

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

WRIT PETITION NO. 960 OF 2019

Vijay Purushottam Pathak ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO. 961 OF 2021**

Yejaj Ibrahim Patel ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO. 4061 OF 2019**

Ashok Bala Bhanuse ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO. 4558 OF 2019**

Bhagyashri Vishwas Gore ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO. 4259 OF 2019**

Anuradha Raghunath Deshpande ... Petitioner
Vs.
State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO. 2461 OF 2020**

Rajendra Annappa Dugane ... Petitioner
Vs.
State of Maharashtra and Ors. ... Respondents

Mr. Y. B. Lengare with Mr. Wilson Robi, advocates for Petitioners in all writ petitions.
Mr. N. K. Rajpurohit, AGP with Ms. S. S. Bhende, AGP, Mrs. P. J. Gavhane, AGP, Ms. K. N. Solunke, AGP, Mr. N. C. Walimbe, AGP and Mr. V. M. Mali, AGP for State-Respondents in all writ petitions.

**CORAM : R.D. DHANUKA AND
ABHAY AHUJA, JJ.**
RESERVED ON : 20TH OCTOBER, 2021.
PRONOUNCED ON : 27TH OCTOBER, 2021.

PC:-

1. Learned counsel for petitioners, on instructions, seeks leave to delete respondents no. 5 to 7. Learned counsel for remaining respondents have no objection. Leave is granted. Amendments to be carried out forthwith. Re-verification is dispensed with.

2. Rule. With the consent of the counsel for the parties, rule is made returnable forthwith and heard finally.

3. In all these petitions, under Article 226 of the Constitution of India, the respective petitioners are seeking directions to the concerned respondents including the Education Officer (Secondary) to consider the services and grant approval to the post of Full Time Librarian (FTL) from the periods referred to in the table below as per Government Resolution dated 28th June 1994 and to make pay fixation, pension and time bound promotion/career assurance scheme by considering the service from the academic years as mentioned in the following table as per rules and for a declaration that petitioners are entitled for pensionary benefits under the Old Pension Scheme, viz., Maharashtra Civil Services (Pension) Rules, 1982 (“MCPS Rules, 1982”), Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the existing General Provident Fund Scheme (GPF) and not the Defined Contributory Pension Scheme (DCP Scheme) issued by the Government Resolution dated 31st October, 2005.

TABLE

Sr. No.	WP No. And Name of the petitioner	Part time appointment date	Full time appointment date	Year of students incereasing more than 1000	50% Services	Retired on
1	WPST No. 960 of 2019 Shri Vijay Purushottam Pathak	09.07.1996	01.04.2006	2000-2001	12.07.1996 to 2000 comes to 2 years	
2	WP No. 961 of 2019 Yeja Ibrahim Patel	01.01.1996	01.04.2006	1996-1997		
3	WP No. 4061-19 Ashok Balu Bhanuse	03.01.1996	01-05-2007	2003-2004	06.01.1996 To 01.05.2003 comes to 3.5 years	
4	WP No. 4558-19 Bhagyashri V. Gore	17.02.1995	01-04-2006	1995-1996		31.08.2006
5	WP No.4259-19 Anuradha Raghunath Deshpande	12.01.1994	01-04-2006	1994-1995		31.07.2016
6	WP No. 2461-20 Rajendra Dugane	03.10.1995	01-04-2006	1996-1997		
7	WP No. 4060-19 Ajay Madhukar Kale	07.11.2000	01.04.2006	2000-		

4. Brief facts are that petitioners are graduates, qualified in Library Science and after due selection process were appointed as Part Time Librarian on the respective dates mentioned in the table

above, which had received approval from the Education Officer (Secondary). It is submitted that even through the academic year in which the students' strength increased to more than 1000, the petitioners (except Shri Ashok Balu Bhanuse) were upgraded to Full Time Librarian only from 1st April 2006 and Shri Ashok Balu Bhanuse was upgraded from 1st May 2007. It is submitted that the approval for Full Time Librarian ought to have been granted from the academic year from which the strength of the students increased to more than 1000 as per Government Resolution dated 28th June 1994, which has not been done. The contents of the above table are not disputed by the learned AGP.

5. Aggrieved by the aforesaid, petitioners are before us having filed these petitions for the reliefs claimed therein.

6. Since the issues involved in all these petitions are similar, we consider it appropriate to pass a common order. We also record that respondents have filed their affidavit-in-reply and petitioners have also filed their rejoinders in these matters.

7. The facts as set out in the table above disclose that Petitioners were appointed as part time librarians in the respective schools. The table annexed in the exhibits to the respective Petitions and as indicated in the above table/chart indicates the academic year from which the strength of the students increased above 1000 and through the year the same continued thereafter. It is not in dispute that the Education Officer (Secondary) has approved the appointments of these petitioners as part time librarians in terms of Government Resolution dated 28th June, 1994. In accordance with the said Government Resolution, the post of part time librarian can be upgraded as a full time librarian, if the school satisfies the criteria, i.e., if total strength of the students becomes 1000 or more. The fact that the said criteria has been satisfied in these Petitions is not in dispute.

