IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4532 OF 2017

Dr. Annie John
Age: 64 years, Occu: Principal,
Dayanand College of Law, Latur,
R/o Pillai Niwas, Barshi Road, Latur,
Dist. Latur. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of Higher Education,
Mantralaya, Mumbai 400 032.

2. The Principal Secretary,
Finance Department,
Mantralaya, Mumbai 400 032.

3. The Director,
Higher Education, Central Building,
Pune 411 001.

4. Swami Ramanand Tirth Marathwada,
University, Nanded,
Through its Registrar.

5. Dayanand Education Society,
Latur, Barshi Road, Latur,
Through its President,
Shri. Laxmiraman Lahoti.

6. The Accountant General – II of Maharashtra,
Civil Lines, Nagpur. .. Respondents

Shri Ajay S. Deshpande, Advocate for the Petitioner.
Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 3 and 6.

Shri Uday S. Malte, Advocate for the Respondent No. 4.
Smt. Anjali (Bajpai) Dube, Advocate 5.

CORAM : MANGESH S. PATIL AND SANDEEP V. MARNE, JJ.
DATE : 25.08.2022.

JUDGMENT (*Per Sandeep V. Marne, J.*) :-

. The petitioner challenges communication dated 26th December, 2016, rejecting her request for extending the pension scheme applicable under the Maharashtra Civil Services (Pension) Rules, 1982 (for the sake of brevity hereinafter referred as to the "Rules of 1982") by considering service rendered by her since 16.03.1984 in Andhra Christian College of Law, Guntur, Andhra Pradesh.

2. The petitioner claims to have been appointed as a lecturer in Andhra Christian College of Law, Guntur in Andhra Pradesh on 16.03.1984. It is common ground that the said college was not in receipt of any grant-in-aid and the petitioner was paid salary by the management. In response to an advertisement, the petitioner applied for appointment on the post of Principal in Dayanand College of Law, Latur run by the respondent No. 5 and she came to be appointed as Principal vide order dated 06.07.2009. She joined the services on 18.07.2009, after procuring due permission from her earlier college. The respondent No. 5 college is in receipt of grant in aid and accordingly she came to be placed in the pay scale of Rs. 16,400 – 450 – 20,900 – 500 – 22,400, which was pre-revised scale as per

the 05th Pay Commission. She attained the age of superannuation of 62 years on 30.04.2014, but was granted extension on the post of Principal for a period of three years upto 30.04.2017. On account of joining college in receipt of grant-in-aid after 01/11/2005, the defined contributory pension scheme is made applicable to her. Her grouse is that by counting her service from 1984, she ought to be governed by the pension scheme envisaged under the Rules of 1982.

3. The petitioner claims to have made several representations for applying her provisions of the pension scheme under the Rules of 1982. On account of non decision thereof, she was required to file Writ Petition No. 9898 of 2016, which came to be disposed of with a direction to the Director of Higher Education, Pune to take decision on the representation. By communication dated 26.06.2016, the Director of Higher Education, Pune has rejected the request of the petitioner on the ground that she was earlier working in non aided college of Andhra Pradesh and did not fulfill the condition of the Government Resolution dated 22.11.1993.

4. Appearing for the petitioner Mr. Ajay Deshpande, learned counsel submitted that the petitioner was lawfully appointed as a lecturer in the Andhra Christian College of Law, Guntur, Andhra Pradesh and after rendering of 27 long years service there, she came to be appointed as a Principal in the respondent No. 5 college with due permission of her previous college. He

relies upon University Grants Commission Regulation 2010, more particularly para 10 thereof, to buttress his contention that for the purpose of grant of benefits under Career Advancement Scheme (C.A.S.), no distinction is made between the nature of management of institution where previous services are rendered for the purpose of counting the past service for C.A.S. benefit. He submits that if her services in Andhra Christian College of Law, Guntur, Andhra Pradesh could be counted for grant of benefits under the C.A.S, there is no reason why the same should not be computed towards qualifying service for pension. He further submits that, the reason of past service being rendered in a college outside the State is perverse as advertisement was required to be published under regulations in a national level news paper and, therefore, there was every likelihood of candidates from other states being appointed.

