

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3628 OF 2021

Mahadev Bapu Takale

... Petitioner

Vs.

The State of Maharashtra

Thr. Secretary of School Education Dept. & Ors. ... Respondents

Mr. S.A. Rajeshirke, Advocate for Petitioners.

Mrs. P.J. Gavhane, AGP, for State- Respondent Nos. 1 to 3.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.**

DATE : 16th SEPTEMBER 2021

P.C. :

. Learned Counsel for the petitioners seeks liberty to delete the name of respondent Nos.4, 5 and 6. Leave to amend is granted. Amendment to be carried out forthwith.

2. Mrs. Gavhane, AGP waives services to respondent Nos.1 to 3 and 7. By consent of parties petition is heard finally.

3. The petitioner has filed this petition under Article 226 of the Constitution of India seeking various reliefs including the reliefs for an order and direction against the respondent No.2 to consider half of the service from initial appointment on 20th April 1995 till 30th April 2007 as a

part time librarian along with full time service i.e. 1st May 2007 to 31st March 2019 for the purpose of granting Old Pension Scheme.

4. It is not in dispute that the petitioner was appointed on 20th April 1995 in the respondent No.5 school by the Respondent No.4 as a part time librarian on the aided post. He continued on the said post till 30th April 2007 as a part time librarian. After following due process of law the petitioner was upgraded with effect from 1st May 2007 as a full time librarian and retired on 30th May 2019 on the same post.

5. Learned Counsel for the petitioner placed reliance on the Judgment of this Court dated 25th August 2021 in case of **Shri Purushottam Harishchandra Shirsekar & Ors. v/s. State of Maharashtra & Ors.** in Writ Petition No.2538/2021 and would submit that 50% of the period of service while the petitioner was appointed on the post of part time librarian on the aided post shall be considered alongwith the service rendered as full time services for computing qualifying service for payment of pension.

6. After considering the period of service granted by the petitioner as part time librarian between 20th April 1995 and 30th April 2007 and as a full time librarian during the period from 1st May 2007 to 31st May 2019 the petitioner is eligible for applying the Old Pension Scheme. This Court in the said Judgment in the case of **Purushottam Harishchandra Shirsekar.** after adverting several Judgments of this Court have held that 50% of the part time services rendered by the employee working in aided school along with the full time services in the educational institutions have to be considered for payment of pension under Old Pension Scheme. The

services of the employee has to be counted from the first date of appointment on either part time or full time post for purpose of pensionary benefits in aided school. There is no dispute that petitioner has completed the service period required for benefit of pensionary benefit under the Old Pension Scheme. The Judgment of this Court in case of **Purushottam Harishchandra Shirsekar (supra)** applies to the facts of this case.

7. Learned Counsel for the petitioner does not press the reliefs sought in prayer clauses (a), (b) and (c) and press only for relief in terms of prayer clause (d).

8. Mrs. Gavhane, learned AGP for respondent could not distinguish the Judgment of this Court in case of **Purushottam Harishchandra Shirsekar (supra)**. In our view, the said Judgment applies to the facts of this case. We are respectfully bound by the said Judgment. We do not propose to take any different view in the matter.

9. We accordingly, pass the following order.

ORDER

- (i) Rule is made absolute in terms of prayer clause (d).
- (ii) The President of Rayat Shikshan Sanstha Satara, Dist. Satara is directed to send the pension proposal papers to respondent No.3 in respect of the claim of pensionary benefit of the petitioner within four weeks from today. The Education Officer shall grant sanction to

the said proposal within four weeks thereafter and shall release the payment within four weeks from the date of granting approval. All the arrears also shall be released simultaneously.

(iii) The Writ Petition is made absolute accordingly.

(iv) No order as to costs.

(v) If the management has applied D.C.P. Scheme and has deducted only amount from the salary paid to the petitioner, the said amount shall be refunded to the petitioner within four weeks from today.

(vi) The parties to act upon an authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)