

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

WRIT PETITION NO.5458 OF 2017

Chitrarekha M. Naik

Age : 60 Years, Occu. : Retired Librarian,
Residing at 203, Amar Apartment,
Near Samrat Hotel, Pandit Deendayal Road,
Dombivali(W), Thane-421 202.

... Petitioner

Vs.

1. State of Maharashtra

Through the Principle Secretary,
Government of Maharashtra,
Mantralaya, Mumbai-400 032

2. The Accountant General

The Office of the Accountant General,
Accounts Entitlement-I, 2nd Floor,
Prathishta Bhavan, 101, Maharshi
Karve Road, New Marine Lines,
Mumbai-400 020.

3. The Secretary,

Department of Education (Lower),
Government of Maharashtra,
Mantralaya, Mumbai- 400 032.

4. Director of Education,

Central Building,
Government of Maharashtra,
Pune-411 001.

5. The Education Officer (Madhyamik),

Department of Education,
Zilla Parishad, Thane (West),

6. The Principal,
Swami Vivekanand Vidya Mandir,
Datta Nagar (Madhyamik),
Chatrapatri Bhavan, Ayre Road,
Datta Nagar, Dombivli (East),
District-Thane 421 201.

... Respondents

Mr. Shubham Misar i/b Mr. M. g. Misar, advocate for Petitioner.
Mr. N. K. Rajpurohit, Asst. Government Pleader, for Respondents
No.1 and 3 to 5.

CORAM : R.D. DHANUKA AND
ABHAY AHUJA, JJ.
RESERVED ON : 5TH OCTOBER, 2021.
PRONOUNCED ON : 8TH OCTOBER, 2021.

JUDGMENT : (PER ABHAY AHUJA, J.)

1. Learned counsel for Petitioner seeks leave of this Court to delete Respondent No.6. Leave is granted. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule. Rule made returnable forthwith. Mr. N. K. Rajpurohit, the learned Additional Government Pleader for Respondents No.1 and 3 to 5 waives service.

3. By consent of counsel for the parties, Writ Petition is heard finally.

4. By this petition, filed under Article 226 of the Constitution of India, Petitioner is challenging the order dated 19th November 2013 issued by the Accounts Officer, Office of the Principal Accountant General, Accounts Entitlement-I, Mumbai, refusing / rejecting the pension proposal in respect of Petitioner.

5. It is submitted that Petitioner was appointed as part time librarian in Swami Vivekanand Vidyamandir on 29th August 1992 and till 31st March 2006 she served as part time librarian. With effect from 1st April 2006, she came to be appointed as full time librarian, till she superannuated on 31st December 2013. It is the case of Petitioner that her total part time service is 13 years, 7 months and 2 days and her total full time service is 7 years 8 months and 30 days.

6. Mr. Misar, learned counsel for Petitioner submits that Petitioner has continuously served for 21 years uninterruptedly and thereby qualifies the criteria for pensionable service of more than 10 years. He submits that in a similar case, this Court has allowed the Petition directing the Respondents to consider the pension proposal of Petitioner and for making payment thereof and

relies upon the decision of this Court in the case of **Smt. Kalpana Jagatrao Dahiwale Vs. State of Maharashtra and Ors. In Writ Petition No. 1673 of 2021.**

7. Per Contra, learned AGP relies upon the affidavit-in-reply dated April/May 2021 and submits that part time service of Petitioner cannot be considered for pensionery benefits.

8. We have heard Mr. Misar, Learned Counsel, on behalf of Petitioner and Mr. Rajpurohit, Learned Additional Government Pleader for Respondents No. 1 and 3 to 5 and with their able assistance, we have perused the papers and proceedings in the matter.

