

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8352 OF 2021

Preeti Krishnakumar Singh & Anr. ... Petitioners
Versus
The State of Maharashtra & Ors. ... Respondents

Mr. Surel S. Shah, for the Petitioners.
Mr. N. K. Rajpurohit, AGP for Respondent Nos.1 to 4.

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

DATE : 3rd DECEMBER, 2021.

P.C. :-

1. Mr. Shah, learned Counsel for the petitioner seeks liberty to delete respondent no. 6 from the cause title of the petition. Leave to amend is granted. Amendment to be carried out forthwith.

2. Rule.

3. Mr. Rajpurohit, learned AGP for respondent nos.1 to 4 waives service. By consent of parties, the petition is heard finally.

4. By this petition filed under Articles 226 of the Constitution of India, the petitioners seek a writ of mandamus against the

respondent Nos. 1 to 5 to grant and release pension benefits to the petitioners including arrears on account of demise of Mr. Krishnakumar Sabhajeet Singh, predecessor of the petitioners i.e. husband of petitioner no. 1 and father of petitioner no. 2, expired during the service as an Assistant Teacher in Smt. Sushiladevi Deshmukh Vidyalay, Thane.

2. The said Shri Krishnakumar Sabhajeet Singh, husband of petitioner no. 1 and father of petitioner no. 2 was appointed as an Assistant Teacher on part time post on 13th June 1999 in the said Smt. Sushiladevi Deshmukh Vidyalay. On 15th June 2016, the said Shri Krishnakumar Sabhajeet Singh, was appointed as full time teacher and expired due to cancer on 22nd September 2020.

3. The Management sent proposal for payment of pension to the respondent no. 1 on 23rd October, 2020. The said proposal was however, rejected by Deputy Director of Education vide order dated 25th November 2020 by relying upon the resolutions dated 31st October, 2005 and 29th November, 2010.

4. Mr. Shah learned counsel for the petitioners invited our attention to the Exhibits annexed the petition and would submit that admittedly said Shri Krishnakumar Sabhajeet Singh was appointed as a Assistant Teacher on part time post in the said school on 13th June 1999 and was continued in service till he was

appointed on full time post on 15th June 2016 and thereafter till his demise. The said Shri Krishnakumar Sabhajeet Singh expired on 22nd September, 2020.

5. It is submitted by learned counsel for the petitioner that 50% of the period of service rendered by husband of petitioner no. 1 and father of petitioner no. 2 was required to be taken into consideration alongwith the period of service rendered by the said employee till the date of his demise for the purpose of computation of qualifying service for payment of pension. In support of this submissions, learned counsel for the petitioner relied upon the unreported judgment of this Court delivered on 8th October, 2021 in case of **Chitrarekha M. Naik Vs. State of Maharashtra and Others** in Writ Petition No. 5458 of 2017

6. Learned counsel also placed reliance on unreported judgment of this Court delivered on 7th September, 2021 in case of **Renuka Chandrabhan Umredkar Vs. State of Maharashtra and Others** in Writ Petition No. 3696 of 2021 in support of the submission that 50% period of the service rendered on part time post has to be considered along-with the period of service rendered as full time for computation of qualifying service under the provisions of MCS (Pension), Rules, 1982.

7. In so far as the Government Resolution placed in service by the Education Officer in the order dated 25th November, 2020 is

concerned, it is submitted by learned counsel for the petitioner that the said resolution dated 29th November, 2010 would not apply to the appointment of Shri Krishnakumar Sabhajeet Singh, who was already appointed much prior to the date of said resolution.

8. Mr. Rajpurohit, learned AGP for the State tried to defend the impugned order dated 25th November, 2020. He also could not distinguish the principles of law laid down by this Court in case of **Chitrarekha M. Naik** (supra) and also in case of **Renuka Chandrabhan Umredkar** (supra).

9. It is an admitted position that the husband of petitioner no. 1 and father of petitioner no. 2 was appointed as Assistant Teacher on part time post and continued his service till the date of his demise on 22nd September, 2020. The said Shri Krishnakumar Sabhajeet Singh, was given benefits of full time post on 15th June 2016. This Court in catena of decisions including in case of **Chitrarekha M. Naik** (supra) and also in case of **Renuka Chandrabhan Umredkar** (supra) has held that 50% period of service rendered on part time post has to be considered along-with the period of service rendered as full time under the provisions of MCS (Pension), Rules, 1982 for the purpose of computation of qualifying service. In this case, the 50% of the service rendered by Shri Krishnakumar Sabhajeet Singh i.e. between 13th June 1999 and 15th June, 2016 has to be taken into

consideration with the period of service rendered by Shri Krishnakumar Sabhajeet Singh from 16th June, 2016 till his demise i.e. on 22nd September, 2020.

10. If the computation is made accordingly it would be clear that Shri Krishnakumar Sabhajeet Singh is entitled for the payment of pension under the provisions of MCS(Pension), Rules, 1982. The principles of law laid down by this Court in case **Chitrarekha M. Naik** (supra) and also in case of **Renuka Chandrabhan Umredkar** (supra) apply to this case. We do not propose to take different view in the matter.

11. In so far as the resolution pressed in service by the Education Officer in the impugned order dated 25th November, 2020 i.e. resolution dated 29th November, 2010 is concerned, in our view the said resolution would not apply with retrospective effect. Shri Krishnakumar Sabhajeet Singh was appointed in the year 1999. The impugned order passed by the Education Officer is thus totally perverse and contrary to the provisions of MCS (Pension), Rules, 1982 and principles of law laid down in couple of judgments including the decision in case of **Chitrarekha M. Naik** (supra) and also in case of **Renuka Chandrabhan Umredkar** (supra).

12. We accordingly pass the following order.

(a) The Writ petition is made absolute in terms of

prayer clause (A).

- (b) It is made clear that the said relief is granted only against respondent Nos. 1 to 5 and not respondent no. 6-School.
- (c) In so far as prayer clause (B) is concerned, Mr. Shah, learned counsel for the petitioner does not press that relief in this petition at this stage. Statement is accepted. The petitioners are at liberty to file appropriate proceedings before the appropriate Court in accordance with law.
- (d) The arrears of payment of pension shall be released infavour of the petitioners within 6 weeks from today without fail. The pension payable for the current period and for such period the petitioners are entitled to family pension shall be released every month on due date as per the policy of the State Government.
- (e) Rule is made absolute in the aforesaid terms. No order as to costs.
- (f) Parties to act on an authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]