

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3719 OF 2019

Smt. Prema Narsinha Herkal. ..Petitioner.
Versus
State of Maharashtra & Others. ..Respondents.

Ms. Pranita P. Hingmire for the Petitioner.
Mr. P. G. Sawant, AGP for Respondent Nos. 1 to 3.

Coram : R. K. DESHPANDE, &
PRITHVIRAJ K. CHAVAN, JJ.
Date : **March 11, 2020.**

P. C. :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the respective parties.

2. The Petitioner was appointed as part time librarian in the private aided school on 21st September 1990. She was made full time librarian with effect from 6th November 2006. The Petitioner retired on attaining the age of superannuation with effect from 31st May 2016. The service rendered by the Petitioner on full time basis from 6th November 2006 has been taken into consideration for the purpose of pension. However, the earlier service rendered by her on part time basis has not been counted.

The reliance is placed on Rule 57, Note-1 of the Maharashtra Civil Services (Pension) Rules, 1982. It is further urged that the Petitioner is governed by the pension scheme prevailing prior to 31st October 2015.

3. The controversy involved in the present case is covered by the decision dated 9th July 2018 given by this Court in Writ Petition No.5421 of 2017 (Nagpur Bench), which takes into consideration the earlier decisions also (consistent view taken by this Court). The decision holds that the Petitioner therein is entitled to claim 50% of the part time services rendered by the employee for the purpose of pension and date of appointment as part time librarian has to be taken into consideration for the purpose of pension. Paragraph 4 of the said decision is relevant and it is reproduced below :

“4. We have gone through Government Resolution dated 31-10-2005 and we do not find that Clause 4(b) therein makes any distinction between the Part Time and Full Time employees. It states that the decision contained in the said Government Resolution shall *mutatis-mutandis* apply to the employees who are recruited on or before 1-11-2005, to whom the existing Pension Scheme or General Provident Fund Scheme would be applicable. Undisputedly, the husband of the Petitioner was recruited on 1-7-1998 as a Part Time Librarian and we find that the stand of the Respondents is that Clause 4(b) contains the recruitment as a Full

Time employee as on 1-11-2005, is artificial and it is not borne out from the said Government Resolution.”

4. The stand taken by the Respondents in their affidavit is that the date of appointment as full time librarian can only be considered, as it is a fresh appointment. This contention has already been rejected. We are also unable to accept this plea that the appointment as full time librarian is a fresh appointment. The services of the Petitioner has to be counted from the first date of appointment and therefore the pension scheme prevailing prior to 1st November 2005 would be applicable to the Petitioner. In the result, writ petition is **allowed** and the order is passed as under :

-: O R D E R :-

1] The order dated 11th July 2018 passed by Respondent No.2 refusing to grant pension and other benefits to the Petitioner is hereby quashed and set aside.

2] The 50% of services rendered by the Petitioner as part time librarian from 21st September 1990 till 6th November 2006 shall be taken into consideration while computing the pensionable service rendered by the Petitioner.

3] The Petitioner shall be entitled to benefit of pension scheme prevailing prior to 1st November 2005.

4] All this exercise shall be carried out within the period of four months from today.

[PRITHVIRAJ K. CHAVAN, J.]

[R. K. DESHPANDE, J.]