

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1673 OF 2021

Smt. Kalpana Jagatrao Dahiwale,
Aged 61 Years, Occ. Retired,
C/O. Satish Dahiwale, Roop Jagat
Bungalow, Ramrkishna Garden, Tembhde
Road, Palghar, Dist. Palghar – 401 404. ...Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032.
- 2 The Accountant General, M.S., Mumbai
- 3 The Deputy Director of Education,
Mumbai Region, Mumbai.
- 4 The Education Officer (Secondary),
Zilla Parishad, Palghar
- 5 Seva Ashram Shikshan Sanstha, A/p
Murbe, Ta. & Dist. Palghar – 401 501,
Through its Chairman/Secretary
- 6 Seva Ashram Vidyalaya, Boisar, Tal. & ...Respondents
Dist. Palghar, Through its Head Master

Mr. N.V. Bandiwadekar a/w Mr. Vinayak Kumbhar i/by Ms.
Ashwin N. Bandiwadekar, Ms. Neha N. Bandiwadekar for the
Petitioner.

Mrs. P.J. Gavhane, AGP for the Respondent Nos. 1 to 4.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.
DATE : 4 August 2021

ORAL JUDGMENT : (Per R.D. Dhanuka, J.)

1. Rule.

2. Learned AGP waives service on behalf of Respondent Nos. 1 to 4. Learned Counsel for the Respondent Nos. 5 and 6 waives service.

3. By our order dated 20th July 2021, it was made clear that the Court would make an endeavour to dispose of the Writ Petition finally at the admission stage subject to time constraint. Though Respondent Nos. 5 and 6 are served, none appears on behalf of them.

4. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for an order and declaration that the Petitioner is entitled to superannuation pension since she has completed the qualifying service of 10 years to get the said pension, taking into consideration one half of service of the part time service rendered by the Petitioner along with the entire service

rendered by the Petitioner on full time basis, in the post of Librarian in the Respondent No. 6-School.

5. The Petitioner was appointed on 26th December 1995 as part time Librarian in the Respondent No. 6-School run by the Management at the sanction and aided post. Education Officer granted approval for part time Librarian from the year 1996. The Education Officer thereafter, granted approval on 25th June 2007 to the Petitioner in the full time post of Librarian appointed on 1st April 2006 by upgradation of the said part time post as full time on 29th February 2016. The Petitioner retired from services as full time Librarian. It is the case of the Petitioner that she has rendered services as part time Librarian for a period of 10 years and 3 months and thereafter, full time Librarian for a period 9 years and 11 months and thus, became eligible to superannuation pension by completing qualifying service of 10 years as required in the pension rules. Since the Petitioner was refused the payment of superannuation pension by the authority, the Petitioner filed this Petition.

6. Mr. Bandiwadekar, learned Counsel for the

Petitioner invited our attention to various documents annexed to the Petition. It is not in dispute that the appointment of the Petitioner as part time Librarian was already approved on 3rd February 1996. The Petitioner was working as part time Librarian in the school run by the same Management and thereafter, as full time Librarian in the same school approved by the same Management.

7. Learned Counsel invited our attention to various judgment annexed to the Writ Petition at pages 31 to 58 in support of his submission that under Rule 57 Note 1 of the Maharashtra Civil Services (Pension) Rules, 1982, the Petitioner was entitled to benefit of 50% of the services rendered by him as part time Librarian in the school approved by the said Management which was aided post and also entitled to period of services rendered as full time Librarian for the purpose of superannuation pension under Rule 30 and 57 of the Maharashtra Civil Services (Pension) Rules, 1982.

8. Mrs. Gavhane, learned AGP for the State on the other hand tried to distinguish the judgments relied upon by the Petitioner and submits that the period of services rendered

by the Petitioner as part time Librarian cannot be considered for the purpose of full time superannuation.

9. This Court in case of **Jyoti Prakash Chougule Vs. State of Maharashtra**¹ has considered identical facts and after adverting to the judgments of this Court in **Shivappa s/o Bhujangappa Bembale Vs. State of Maharashtra & anr.**² and various other judgments has held that the teacher should not have been deprived of the services rendered under the same Management, but may be in different schools or institutions. The services could have been clubbed or added to as desired. It is held that the State Pension Rules are applicable to the teachers in terms of Rule 19 of the MEPS Rules, the above principle will apply. This Court directed the Accountant General to consider the case of the Petitioner by giving pensionary benefit in view of the Rules considered by this Court.

10. A Division Bench of this Court in case of **Abaso Ganpati Aoute Vs. State of Maharashtra & Ors.**³ has after

1 Writ Petition No. 2354 of 2012 Order dated 07.01.2014

2 2005(3) Mh.L.J. 709

3 Writ Petition No. 8832 of 2015 Order dated 22.07.2016

adverting to the judgment of **Jyoti Prakash Chougule** (supra) has held that 50% of the part time services rendered by the Petitioner has to be taken into consideration along with the services rendered by the Petitioner as full time teacher for grant of superannuation pension benefits.

11. The principles laid down by this Court in the aforesaid judgment will apply to the present case regarding non teaching staff also. A Division Bench of this Court in case of **Smt. Darshana wd/o Adikrao Gaikwad Vs. State of Maharashtra**⁴ has considered identical facts where the Petitioner was appointed as part time Librarian initially and thereafter, full time Librarian. In that matter also authority had refused to grant superannuation pension to the Petitioner therein. This Court after adverting to various judgments including **Jyoti Prakash Chougule** (supra) held that 50% of the part time services rendered by the part time Librarian is required to be counted for the purpose of pensionary services along with full time services rendered by the employee. The said judgments squarely applies to the facts of this case. We are not inclined to take different view in the matter.

⁴ Writ Petition No. 5421 of 2017 Order dated 09.07.2018

12. Though learned AGP made an attempt to distinguish the aforesaid judgments, in our view, the learned AGP could not succeed in her attempt. In our view, the Petitioner 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. After computing 50% of the services rendered by the Petitioner as part time Librarian and 100% services rendered as full time Librarian, the Petitioner would be entitled to superannuation pension under the relevant Rules referred to aforesaid. The authority thus, could not have refused to pay pension to the Petitioner.

13. We accordingly, pass the following order:-

- (i) The Respondent Nos. 5 and 6 are directed to submit the pension papers of the Petitioner in line with the view taken by this Court aforesaid to the Respondent No. 4 within a period of four weeks from the date of communication of this order without fail.

- (ii) Upon receipt of pension papers from the Respondent Nos. 5 and 6 to the Respondent No. 4, the Respondent No. 4 to start making payments of the pensionary benefits to the Petitioner for the month of August 2021 on or before 25th August 2021 and shall clear the arrears of pension to the Petitioner within a period of three months thereafter without fail.
- (iii) Rule is made absolute accordingly.
- (iv) Writ Petition is disposed of in the aforesaid terms.
- (v) Parties to act on an authenticated copy of this order.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]