

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

***CIVIL APPELLATE JURISDICTION***

**WRIT PETITION NO. 2622 OF 2021**

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VINOD  
MAYEKAR

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**Avinash Vishnupant Takawale**

**..... Petitioner**

**VERSUS**

**The State of Maharashtra & Ors.**

**..... Respondents**

Mr.Rahul S.Kadam for the Petitioner.

Ms.Kavita N.Solunke, A.G.P. for the State – Respondent nos.1 to 4.

**CORAM: R. D. DHANUKA AND  
ABHAY AHUJA, JJ.**

**DATE : 17<sup>th</sup> SEPTEMBER, 2021**

**P.C:-**

Rule. Learned counsel for the petitioner seeks leave to delete respondent nos. 5 and 6. Leave granted. Amendment to be carried out forthwith. Re-verification is dispensed with. Rule is made returnable forthwith. By consent of the learned counsel for the parties, petition is heard finally.

2. By this petition filed under Section 226 of the Constitution of India, the petitioner prays for quashing and setting aside the impugned order dated 27<sup>th</sup> April, 2021 by putting proposal for grant of the pension benefits to the petitioner.

3. The brief facts are that the petitioner was appointed on 15<sup>th</sup> June, 1988 till 31<sup>st</sup> May, 2017 as a part time teacher. Thereafter from 1<sup>st</sup> June, 2017 he was appointed as headmaster. He thereafter retired on 30<sup>th</sup> April, 2021. It is the case of the petitioner that he had worked total period of 30 years as a part time teacher and one half of it is 15 years which is to be counted as full time service of 15 years. As headmaster, his appointment was on full time and therefore from 1<sup>st</sup> June, 2017 till 30<sup>th</sup> April, 2021 till his retirement, total period would come to three years and 10 months. Considering this, it is submitted that the service of the petitioner is more than 10 years and therefore the petitioner is qualified and entitled to get the benefits as pensioner under the old pension scheme.

4. The respondents have filed affidavit in reply dated 1<sup>st</sup> September, 2021. Learned A.G.P. relied upon the said affidavit. She submits that the case of the petitioner is distinguishable from the cases referred to by the learned counsel for the petitioner. However a perusal of the reply does not indicates any distinguishable features pointed out by the State. Learned A.G.P. was unable to indicate any such distinguishable features.

5. Our attention has been drawn to several decisions of this Court and in particular the recent decision of this Court in case of ***Kalpana J. Dahiwale vs. State of Maharashtra , 2021 SCC OnLine Bom 1598*** where this Court considering the similar facts, allowed the petition of the petitioner relying upon the decision of this Court in the said case of ***Jyoti Prakash Chougule vs. State of Maharashtra & Ors. (Writ Petition No. 2354 of 2012)*** and has held as under :-

11] Petitioner's advocate has placed reliance upon the judgement of Shivappa (supra) in which identical controversy was considered by the Division bench of this court. The Division Bench has held as under:-

“5. Relying on the above three provisions of Rule 30, Rule 57 Note 1 and Rule 110 of the Maharashtra Civil Services (Pension) Rules, Mr. Vivek Dhage, Advocate for petitioner, submits that present petitioner is entitled for pension as his part time service as Peon is approximately 20 years as he was appointed in the year 1970 and continued on the same post till 1990 and, thereafter, the Chief Executive Officer has taken him in regular cadre by giving appointment in the said cadre and he worked for three years. So, considering the Note 1 of Rule 57, his previous service is to be counted to the extent of 10 years as this period worked as part time Peon is about 20 years and in regular post he worked for three years. Thus, the total period of service of present petitioner comes to near about 13 years, however, the Zilla Parishad has completely ignored this aspect.

6. The only crux in the present matter as the Zilla Parishad authorities has rejected the claim of present petitioner relying on Note 2, however, considering the

factual aspect from the present case as it is seen that the initial appointment order of the present petitioner as part time Peon is 24-7-1970; he continued as part time Peon till 10-7-1990 and thereafter by order dated 6-7-1990 the petitioner was taken on regular cadre in the pay scale of Rs. 750-12-870-DR-14-940 by the Chief Executive Officer, Zilla Parishad. The order passed by the Chief Executive Officer, Zilla Parishad is also on record and the very wording of the said order safely makes it clear that the persons who are working as part time and salary being paid from contingency, those persons are being taken on regular cadre in class-4 and being fixed in the pay scale of Rs. 750-12-870-DR-14-940. After going through the order dated 7-7-1990 it can be said that it is the fresh order giving regular employment to the petitioner, however, as he was already worked as part time Peon and being paid from contingency the services being regularised in the pay scale in class-4 servant. We have gone through the Note 1 and Note 2 of Rule 57 and we find that the Zilla Parishad has wrongly applied Note 2 in the present matter while rejecting the claim of the petitioner to grant pension, as in fact in the present case, Note 1 of Rule 57 is applicable. Therefore, we find that the claim as set up by the present petitioner that he is entitled for pensionary benefits, is definitely justified.

7. Mr. Dhage, Advocate, has made reference in respect of order passed in Writ Petition No. 3472/1996 and in a same situation this Court in the said writ petition, has given direction to the respondents to consider the case of petitioner for pensionary benefits within a period of three months and also directed for payment of arrears. We have gone through the said order wherein a reliance is placed on Note 1 of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. Considering the factual aspects in the present case we also find that in the present case Note 1 of Rule 57 is applicable.”

12] We are, therefore of the opinion that the point and issue raised in this petition is squarely covered by this judgement. The teacher could 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. The reliance placed on Rule 30 and 31 of the MCS(Pension) Rules 1982 was also noticed in the case of Shivappa (supra) and the Division Bench invited attention of the authority to Rule 57 which deals with non pensionable service. That is how the observations and findings in paras 5 and 6 reproduced above have been rendered by the Division bench, to confer the benefit of pension on the petitioner. The post is fully aided and the Rules noted above are thus applicable.

6. The facts of this case are similar to the facts in case of **Kalpana J.Dahiwale** (supra) as well as **Jyoti Prakash Chougule** (supra), we are also inclined to take the similar views in this petition.

7. We have also perused the impugned order dated 27<sup>th</sup> April, 2021 which in our view is contrary to the law settled by this Court in several decisions including one discussed by us above. We accordingly allow the petition. We also set aside the impugned order dated 27<sup>th</sup> April, 2021.

8. We accordingly pass the following order :-

(a) The management of Saraswati Mandir Sanstha,

1359, Shukrawar Peth, Bajirao Road, Pune – 411 002

is directed to submit the pension papers of the petitioner in accordance with the view taken by us above to the respondent nos. 1 to 4 within the period of four weeks from the date of this order.

(b) Upon receipt of the pension papers from the aforesaid Saraswati Mandir Sanstha, the respondent nos. 1 to 4 are directed to make payment of pensionary benefits from the month of October 2021 on or before 31<sup>st</sup> October, 2021 and the arrears within a period of three months thereafter.

(c) Writ petition is disposed of in the above terms.

(d) Rule is made absolute accordingly.

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

**[ABHAY AHUJA, J.]**

**[R.D.DHANUKA, J.]**