

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

WRIT PETITION NO.3696 OF 2021

Renuka Chandrabhan Umredkar)
presently residing at Krishna Paradise)
A2/801, Hajimalang Road, 110 Peth,)
Kalyan (E), District Thane 421 306.) .. Petitioner

Versus

1. State of Maharashtra)
Department of School Education and Sports)
Mantralaya, Mumbai -32.)
2. The Secretary, Government of Maharashtra)
Rural Development Department)
Mantralaya, Mumbai -32.)
3. The Director of Education (Secondary))
State of Maharashtra, Pune.)
4. The Deputy Director of Education,)
Mumbai Division, Mumbai.)
5. The Education Officer (Secondary))
Thane Zilla Parishad, Thane.)
6. The Superintendent (Secondary))
Pay and Provident Fund Unit,)
Thane Zilla Parishad, Thane)
7. The Chairman/Secretary,)
Shri Haji Malang Baba Shikshan Prasarak Mandal,)
Dhoke, Taluka : Ambernath,)
District Thane.)
8. The Headmaster,)
Sant Sawlaammaharaj Madhyamik)
Va Uchha Madhyamik Vidyalaya, Dhoke,)
Taluka Ambernath, District Thane.)

Mr.Saurabh S. Pakale i/by Mr.Shankar M. Katkar for the petitioner.
Ms.Kavita N. Solunke, AGP for the respondent nos.1 to 6- State.

**CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.**
RESERVED ON : 2nd September 2021
PRONOUNCED ON : 7th September 2021

Judgment :- (per R.D.Dhanuka, J.)

. Mr.Pakale, learned counsel for the petitioner seeks liberty to delete the respondent nos.7 & 8. Leave to amend is granted. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule. Ms.Solunke, learned AGP for the respondent nos.1 to 6 waives service. By consent of parties petition is heard finally. Some of the relevant facts for deciding this petition are as under :-

3. On 15th April 1996, the petitioner was appointed as Librarian (Part Time) in the employment of the respondent no.8- Sant Sawalarammaharaj Madhyamik Va Ucha Madhyamik Vidyalaya (hereinafter referred to “the said school”) on probation for a period of 2 years. The said appointment was approved by the respondent no.5 vide order dated 9th November 1996. The said school was 100% aided school.

The appointment of the petitioner was made against an aided post and accordingly admissible monthly salaries payable to her came to be released in her favour. There was no change in the said status till her superannuation.

4. It is the case of the petitioner that the said part time post came be upgraded to a full time Librarian as per the Government Rules and Regulations. By an appointment order dated 11th December 2007, the petitioner was appointed as full time Librarian w.e.f. 1st April 2006.

5. The said school thereafter forwarded a proposal to the respondent no.5 for approval of the petitioner to the said post of full time Librarian w.e.f. 1st April 2006. The petitioner retired on 31st July 2019. In the meanwhile, the respondent no.1 issued a Government Resolution dated 31st October 2005 declaring that the employees employed after 1st November 2005 would be governed by the Defined Contributory Pension Scheme (DCPS) and would not be entitled to the benefits of the Maharashtra Civil Service (Pension) Rules, 1982 (for short “the MCS (Pension) Rules, 1982” i.e. ‘Old Pension Rules’.

6. It the case of the petitioner that though the petitioner was

appointed in the year 1996 as a part time Librarian, she was entitled to be governed by the provisions of the MCS (Pension) Rules, 1982. Without consent of the petitioner, name of the petitioner was included in the said DCPS. The said school vide letter dated 18th July 2019 sought clarification from the respondent no.5 on this issue. Since the petitioner has not been granted pension as admissible to her under the provisions of the MCS (Pension) Rules, 1982, the petitioner filed this writ petition.

7. Mr.Pakale, learned counsel for the petitioner invited our attention to the order of appointment dated 15th April 1996 appointing the petitioner as a part time Librarian and various approvals granted by the Education Officer to the management appointing the petitioner as a part time Librarian as well as a full time Librarian. He submits that the petitioner had put in more than 13 years of full time service and more than 10 years of part time service equivalent to 5 years full time service. Therefore, she had put more than 18 years of 'pensionable service' and thus she became entitled to receive pension as provided under the MCS (Pension) Rules, 1982.