9. Facts not being in dispute, in a catena of decisions, this Court has held that 50% of the part time services rendered by a part time librarian is required to be counted for the purposes of pensionery benefits alongwith the full time services rendered by the employee. In the case in hand, admittedly, Petitioner has served as part time librarian from 29th August 1992 to 31st March 2006 and from 1st April 2006 till her retirement on 31st December 2013, has worked

as full time librarian, resulting in total part time service to 13 years 7 months and 2 days and total full time services to 7 years 8 months and 30 days. If 50% of total part time service was added to the full time service, the total period of Petitioner's service would be more than 10 years, entitling Petitioner to the benefit of services rendered as full time librarian for the purposes of superannuation pension in accordance with Rule 30 and Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (the "MCPS Rules, 1982"). For the sake of convenience Rule 57, Note 1 on the MCPS Rules, 1982 is usefully quoted as under:-

"Note 1- In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension. (Emphasis Supplied)"

10. We also place reliance on the decision of this Court in the case of *Kalpana Dahiwal*e (supra), (where one of us, R. D. Dhanuka, J was a member). Paragraphs no. 9 to 12 from the said decision are usefully quoted as under:-

*"9. This Court in case of **Jyoti Prakash Chougule Vs. State of Maharashtra** has considered identical facts and after adverting to the judgments of this Court in **Shivappa s/o Bhujangappa Bembale Vs. State of Maharashtra & anr.** and various other judgments has held that the teacher*

should 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. It is held that the State Pension Rules are applicable to the teachers in terms of Rule 19 of the MEPS Rules, the above principle will apply. This Court directed the Accountant General to consider the case of the Petitioner by giving pensionary benefit in view of the Rules considered by this Court.

*10. A Division Bench of this Court in case of **Abaso Ganapati Aoute Vs. State of Maharashtra & Ors.** has after adverting to the judgment of **Jyoti Prakash Chougule** (supra) has held that 50% of the part time services rendered by the Petitioner has to be taken into consideration along with the services rendered by the Petitioner as full time teacher for grant of superannuation pension benefits.*

*11. The principles laid down by this Court in the aforesaid judgment will apply to the present case regarding non teaching staff also. A Division Bench of this Court in case of **Smt. Darshana wd/o Adikrao Gaikwad Vs. State of Maharashtra** has considered identical facts where the Petitioner was appointed as part time Librarian initially and thereafter, full time Librarian. In that matter also authority had refused to grant superannuation pension to the Petitioner therein. This Court after adverting to various judgments including **Jyoti Prakash Chougule** (supra) held that 50% of the part time services rendered by the part time Librarian is required to be counted for the purpose of pensionary services along with full time services rendered by the employee. The said judgments squarely applies to the facts of this case. We are not inclined to take different view in the matter.*

12. Though learned AGP made an attempt to distinguish the aforesaid judgments, in our view, the learned AGP could not succeed in her attempt. In our view, the Petitioner having completed more than 10 years 3 months as part time Librarian and completed more than 9 years and 11 months as full time Librarian, 50% of the services

rendered as part time will have to be considered for the purpose of computation of pensionable services. After computing 50% of the services rendered by the Petitioner as part time Librarian and 100% services rendered as full time Librarian, the Petitioner would be entitled to superannuation pension under the relevant Rules referred to aforesaid. The authority thus, could not have refused to pay pension to the Petitioner.”

11. In this view of the matter, we are of the view that, after computing 50% of the services rendered by the Petitioner as part time librarian and 100% service rendered as full time librarian, Petitioner would be entitled to superannuation pension under the relevant Rules and that the rejection by the authority and the refusal cannot be sustained.

11. The order dated 19th November 2013 passed by the office of Accountant General, Accounts Entitlement-I, viz. Respondent No. 2, is hereby quashed and set aside.

12. Respondents are directed to grant and release pensionary benefits to Petitioner in line with the aforesaid discussion including all arrears of pension, within a period of two months from today.

13. Rule is made absolute in the above terms.

14. Writ Petition accordingly stands disposed. There shall however be no order as to costs.

15. Parties to act on an authenticated copy of this judgment.

(ABHAY AHUJA, J.)

(R. D. DHANUKA, J.)

NIKITA
YOGESH
GADGIL

Digitally signed
by NIKITA
YOGESH
GADGIL
Date: 2021.10.08
17:03:33 +0530