

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

WRIT PETITION NO.4539 OF 2019

Nirmal Amresh Julka	.. Petitioner
Versus	
The State of Maharashtra & Ors.	.. Respondents

Mr.Aniket B. Deshkar a/w Mr.Kiran E. Patil for the Petitioner.
Mr.N.K. Rajpurohit, AGP for the respondent nos.1 & 2-State.

**CORAM : R.D. DHANUKA
ABHAYAHUJA, JJ.**
DATE : 22nd November 2021

P.C.:-

1. Learned counsel for the petitioner seeks leave to delete the name of the respondent no.3 in the cause title of the petition. Leave is granted as prayed. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule. Learned AGP for the respondent nos.1 & 2 waives service. By consent of parties, petition is heard finally.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of certiorari for quashing and setting aside the letter dated 27th July 2017 issued by the respondent no.2 and further seeks writ of mandamus to compute the services of the petitioner as part time Librarian as qualifying service for the purpose of grant of pensionary benefits.

4. The petitioner was appointed as a part time Librarian in the respondent no.3 -S.E.S. K.A. Banthia Madhyamik Vidyalaya from 16th June 1997 to 31st March 2006 i.e. for a period of 8 years and 9 months. The petitioner was thereafter confirmed on the said post as Full time Librarian and continued from 1st April 2006 to 31st May 2016 i.e. for a period of 10 years and 2 months and thereafter retired on superannuation.

5. On 29th March 2007, the petitioner completed qualifying service of 3 years as 'Shikshan Sevak.' The respondent no.2 approved the post of the petitioner as full time Librarian. After approval of post of the petitioner as full time Librarian, the respondent no.2 however, applied the pension under new pension scheme i.e. Defined Contributory Pension Scheme (DCPS) and not under old pension scheme.

6. On 6th December 2016, the respondent no.3 sent a letter to the respondent no.2 requesting for accepting the retirement proposal of the petitioner. The proposal sent by the management was returned by the respondent no.3 on 27th July 2017 on the ground that the petitioner was not entitled for retirement pension scheme. The petitioner therefore filed this petition.

7. The case of the petitioner is that pension of the petitioner however was considered by the respondent nos.1 & 2 under new pension scheme i.e. DCPS and not under old pension scheme, though the petitioner had completed the qualifying service under the said Maharashtra Civil Services (Pension) Rules (for short "the said Pension

Rules”) having been come into effect and was initially appointed on 16th June 1997.

8. Mr.Rajpurohit, learned AGP for the State could not dispute that 50% period of service of the petitioner as part time Librarian i.e. from 16th June 1997 till 31st March 2006 has to be considered along with the services of the petitioner as full time Librarian from 1st April 2006 to 31st May 2016 i.e. for a period of 10 years and 2 months.

9. In the catena of the decisions rendered by this Court, it has been held that the period of 50% of the Librarian as part time service has to be considered for computation of qualifying service with full time service for the purposes of pension. Since admittedly in this case, the petitioner was appointed as part time Librarian on 16th June 1997, 50% of the said period i.e. from 16th June 1997 to 31st March 2006 will have to be considered along with the services rendered by the petitioner as full time Librarian with effect from 1st April 2006 to 31st May 2016 for the purpose of computation of pension under the said Pension Rules. If the said period is taken into consideration, the petitioner becomes eligible to get benefits under the old pension scheme. It is ordered accordingly. The petitioner would get benefits under the old pension scheme having been initially appointed on 16th June 1997. Computation of pension would be accordingly made by the respondents by considering the provisions of the said Pension Rules and to grant such benefits to the petitioners.

10. The management has already submitted proposal to the respondent nos.1 & 2. The impugned order dated 27th July 2017 passed

by the respondent nos.1 & 2 returning the proposal is quashed and set aside. The management is directed to submit fresh proposal to the respondent nos.1 & 2 by giving effect to this order within two weeks from today. Upon receipt of the fresh proposal, the respondent nos.1 & 2 to consider the said proposal within four weeks from the date of receipt of such proposal and to pay all consequential benefits within two weeks thereafter without fail.

11. Writ petition is allowed in aforesaid terms. Rule is made absolute. Parties to act on the authenticated copy of this order.

ABHAY AHUJA, J.

R.D. DHANUKA, J.