5. *Per contra*, Mr. Yawalkar, learned Additional Government Pleader appearing for the State Government as well as the Accountant General submits that the petitioner has joined the respondent No. 5 college on 18.07.2009 i. e. after coming into effect the Defined Contributory Pension Scheme, introduced vide Government Resolution dated 31st October, 2005. Therefore, the petitioner is bound to be governed by the D.C.P.S. scheme. He further submits that even otherwise the petitioner was brought on DCPS in the year 2013 by making necessary deductions from her salary, which she did not object to and, therefore, she is now estopped from claiming benefits under the Old Pension Scheme.

Mr. Yawalkar, also relies upon several provisions of the Rules of 1982 to defeat the claim of the petitioner.

6. Since the impugned decision is taken by the Director of Higher Education and the pension is to be sanctioned by the office of the Accountant General, the respondent Nos. 4 and 5 do not have much role in the matter, nor have they filed any affidavit in reply.

7. Upon hearing learned counsels for the parties, we find that the petitioner's services during 16.03.1984 to 17.07.2009 are admittedly in unaided college. Even if the aspect of the services being rendered outside Maharashtra State is to be ignored for a moment, still the services rendered in an unaided college cannot be counted for pension.

8. Rule 19 of the Maharashtra Employees of Private Schools (Condition of Service Regulation) Rules (for short MEPS Rules) deals with right to pension in respect of teachers and provides as under :

> **19. Pension.** - An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after the 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above mentioned respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools.

9. Thus under Rule 19 of the MEPS Rules, employees of only aided schools and aided junior colleges are entitled to pension. Consequently the services rendered in unaided schools and colleges would not qualify for pension.

10. This issue has also been considered by this Court in the case of **Homraj Hansaram Bisen Vs. State of Maharashtra and others** reported in ***(2013) 2 Mh.L.J. 401***, in which it is held in para No. 15 as under :

> "15. The State Government has in unequivocal terms stated that it has been policy of the State to make applicable pensionary scheme only to such of the employees who were working in hundred percent aided schools. Notice is also required to be taken that only after school starts receiving hundred percent grant- in-aid, entire salary amount of the employees would be required to be paid by the Government. Till the School is made entitled to receive hundred percent grant-in- aid, the State Government is not enjoined with the responsibility of paying entire salary. It is also a settled principle of law that primary responsibility to make payment of salary to the staff is on the management. In that view of the matter, we find that decision in prescribing cut-off date of 1st November 2005 and providing that only such of the employees who are working on hundred percent aided schools prior to 1st November 2005 being entitled to the benefit of old Scheme cannot be said to be either unreasonable or arbitrary. It is only after the school is brought on hundred percent grant-in-aid basis, the employee of such school would be entitled to be equated with Government employee."

11. Even though Rule 19 of the MEPS Rules as well as decision in the case of **Homraj Hansaram Bisen** (supra) is relevant to

schools and junior colleges governed by the provisions of the Rules of 1982, the same analogy would apply to the case of the petitioner.

12. Even otherwise the petitioner has not been able to point out any specific provision under which services rendered in unaided college can be counted towards qualifying service towards pension.

13. Mr. Yawalkar, has submitted that under Rule 30, 37 and 57 of the Rules of 1982, services which are not rendered under Maharashtra Government would not qualify for pension. We, however, do not wish to enter into this controversy, as the petitioner has not been able to point out any provision or even any decision under which lecturers of unaided college can be held to be entitled to pension.

14. In the result, we do not find any merit in the petition and the same is dismissed without any order as to costs.

[SANDEEP V. MARNE, J.] **[MANGESH S. PATIL, J.]**

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