as full time teacher w.e.f. 16.12.2005 and continued as such till 2010.

12. In so far as the petitioner No.2 is concerned he was appointed as a part time Shikshan Sevak in 2003-2004. He was appointed as part time teacher from 2005 in regular scale in the Junior College. He continued as part time teacher till the year 2010. From 2010 the petitioners appointment was approved

though the petitioner was working on the full time basis as Shikshan Sevak for a period of three years and it is after he completed three years of service that he has been given the approval as regular teacher in Junior College.

13. The petitioner No.3 was appointed as a part time teacher from 2005 onwards till he was regularly selected in the year 2013. He was appointed as full time teacher on 07.09.2013.

14. In our opinion the case of the petitioners is squarely covered by the decision of this Court rendered in Writ Petition No.2354 of 2012 (to which one of us Dharmadhikari, J. was a party). We may refer to the relevant paras of the decision of the Division Bench in the Jyoti Prakash Chougule (supra) which reads thus :-

11] Petitioner's advocate has placed reliance upon the judgement of Shivappa (supra) in which identical controversy was considered by the Division bench of this court. The Division Bench has held as under:-

“5. Relying on the above three provisions of Rule 30, Rule 57 Note 1 and Rule 110 of the

Maharashtra Civil Services (Pension) Rules, Mr. Vivek Dhage, Advocate for petitioner, submits that present petitioner is entitled for pension as his part time service as Peon is approximately 20 years as he was appointed in the year 1970 and continued on the same post till 1990 and, thereafter, the Chief Executive Officer has taken him in regular cadre by giving appointment in the said cadre and he worked for three years. So, considering the Note 1 of Rule 57, his previous service is to be counted to the extent of 10 years as this period worked as part time Peon is about 20 years and in regular post he worked for three years. Thus, the total period of service of present petitioner comes to near about 13 years, however, the Zilla Parishad has completely ignored this aspect.

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.”

12] We are, therefore of the opinion that the point and issue raised in this petition is squarely covered by this judgment. The teacher could not have been deprived of the services rendered under the same management but may be in different schools or institutions. The services could have been clubbed or added to as desired. The reliance placed on Rule 30 and

31 of the MCS(Pension) Rules 1982 was also noticed in the case of Shivappa (supra) and the Division Bench invited attention of the authority to Rule 57 which deals with non pensionable service. That is how the observations and findings in paras 5 and 6 reproduced above have been rendered by the Division bench, to confer the benefit of pension on the petitioner. The post is fully aided and the Rules noted above are thus applicable.

13] Once the very State Pension Rules are applicable to teachers in terms of the Rule 19 of the MEPS Rules, then, we are of the view that the above principle will apply in the present case. Hence, we direct the respondent No.2 Accountant General to consider the case of present petitioner for giving pensionary benefits in view of the above rule and to decide the entitlement within four months from the date of receipt of copy of this order. The necessary arrears which the petitioner is entitled to should be accordingly paid. If any monetary benefits have to be refunded, the said Respondent No.2 to make an appropriate order in that behalf and the Petitioner to abide by the same.

15. Coming to the facts of the present case, the petitioners earlier working on part time basis were appointed on full time basis when the part time post was converted into full time. Thus in view of the Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982, more particularly Note 1, one

half of the continuous service of the petitioner as a part timer shall be allowed to count for pension. The case of the petitioner is squarely covered by the decision of this court in Jyoti Prakash Chougule (supra). The petitioners being similarly situated are entitled to count 50% of the part time services rendered by them as teachers/Shikshan Sevak for the purpose of pension.

16. In the result the present Writ Petition is allowed. The respondent No.2 is directed to consider the case of the present petitioner for giving pensionary benefits in view of the above rule and to decide the entitlement within four months from the date of receipt of copy of this order. The necessary arrears which the petitioner is entitled to should be accordingly paid. If any monetary benefits have to be refunded, the Respondent No.2 to make an appropriate order in that behalf and the petitioners to abide by the same.

17. Rule is made absolute in the above terms with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)