

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 26 OF 2021**

1. Prakash Arjun Rajeshirke,)
Aged 68 yrs., Occ. Retired,)
R/o. Sawarde, Tal. Chiplun,)
Dist. Ratnagiri)

2. Sahyadri Shikshan Sanstha,)
Sawarde, Tal. Chiplun,)
Dist. Ratnagiri, Through its)
Chairman/Secretary)

..... Petitioners**VERSUS**

1. The State of Maharashtra,)
Through the Secretary,)
Higher and Technical Education)
Department, Mantralaya,)
Mumbai – 400 032.)

2. The Director of Art,)
At Sir J.J.School of Art Compound,)
D.N.Road, Fort, Mumbai – 400 001)

..... Respondents

Mr.Narendra V.Bandiwadekar, a/w. Mr.Vinayak R.Kumbhar, i/b.
Mrs.Ashwini Navjyot Bandiwadekar for the Petitioners.

Mr. N.C.Walimbe, A.G.P. for the State.

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

DATE : 2nd DECEMBER, 2021

ORAL JUDGMENT (PER R.D.DHANUKA, J.) :-

Rule. Mr.Walimbe, learned A.G.P. for the respondent waives

service. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek order and direction against the respondent no.1 to pay to the petitioner no.1 the retirement benefits and all other retiral benefits on the basis of the entire service rendered by the petitioner no.1 in the Art school of the petitioner no.2 institute from 28th June, 1993 till 30th June, 2010 and to pay the arrears of the retirement pension and other benefits w.e.f. 1st July, 2010.

3. The petitioner no.1 was appointed as Assistant Lecturer in the Art School started by the petitioner no.2 at Sawarde, Taluka Chiplun, District Ratnagiri on no grant basis from 28th June, 1993 on unaided basis. On 1st January, 2005, the respondent no.1 issued a Government Resolution sanctioning grant-in-aid to total 12 Art Schools/Colleges in the State of Maharashtra who were granted permission initially to be started on no grant basis. The Art School started by the petitioner no.2 was one of the institute sanctioned the grant-in-aid out of those 12 Art Schools/Colleges.

4. On 18th May, 2009, the respondent no.2 granted approval to the

appointment of the petitioner no.1 as Assistant Lecturer from 1st April, 2004 with effect from the date on which the grant-in-aid was sanctioned to the Art School vide the Government Resolution dated 1st January, 2005.

5. On 4th October, 2009, the petitioner no.1 was promoted to the post of full time lecturer in the said Art School run by the petitioner no.2. On 12th October, 2009, the respondent no.2 issued order granting approval to the promotion of the petitioner no.1 in the post of full time lecturer.

6. On 30th June, 2010, the petitioner no.1 retired due to superannuation after completion of 17 years of service. It is the case of the petitioner that the service of the 10 years and 9 months was on unaided basis and the service of 6 years and 3 months was on aided basis. According to the petitioner, the petitioner no.1 had completed more than 10 years of service which is the qualifying service for grant of pension. The proposal of the petitioner no.1 for payment of pension and retirement benefits was sent to the respondent no.2 vide letter dated 19th January, 2015.

7. Vide letter dated 23rd February, 2015, the respondent no.2 however informed the management that as the petitioner no.1 had not completed 10 years of service on aided basis and had completed only 6 years and three months service, no pension was payable to the petitioner. The petitioner thus filed this writ petition for various reliefs.

8. Mr.Bandiwadekar, learned counsel for the petitioner invited our attention to some of the exhibits annexed to the petition and would submit that the petitioner was appointed as Assistant Lecturer w.e.f. 28th June, 1993 on unaided basis and was subsequently appointed as full time lecturer. Both these appointments were sanctioned by the respondent no.2. He submits that the period of service rendered by the petitioner in the unaided school run by the same management has to be considered along with the period of service completed by the petitioner after the said school started getting grant-in-aid for the purpose of qualifying service for grant of pension and retirement benefits. He submits that the petitioner has completed total 17 years of service i.e. 10 years and 9 months on unaided basis and 6 years and 3 months on aided basis.

9. Learned counsel invited our attention to the unreported judgment of the Nagpur Bench of this Court delivered on 7th December, 2012 in case of ***Dnyaneshwar s/o. Shankarrao Marotkar vs. State of Maharashtra & Ors.*** in ***Writ Petition No. 2087 of 2012*** and also the judgment of this Court in case of ***Sister Ansela D'mello & Anr. vs. The State of Maharashtra*** delivered on 16th April, 2019 in ***Writ Petition (St) No.9011 of 2017.***

10. Mr.Walimbe, learned A.G.P. for the State could not distinguish the judgments relied upon by Mr.Bandiwadekar, learned counsel for the petitioner. Learned A.G.P. also could not dispute that the school run by the petitioner no.2 was one of the school granted grant-in-aid out of the 12 Art Schools by the respondent no.1 vide Government Resolution dated 1st January, 2005 and that on the date of retirement of the petitioner, the said school run by the petitioner no.2 was getting grant-in-aid under the said Government Resolution dated 1st January, 2005.

11. The Division Bench of this Court in case of ***Dnyaneshwar s/o. Shankarrao Marotkar*** (supra) has considered identical situation and held that so long as school is in receipt of grant-in-aid on the date on

which employee has retired upon attaining the age of superannuation, his services rendered during the period when such institute was on no grant-in-aid basis is also required to be taken into consideration while computing the eligible period for grant of expansionary benefits.

12. We have perused the said judgment delivered by this Court minutely, the averments and the prayers in the said writ petition which are identical in this petition. Out of the 12 Art Schools, the school run by the petitioner no.2 was also granted grant-in-aid by the Government Resolution dated 1st January, 2005. The principles laid down by this Court in the said judgment would apply to the facts of this case. We do not propose to take any different view in the matter.

13. In our view, the period of service rendered by the petitioner on the said post for Assistant Lecturer in the unaided school run by the petitioner no.2 will have to be considered along with the period of service rendered by the petitioner in the said school having granted grant-in-aid w.e.f. 1st January, 2005 for the purpose of computing qualifying services for the payment of pension. In our view, the stand taken by the State that the qualifying service will have to be computed

from the date of sanction of the grant-in-aid is totally erroneous and contrary to the principles of law laid down by this Court in case of **Dnyaneshwar s/o. Shankarrao Marotkar** (supra).

14. If the period of services rendered by the petitioner in the unaided school is taken into consideration along with the period of services rendered in the grant-in-aid school, the period of service would be more than 17 years which is more than the qualifying service required for the purpose of entitlement of pension. We accordingly pass the following order :-

15. Writ petition is made absolute in terms of prayer clauses (b) and (c) excluding interest. The arrears of retirement pension and other retirement benefits should be paid to the petitioner within six weeks from today without fail.

16. The regular pension and other retiral benefits payable shall also commence from the month of December 2021 onwards every month on the due date as per the policy of the State Government.

17. It is made clear that if the arrears amount as directed is not

paid within a period of six weeks from today, the respondent no.2 would be liable to pay the interest on the delayed payment from the due date till the payment to the petitioner at the rate of 8% per annum.

18. Writ petition is made absolute in the aforesaid terms. Rule is made absolute accordingly. No order as to costs.

19. The parties to act on the authenticated copy of this matter.

[ABHAY AHUJA, J.]

[R.D.DHANUKA, J.]

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VINOD
MAYEKAR

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