

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8222 OF 2018

Shri Mukund Marutirao Jagtap	]	
Age 57 Occ : Service	]	
Residing at & Post 591 D, Sopannagar,	]	
Near Mahalaxmi Temple,	]	
Saswad, Taluka Purandar,	]	
District : Pune	]	 Petitioner.

versus

1]	Superintendent,	]	
	Pay & Provident Fund Unit,	]	
	Education Department,	]	
	Pune District, Pune	]	
		]	
2]	The Education Officer (Secondary)	]	
	Pay & Provident Fund Unit	]	
	Education Department,	]	
	Pune District, Pune 411 001	]	
		]	
3]	The Head Master,	]	
	Lonkar Secondary School	]	
	Mundhawa, Pune 411036	]	
	District Pune	]	
		]	
4]	The State of Maharashtra	]	 Respondents.

Mr. Vivek V Salunke for the Petitioner.

Mr. P G Sawant AGP for the Respondents/State.

CORAM : S. S. SHINDE,
V. G. BISHT, JJ

Reserved on : 05th March 2020

Pronounced on : 11th March 2020

JUDGMENT : (PER S S SHINDE, J)

1 Rule. Rule made returnable forthwith and by consent of the learned counsel for the parties heard finally.

2 The Petitioner by this Petition filed under Article 226 of the Constitution of India challenges the order/letter dated 14/07/2017 passed/issued by Respondent No.2 herein to Respondent No.3 whereby the proposal for grant of family pension in respect of the deceased wife of the Petitioner came to be rejected. The Petitioner seeks further direction to the Respondents to grant the pensionary and incidental benefits to the present Petitioner by holding that the deceased wife of the Petitioner is entitled for grant of pension.

3 The relevant facts leading for filing the Petition as disclosed in the Petition are as under :-

The wife of present Petitioner Pramila Mukund Jagtap expired on 08/02/2014. She is survived by her husband i.e. present Petitioner and two daughters. She was appointed as part time librarian at New English School, Mandaki Taluka Purandar, District Pune from 17/09/1996 to 30/04/1997. The said appointment was continued from 09/06/1997 to 30/04/1998. The total period of said service as part time librarian was 1 year, 6 months and 4 days,

however there was a brake in her said service period. Thereafter from 08/06/1998 to 31/03/2007 the wife of Petitioner was appointed on the vacant post as part time librarian at Yashwant Vidyalaya, Mavdik KP, Tal. Purandhar, District Pune and in New English School, Mandaki. During the said period, the wife of Petitioner rendered continuous service. The Education Officer (Secondary), Zilla Parishad, Pune vide letter dated 02/01/1999 was pleased to grant approval to the said appointment of the wife of the Petitioner as part time librarian at the aforesaid schools. Thereafter on 01/04/2007 the wife of Petitioner (now deceased) came to be appointed as full time librarian from the post of part time librarian and accordingly approval came to be granted by the Education Officer (Secondary), Pune zilla Parishad, Pune vide letter dated 08/10/2007. The wife of the Petitioner continued to discharge her duties as full time librarian and while in service as full time librarian with Respondent No.3 she died on 08/02/2014. As she was entitled for grant of family pension and other incidental benefits, Respondent No.3 forwarded the pension proposal of the Petitioner. However, by impugned letter dated 14/07/2017, Respondent No.2 refused to accept the said pension proposal of the Petitioner. Hence this Petition for the relief adverted to herein above.

4 Learned counsel appearing for the Petitioner submits that the approach of Respondent No.2 that since the wife of Petitioner was working as part time librarian from 08/06/1998 to 31/03/2007, the pension scheme

cannot be made applicable to the Petitioner, is erroneous. It is submitted that for the purpose of pensionary benefits part time services rendered by the deceased wife of Petitioner as librarian from 08/06/1998 till 31/03/2007 ought to have taken into consideration, however, Respondent No.2 while passing the impugned order has completely overlooked the fact that the services of deceased wife of Petitioner as part time librarian during the said period has been approved by the Education Officer (Secondary), Zilla Parishad, Pune. He further submits that Respondent No.2 failed to consider the provisions of Maharashtra Civil Services Pension Rules, 1982 and more particularly Rule 30, Rule 33 and Rule 9(2) of the said Rules which provide for consideration of part time services rendered by an employee for the purpose of grant of pension and other incidental benefits.

