

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3350 OF 2021

KANCHAN
VINOD
MAYEKAR

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Bhatu Hari Sonawane

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.Saurabh S. Pakale, i/b. Mr.S.M.Katkar for the Petitioner.

Mr.N.K.Rajpurohit, A.G.P. for the State – Respondent nos. 1 to 6.

CORAM: R. D. DHANUKA AND

R.I.CHAGLA, JJ.

DATE : 12th AUGUST, 2021

(THROUGH VIDEO CONFERENCE)

P.C:-

Leave to amend is granted to the petitioner to delete the names of respondent nos. 7 and 8. Amendment to be carried out within one week from today.

2. Rule. Learned A.G.P. waives service for the respondent nos. 1 to

6. Heard finally by consent of parties.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions against the respondents within the ambit of the old pension scheme and release the admissible pensionary

benefits as admissible under the Maharashtra Civil Service (Pension) Rules of 1982 and the scheme framed thereunder and the General Provident Fund Scheme framed thereunder to the petitioner due to him rendering (continuous) and more than 15 years of pensionable service w.e.f. 12th June, 2004. Further directions has been sought directions against the respondents to stop making deductions from the petitioner's monthly salaries made towards the DCPS scheme.

4. The petitioner was in employment of the Abhinav Vidya Mandir and Junior College, Goddev, Bhayandar as a assistant teacher. Initially in the year 2004, he was appointed as a Shikshan Sevan (Part Time). On 31st October, 2005, the respondent State by its Government Resolution declared that the employees employed after 1st November, 2005 would be governed by the Defined Contributory Pension Scheme i.e. DCPS and would not be entitled to the benefits of the Maharashtra Civil Service (Pension) Rules, 1982.

5. Abhinav Vidya Mandir and Junior College forwarded proposal of appointment of the petitioner to the respondent no.5 for approval which approval was granted w.e.f. 12th June, 2006.

6. On 5th June, 2013, the respondent management appointed the petitioner as a full time Shikshan Sevak for a period of three years w.e.f. 12th June, 2006. However, on calculating the pensionable service, 50% of the part time service rendered was not considered to be a qualified service rendered and included for the purpose of granting pension to the petitioner. Thus the petitioner's proposal dated 30th July, 2015 was not accepted.

7. Being aggrieved by such inaction on the part of the respondent no.5 in not accepting the petitioner's proposal for applicability of the old pension scheme by not considering the 50% of part time service rendered which commenced from 12th June, 2004 i.e. prior to 31st October, 2005, as qualified service rendered, the petitioner has filed the present petition.

8. Learned counsel for the petitioner has submitted that the issue arising in this petition has been covered by various decisions of this court which include the decisions of the Nagpur Bench in case of ***Smt.Darshana wd/o. Adikrao Gaikwad vs. State of Maharashtra & Ors. in Writ Petition No.5421 of 2017***, decision dated 9th July, 2018

which follows the earlier decision of this Court in case of ***Jyoti Prakash Chougule vs. State of Maharashtra & Ors. in Writ Petition No.2354 of 2012*** decision dated 7th January, 2014. He has submitted that the Nagpur Division Bench of this Court by following the decision of ***Jyoti Prakash Chougule*** (supra) has held that the Accountant General shall consider the case of the petitioner for giving pensionary benefits and that the superannuation pension by taking into account the one half of the part time assistant teacher service so as to enable the petitioner to qualify the superannuation pension. Thus, the Nagpur Bench held that 50% of part time service rendered by the petitioner's husband is to be counted along with full time service rendered by the petitioner for giving pensionary benefits and superannuation pension. He submitted that in view of the issue arising in the present petition is covered, this petition be allowed. The petitioner has also served as assistant teacher (part time) being appointed as Shikshan Sevak (part time) in June 2004 and thus prior Government Resolution dated 31st October, 2005 which was made applicable to the DCPS from 1st November, 2005 would not be applicable to the petitioner. Thus, the old pension scheme would be applicable in the case of the petitioner who has been appointed prior thereto.

9. Learned A.G.P. for the respondents has not been able to produce any decision which is contrary to the view taken by the Nagpur Bench of this Court following the decision of this Court in case ***Smt.Darshana wd/o. Adikrao Gaikwad*** (supra) and which is followed by the case of ***Jyoti Prakash Chougule*** (supra).

10. Having considered the submissions, we are of the view that this issue is clearly covered by the decision of this Court including the decision in case of ***Smt.Darshana wd/o. Adikrao Gaikwad*** (supra) as well as prior decision in case of ***Jyoti Prakash Chougule*** (supra). The petitioner having been appointed prior to 31st October, 2005 i.e. on 12th June 2004 as Shikshan Sevak (part time) will be entitled to the benefit of the old pension scheme. The Government Resolution dated 31st October, 2005 which had declared that DCPS will apply to employment after 1st November, 2005 will not be applicable to the petitioner. Hence, the following order is passed :-

(a) The respondent no.5 together with Abhinav Shetkari Shikshan Mandal, management of Abhinav Vidya Mandir and Junior College shall

release the admissible pensionary benefits as admissible under the Maharashtra Civil Service (Pension) Rules of 1982 and the scheme thereunder and the General Provident Fund scheme to the petitioner by considering 50% of the part time service and 100% of the full time service w.e.f. 12th June, 2004 for computation of pensionable service.

(b) The respondent nos. 5 and 6 together with the said management and the said college shall stop making deduction from the petitioner's monthly salary towards the DCPS scheme.

(c) The respondent nos.5 and 6 along with the management and the school shall reverse the illegal deduction, if any, made from the petitioner's monthly salary towards the DCPS and pay the same back to the petitioner within a period of four weeks from today.

(d) The petition is accordingly made
disposed of in the aforesaid terms. Rule is made
absolute. There shall be no order as to costs.

[R.I.CHAGLA, J.]

[R.D.DHANUKA, J.]