8. In all these petitions, though various reliefs have been sought, the short controversy involved in the above petitions is whether the petitioners are entitled to notional compensation of their salary, time-bound promotion/career assurance scheme benefits and pensionary benefits from the year when the strength of the students

in the schools, in which they have been working, exceeded 1000. Further, in the case of two petitioners viz. Vijay Purushottam Pathak (WP 960 of 2019) and Ashok Bala Bhanuse (WP 4061 of 2019), petitioners therein are claiming 50% service i.e. entitlement to half of the part time service rendered by petitioners in the educational institution together with full time service in such institute for the period of calculating qualifying service.

9. With respect to the issue regarding 50% service of part time librarian, this Court in the case of **Jyoti Prakash Chougule Vs. State of Maharashtra & Ors.** in **Writ Petition No.2354 of 2012**, has categorically held that petitioner shall be entitled to half of the part time service rendered by the petitioner in the educational institution together with full time service rendered in such educational institution for the purposes of qualifying service as well as pensionary benefits. It is also useful to refer to Rule 57 Note No. 1 of Pension Rules, which provides for considering such services and which has been discussed in the case of Shalini Asaram Akkarbote in Writ Petition No. 8289 of 2013, a view reiterated by various benches of this Court. Therefore, in our view, the service rendered

by the petitioners as part time librarian half of period of such service will have to be taken into consideration in addition to the period for which petitioners have worked as full time librarian and accordingly, entitled to pensionary benefits.

10. Also the Nagpur Bench of this Court in **Darshana Adhikrao Gaikwad** in **Writ Petition No. 5421 of 2017** has clearly held that in the Government Resolution dated 31st October 2005, there is no distinction between part time and full time employees and that the Government Resolution *mutatis-mutandis* applies to employees who are recruited on or before 1st November 2005, to whom the existing pension scheme of GPF would apply.

11. With respect to the time-bound promotion/Career Assurance Scheme, this Court by order dated 4th October, 2018 in **Writ Petition No.334 of 2018** in the case of **Shri Suresh Bhanudas Shinde and Anr. Vs. State of Maharashtra** and connected Writ Petitions has held that in view of a number of decisions passed by this Court in similar matters that the second benefit after 24 years of service be granted to all non-teaching staff, who are similarly situated as Petitioners,

viz., who have been given the first benefit, i.e., the benefit after putting in 12 years of service. However, with respect to the time-bound promotional scheme to non-teaching staff on completion of 24 years of regular service, we note that by order dated 10th February, 2021 in Review Petition (St) No.3452 of 2019 in Writ Petition No.5629 of 2018 and connected Petitions, this Court after *prima facie* accepting the submissions made by the learned Advocate General that the said judgments were in respect of one time benefit of Time Bound Promotion Scheme after completion of 12 years in service not having application with respect to the employees, who were claiming second benefit on completion of 24 years, stayed the orders in Review. Learned counsel for Petitioners, therefore, on instructions, submits that with respect to the prayers pertaining to the time-bound promotional scheme in these petitions, he is limiting the petitioners' claim only to the first benefit after completion of 12 years of service.

12. We have by our judgment dated 27th October, 2021, dealt with similar issues, after considering the various Government Resolutions and the decisions of this Court. Since the facts in these

Petitions as well as in Writ Petition (St) No.57 of 2020 are similar, we deem it appropriate to follow the same course of action in these matters, as well.

13. In this view of the matter, applying the well settled principles discussed above and for the reasons contained in Writ Petition (St.) No. 57 of 2020, we issue the following directions to be acted upon in line with the above discussion:-

- (i) The concerned Respondents are directed to consider Petitioners' services and grant approval to Petitioners to the post of Full Time Librarian with effect from the academic years when the respective institutions have acquired the strength of 1000 students or more as per the Government Resolution dated 28th June, 1994 as contained in the table referred to above and make pay fixation, pension, and time bound promotion by considering the said Government Resolution and the date as 28th June, 1994.

- (ii) The concerned Respondents are directed to grant notional pay fixation, time-bound promotion and other retirement and pensionary benefits to the Petitioner upon considering full time appointment on the post of Librarian from the date of initial appointment as contained in the table above, having regard to the academic years in which the strength of the students was 1000 or more.
- (iii) The concerned respondents are directed to consider the 50% services of part time librarian during the periods mentioned in the table above for the purposes of service benefit and make the pay fixation, pension and time bound promotion.
- (iv) In respect of petitioners, who have retired from the respective educational institutions, the management/head master of the concerned educational institutions is/are directed to submit the pension papers of such petitioners within a period of four weeks from the date of communication of this order and the concerned

respondents are directed to consider the respective proposals in accordance with the MCPS Rules, 1982, the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the existing General Provident Fund Scheme (GPF) and not in accordance with the Defined Contributory Pension Scheme (DCPS) and the concerned respondent(s) is/are directed to release/credit the arrears of salary/retiral/pensionary benefits in favour of the respective petitioners within four weeks thereafter.

- (v) The respective managements/schools are directed to send petitioners' proposal(s) to the concerned respondents for extending the benefits of the time bound/career assurance scheme for the first benefit on completion of 12 years, within two weeks of the communication of this order and the said respondents to consider the same within a further period of two weeks.

(vi) Rule is made absolute in the above terms. Petition is accordingly allowed. There shall be no order as to costs.

(vii) Parties to act on the authenticated copy of this order.

(ABHAY AHUJA, J.)

(R. D. DHANUKA, J.)