8. In support of the submission that 50% of services rendered by the petitioner as part time Librarian shall be considered along with

the full time service to compute pensionable service under Old Pension Scheme, learned counsel for the petitioner placed reliance on the following judgments :-

- (i) ***Jyoti Prakash Chougule Vs. State of Maharashtra, 2005 (3) Mh.L.J. 709;***
- (ii) ***Shalini w/o Asaram Akkarbote Vs. The State of Maharashtra*** delivered on 29th April 2014 in Writ Petition No.8289 of 2013;
- (iii) ***Maharashtra Rajya Madhyamik Va Uchha Madhyamik Shala Kruit Samittee Vs. State of Maharashtra*** delivered on 4th October 2018 in Writ Petition No.13379 of 2017 and other connected matters;
- (iv) ***Shashikant Namdeo Gaikwad Vs. The State of Maharashtra*** delivered on 14th June 2019 in Writ Petition No.2690 of 2016;
- (v) ***Shri Purushottam Harishchandra Shirsekar and Anr. Vs. The State of Maharashtra & Ors.*** delivered on 25th August 2021 in Writ Petition No.2538 of 2021;
- (vi) ***Smt.Kalpana Jagatrao Dahiwale Vs. The State of Maharashtra*** delivered on 4th August 2021 in Writ Petition No.1673 of 2021;
- (vii) ***Pramodini Mangesh Rukari Vs. The Superintendent Pay & Provident Fund Unit & Ors.*** delivered on 11th March 2020 in Writ Petition (St.) No.15490 of 2018
- (viii) ***Smt.Darshana Adikrao Gaikwad Vs.State of Maharashtra & Ors.***

delivered on 9th July 2018 in Writ Petition No.5421 of 2017;

(ix) ***Smt.Prema Narsinha Herkal Vs. State of Maharashtra & Ors.***

delivered on 11th March 2020 in Writ Petition No.3719 of 2019;

(x) ***Bhatu Hari Sonawane Vs. The State of Maharashtra & Ors.***

delivered on 12th August 2021 in Writ Petition No.3350 of 2021;

(xi) ***Anuradha Jayant Gangakhedkar Vs. Brihanmumbai Municipal Corporation & Ors.*** delivered on 26th July 2012 in Writ Petition No.415 of 2012.

9. Ms.Solunke, learned AGP on the other hand, invited our attention to the contentions raised in the affidavit-in-reply dated 26th August 2021 and would submit that since the petitioner was appointed and approved as a full time Librarian from 1st April 2006, the petitioner would not be entitled to claim pension under the old pension scheme and would be governed by the said DCPS having been appointed after 1st November 2005. He relied upon Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and also Rule 57 of the MCS (Pension) Rules, 1982 and would submit that as per the said provisions, only full time services are counted for pensionary benefits under the old pension scheme.

REASONS AND CONCLUSIONS :-

10. It is not in dispute that the petitioner was appointed as a part time Librarian on 15th April 1996. The said appointment was approved by the Education Officer on 9th November 1996. The petitioner was thereafter appointed as a full time Librarian on 11th December 2007 w.e.f. 1st April 2006. The respondent no.5 accorded approval to the said appointment of the petitioner as a full time Librarian on 25th May 2008 w.e.f. 1st April 2006. The petitioner retired by superannuation on 31st August 2019.

11. A perusal of the Government Resolution dated 31st October 2005 indicates that the said DCP Scheme was introduced for the government servants who were recruited on or after 1st November 2005 in State Government Service. In Clause 2(c) of the said Government Resolution, it is provided that the existing pension scheme i.e. the MCS (Pension) Rules, 1982, Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the existing General Provident Fund Scheme (GPF) would not be applicable to the Government Servants who are recruited on or after 1st November 2005 in State Government service. Clause 4 (a) of the said Government Resolution provided that the said DCP Scheme will be applicable to the Government Servants who are

recruited on or after 1st November 2005 in State Government service. Clause 4(b) provides that the said decision should mutatis-mutandis, apply to the employees, who are recruited on or after 1st November 2005, in the services of the Recongnised and Aided Educational Institutions, Non-Agricultural Universities and affiliated Non-Government Colleges and Agricultural Universities etc. to whom the existing pension scheme and General Provident Fund Scheme is applicable. Under Clause 4(c), it is provided that the said Government Resolution shall apply to the employees, who are recruited on or after 1st November 2005 in the services of Zilla Parishads.

12. A Division Bench of this Court (Coram : Shri R.D. Dhanuka and R.I. Chagla, JJ.) in the case of ***Shri Purushottam Harishchandra Shirsekar and Anr. Vs. The State of Maharashtra & Ors. (supra)*** has considered the facts where the petitioner therein was appointed as part time Shikshan Sevak on 11th September 2001 on the post which was sanctioned on aided basis and continued on the said post for 3 years and was granted approval by the Education Officer. The said employee therein was subsequently appointed as part time teacher on 1st September 2010. The said employee was upgraded to the post of full time teacher in same school on 15th June 2015 which post was sanctioned on aided basis.