5 The learned counsel for the Petitioner invites attention of this Court to the judgment of Division Bench of this Court (Bench at Aurangabad) (Coram : S S Shinde and V K Jadhav, JJ) in the matter of Shalini w/o Asarm Akkarbote v/s. State of Maharashtra, Through Secretary, Department of School Education & Sports & ors¹ wherein this Court has referred its earlier judgments in Jayshree Narayan Mhaske v/s State of Maharashtra and ors.² and Shivappa Bhujangappa Bembale v/s State of Maharashtra and anr³, and submits that this Court had an occasion to consider Rules 30 and 57 of the Pension Rules in

1 2014(12) LJSOft 580

2 2005 Bom. C.R. 382

3 2005 Bom. C.R.437

aforesaid cases. He also submits that in similar facts situation and in view of the decision of Division Bench of this court in Writ Petition No.8289 of 2013, this Court (Coram Anoop V Mohta and G S Kulkarni, JJ) by order dated 19/09/2016, in the case of Sukhdev Bhimaji Shinde v/s The Superintendent, Pay & provident Fund Unit, Education Dept. Pune and ors. in Writ Petition No.10424 of 2016, has disposed of the said Petition directing Respondent No.1 to decide the case of the Petitioner therein and take a decision on the Pensionary benefits as early as possible preferably within a period of four months. He therefore submits the ratio laid down in the case of Shalini Asaram Akkarbote's case (supra) squarely applies to the facts of the present case. The learned counsel for the Petitioner therefore submits that the Petition may be allowed.

6 On the other hand, learned AGP appearing for the Respondents/State invites attention to the provisions of Pension Rules and submits that the benefit of Rule 54 of the Pension Rules cannot be extended to the wife of Petitioner as she had rendered services as part time librarian from 08/06/1998 to 31/02/2007 and therefore, the pension scheme cannot be made applicable to the Petitioner as the said part time service cannot be considered for the purpose of considering the entitlement to the pension. The learned AGP lastly submits that the Petition deserves no consideration and it may be rejected.

7 We have given careful consideration to the submissions advance by the learned counsel for the parties. We have also perused the pleadings in the Petition, annexures thereto and the relevant Pension Rules as also the judgments cited by the learned counsel for the Petitioner. The facts of the present case and the facts in the judgments cited are almost similar in nature. Therefore, we are of the opinion that the case of the present Petitioner deserves to be considered in the light of the judgments of this Court referred to herein above.

8 In the case of Jayshree Narayan Mhaske (supra) and in the case of Shivappa Bembale (supra) this Court had an occasion to interpret Rule 57 and other relevant Rules of Maharashtra Civil Services (Pension) Rules, 1982. On the touchstone of the ratio laid down in the said two authorities, the Division Bench of this Court in another judgment in the case of Shalini Asaram Akkarbote (supra) has elaborately dealt with the similar issue involved therein. In Paragraphs 11 and 12 of the said judgment, it has been held by the Division Bench as under :-

“11. In the facts of the present case also, indisputably the petitioner herein has rendered services as part-time Librarian with respondent No.4 School from 24-08-1982 to 30-07-1997 and from 01-08-1997 as full time Librarian till the date of her superannuation i.e. 30-04-2004. 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.

12. In the light of discussion herein above, we direct the respondent no.2 to consider the case of the present petitioner for giving her pensionary benefits and to decide the same within three months from today and the necessary arrears which the petitioner is entitled, be accordingly paid. It is made clear that the respondent No.3 will have to take decision and act in the light of discussion herein above and pass necessary orders. Rule is made absolute in above terms and in terms of prayer clause "C" of the petition, which reads thus :-

- (C) By issuing writ of mandamus or any other appropriate writ, order or direction, respondents may kindly be directed to consider petitioner as an eligible candidate for grant of pensionary benefits after considering half of her part time service as a qualifying service and they may be further directed to take immediate steps for grant and release of all pensionary benefits, including arrears of pension, to the petitioner within stipulated period."

9 In the facts of the present case also, indisputably the wife of Petitioner had rendered services as part time librarian with the schools referred herein above from 08/06/1998 to 31/02/2007 and from 01/04/2007 as full time librarian till the date of her death. Therefore, the services rendered by the wife of 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 wife of the Petitioner had worked as full time librarian. We are therefore of the opinion that the wife of Petitioner will have to be held to be entitled for the pensionary benefits.

10 In the light of the discussions herein above, Respondent No.2 needs to consider the case of the Petitioner's wife as an eligible candidate for grant of family pensionary benefits after considering half of the part time service rendered by the wife of the Petitioner as a qualifying service and decide the same within a particular time frame and the necessary arrears of pension for which the Petitioner is entitled, be paid accordingly.

11 In that view of the matter the impugned order/letter dated 14/07/2017 issued by Respondent No.2 is quashed and set aside. Respondent No.2 is directed to consider the case of the Petitioner's wife accordingly and decide the same within a period of three months from today. The necessary pensionary arrears for which the Petitioner is entitled, be paid accordingly. Rule is made absolute in the aforesaid extent. The Petition is accordingly disposed of keeping all the issues open.

[V. G. BISHT, J]

[S. S. SHINDE , J]

Laxmikant
G.
Chandan

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by Laxmikant G.
Chandan
Date: 2020.03.12
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