

their pension benefits. Further direction is sought against Respondent Nos.1 to 4 to consider that the present Petitioners have been entitled to pay fixation, time bound promotions, old pension scheme and general provident fund benefits without any arrears calculated from the date when the respective schools of the respective Petitioners attained the strength of 1000 students.

3 The Petitioners are librarians in various aided Secondary and Higher Secondary Schools for the past many years. The Petitioners were previously appointed on part time basis before 01.11.2005 and were serving on the post of librarian in the respective educational institution. The Petitioners are now employed in the capacity of full time librarians with continuous service of initial appointment on part time basis.

4 It is the grievance of the Petitioners that the Respondents are not taking into account the Government Resolutions dated 28.06.1994, 31.10.2005 and 03.08.2006 issued by the Respondent-State. The learned Counsel for the Petitioners has relied upon several decisions of this Court. He has referred to the compilation of these decisions which include decision of this Court (Aurangabad Bench) in Writ Petition No.6622 of 2004 - *Jayshree vs. State of Maharashtra and*

Ors., decision dated 09.02.2005; the decision of this Court in Writ Petition No.2354 of 2012 - *Jyoti Prakash Chougule vs. State of Maharashtra and Ors.*, decision dated 07.01.2014; decision of this Court (Aurangabad Bench) in Writ Petition No.8289 of 2013 - *Shalini w/o Asaram Akkarbote vs. State of Maharashtra and Ors.*, decision dated 29.04.2014; decision of this Court (Nagpur Bench) in Writ Petition No.6630 of 2013 - *Kiran Keshavrao Girhe and Ors. vs. State of Maharashtra and Ors.* along with the other companion matters, decision dated 28.01.2015; decision of this Court (Nagpur Bench) in Writ Petition No.1272 of 2015 - *Sunil Ramkrishna Thaware vs. State of Maharashtra and Ors.*, decision dated 20.01.2016; decision of this Court (Nagpur Bench) in Writ Petition No.5421 of 2017 - *Smt. Darshana wd/o Adikrao Gaikwad vs. State of Maharashtra and Ors.*, decision dated 09.07.2018 and the decision of this Court in Writ Petition No.9792 of 2016 along with companion matter - *Shri Prakash Hanumant Gidde vs. State of Maharashtra and Ors.*, decision dated 01.10.2018.

5 It is submitted that this Court has consistently held that the Petitioners shall be entitled to half of the part time service rendered by the Petitioners as teaching or non-teaching staff in the

educational institution together with full time service rendered in such educational institution. The initial date of appointment of the Petitioners i.e. appointment as the part time employee in the education institution shall be taken into account for the purpose of calculation of pension and pensionary benefits. In so doing this Court has held that in the event that the Petitioners appointment as employee on part time basis is prior to 01.11.2005, they will be entitled to the old pension scheme. The Full Bench decision of this Court in *Deshmukh Dilipkumar Bhagwan & Ors. vs. State of Maharashtra, through Chief Secretary, General Administration Department & Ors.* (Writ Petition No.8387 of 2013 decided on 26.08.2019), has held that the employment in 100% aided educational institution, whether part time or full time, prior to 01.11.2005, shall be taken into account and the old pension scheme would be made applicable. He has submitted that all the Petitioners have been appointed on part time basis prior to 01.11.2005 in fully aided educational institution. He has, therefore, submitted that the decisions of this Court referred to above, cover the issue arising in the present Petition.

6 The learned Counsel for the Petitioners has placed

reliance on the decision of this Court in *Prakash Hanumant Gidde* (supra) where this Court held that the date when the School attained the figure of 1000 students is relevant for the old pension scheme to be made applicable and that the Petitioner shall be entitled to notional fixation of their salary, time bound promotion and pensionary benefits from that date. The learned Counsel for the Petitioners has submitted that the Petitioners in line with the said decision be given full time status in terms of the Government Resolution dated 28.06.1994 i.e. benefit from the date when the school attained the figure of 1000 students.

7 The learned A.G.P. has neither produced any judgment contrary to the judgments relied upon by the learned Counsel for the Petitioners nor been able to distinguish the said judgments.

8 Further the learned A.G.P. has neither been able to produce any contrary decision nor distinguish the decision of this Court in *Prakash Hanumant Gidde* (supra).

9 We are of the considered view that the issue arising in this Petition has squarely been covered by the decisions relied upon by the learned Counsel for the Petitioners referred to above. Further, the Full bench of this Court in *Deshmukh Dilipkumar Bhagwan* (supra) has in

answering the issue which also arises herein held that for employees of educational institution who are appointed prior to 01.11.2005 in fully aided posts, the old pension scheme shall be made applicable to such employees of this educational institution.

10 We are of the further view that the Petitioners who were appointed as Librarians on part time basis prior to 01.11.2005 and currently serving as full time Librarians in their respective educational institutes, are entitled for half of their part time service as Librarians to be taken into account together with their full time service for the purpose of pension and pensionary benefits and that the old pension scheme will apply to the Petitioners. In view thereof, we pass the following order :

- i) Respondent Nos.1 to 4 shall consider the commencement of qualifying service as part time librarians for the old pension scheme and general provident fund scheme benefits i.e. from the initial date of appointment on part time basis for which one half of their service shall be calculated together with the full time service rendered by the Petitioners as librarians towards pension and pensionary benefits.

ii) Respondent Nos.1 to 4 shall consider the Petitioners as being entitled to pay fixation, time bound promotion, old pension scheme and general provident fund benefit without any arrears calculated from the date when the respective educational institutions in which the present Petitioners attained the strength of 1000 students, as per Government Resolution dated 28.06.1994.

iii) In the case of Petitioner Nos.2 and 3 who are retired from their respective education institutions, the Management of these education institutions are directed to submit the pension papers of Petitioner Nos.2 and 3 to the Respondent No.3 within a period of four weeks from the date of communication of this order without fail. Upon receipt of the pension papers from the Management, the Respondent No.3 shall start making payment of the pension and pensionary benefits as per the old pension scheme to the Petitioner Nos.2 and 3 by considering half of the service rendered by these Petitioners as part time librarians as qualified service together with the full time service and shall clear arrears

of pension to these Petitioners within a period of three months thereafter without fail.

iv) It is made clear that the Petitioners shall be entitled to pension and pensionary benefits as full time librarians from the date when the respective educational institutions exceeded the student enrollment of 1000 students as per the Government Resolution dated 28.06.1994.

v) In view of the assurance given by Mr. Patel, the learned Additional Government Pleader appearing for the Respondents, that the Respondent-State shall in future be more vigilant with regard to the matters which are covered by the High Court and Supreme Court and shall not take any opposing stand in those matters, we deem it fit not to impose any costs in this matter.

vi) Rule is made absolute in the above terms.

vii) Writ Petition is disposed of accordingly.

viii) There shall be no order as to costs.

(R.I. CHAGLA, J.)

(R.D. DHANUKA, J.)