13. The Division Bench of this Court after adverting to various judgments of this Court has held that the services of the employee of the Educational Institution is to be counted from the first date of appointment irrespective of whether it is on a part time or full time post. If such appointment is prior to 1st November, 2005, then the old pension scheme would be made applicable to such employee. This Court considered that the Government Resolution dated 31st October, 2005 which provides in Clause 4 that the employees who are to be recruited on or after 1st November, 2005 in the services of the recognized and aided educational institutions, the new pension scheme i.e. DCPS is made applicable.

14. This Court after referring to the judgment of the Full Bench of this Court in the case of ***Deshmukh Dilipkumar Bhagwan Vs. State of Maharashtra, 2019 (3) Mh.L.J. 903*** has held that employees who were appointed prior to 1st November 2005 in the aided educational institutions and who were receiving 100% grant-in-aid as on 1st November, 2005 would be governed by old pension scheme. This Court accordingly held that since the employee in that matter, had been appointed prior to 1st November 2005 and occupied the part time fully aided post i.e. receiving 100% grant-in-aid from the State Government, the old pension scheme would be made applicable to such employee.

15. Division Bench of this Court (Coram : Shri R.D. Dhanuka and R.I. Chagla, JJ.) in the case of ***Smt.Kalpana Jagatrao Dahiwale (supra)*** after adverting to the judgment of this Court in the case of ***Jyoti Prakash Chougule (supra)*** and in the case of ***Abaso Ganpati Aoute Vs. State of Maharashtra & Ors.*** in Writ Petition No.8832 of 2015 delivered on 22nd July 2016 has held that the petitioner in that matter having completed more than 10 years 3 months as part time Librarian and completed more than 9 years and 11 months as full time Librarian, 50% of the services rendered as part time will have to be considered for the purpose of computation of pensionable services. In that matter also, the petitioner was appointed as part time Librarian on 26th December 1995 and was appointed as full time Librarian on 1st April 2006 by up-gradation of part time post as full time post. The petitioner therein was appointed on full time post after the Government Resolution dated 31st October 2005 came to be issued. The judgments of this Court in the cases of ***Shri Purushottam Harishchandra Shirsekar (supra)*** and ***Smt.Kalpana Jagatrao Dahiwale (supra)*** apply to the facts of this case.

16. It is not disputed by the respondents that the said school was 100% aided school when the petitioner was appointed on aided post initially as a part time Librarian prior to 31st October 2005 and as a full

time Librarian after 31st October 2005. In our view, the petitioner cannot be denied the pensionary benefits under the old pension scheme on the ground that the petitioner was appointed as full time Librarian only after 31st October 2005.

17. The respondents cannot overlook the admitted fact that the petitioner was already appointed as part time Librarian on the aided post in the 100% aided school and the said appointment was duly approved by the Education Officer. It was not the case of the respondents that the petitioner was appointed for the first time in the said 100% aided school on the aided post only after 31st October 2005 and that also under different managements or different schools or institutions. The respondents cannot refuse to give benefits of 50% of the services rendered by the petitioner as part time Librarian appointed prior to 31st October 2005 for computation of pensionable services along with the services rendered by the petitioner on full time basis after 31st October 2005. The entitlement of the petitioner for pension under Old Pension Scheme would be on the basis of her initial date of appointment as part time Librarian on aided post and not on the basis of her appointment as full time Librarian under DCP Scheme.

18. In our view, the petitioner thus would be governed by the said MCS (Pension) Rules, 1982 and not the said Government Resolution dated 31st October 2005 i.e. DCP Scheme.

19. We therefore pass the following order :-

- (i) The respondent nos.5 & 6 are directed to release the admissible pensionary benefits as admissible under the Maharashtra Civil Service (Pension) Rules, 1982 and the scheme framed thereunder to the petitioner for her pensionable service w.e.f. 16th April 1996 after considering the view taken in this judgment within four weeks thereafter;
- (ii) If the said school has not submitted the pension papers of the petitioner to the respondent no.5 under the provisions of the Maharashtra Civil Service (Pension) Rules, 1982, the said school shall forward such pension papers of the petitioner within two weeks from today;
- (iii) If the said school has deducted any amount from the salary of the petitioner by applying the said DCP Scheme, such amount shall be refunded to the petitioner within four weeks from today.

20. Writ petition is disposed of in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

R. I. CHAGLA J.

R.D. DHANUKA, J.