

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6677 OF 2021

Sanjaykumar s/o Prataprao Wagh,
Age 55 years, Occ. Service (Librarian)
R/o. Girana Vidya Prasarak Mandal's
Secondary School, Mehunbare,
Tq. Chalisgaon, Dist. Jalgaon. ... **Petitioner.**

VERSUS

- 1) The State of Maharashtra,
Through, Secretary
of School Education and Sports Department,
Mantralaya Mumbai – 32.
- 2) Director of Education (Secondary &
Higher Secondary), Education Directorate
Maharashtra State Pune.
- 3) Divisional Deputy Director of
Education, Nasik Division, Nasik.
- 4) Education Officer (Secondary)
Zillha Parishad, Jalgaon.
- 5) Head Master,
Girana Vidya Prasarak Mandal's,
Secondary School, Mehunbare
Tal. Chalisgaon, Dist. Jalgaon. ... **Respondents.**

...

Advocate for the Petitioner : Mr. Paresh B. Patil (Borse)
A.G.P for the Respondent Nos. 1 to 4 : Mr. K. N. Lokhande
Advocate for the Respondent No. 5 : Mr. M.D. Gitte.

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 26.07.2022.

ORAL ORDER : (PER : SANDEEP V. MARNE, J)

Rule. With the consent of both the sides, rule is made returnable
forthwith and heard finally.

2. By way of present petition, the petitioner seeks following relief :

(A) Rule may kindly be issued and made absolute.

“(B) By appropriate writ in the nature of certiorari or any other appropriate writ of like nature or with appropriate orders, or directions, the respondents and respondent No. 4 Education Officer (Secondary) Zillha Parishad, Jalgaon may kindly be directed that the services rendered by the petitioner from 12/03/1995 to 31/03/2006 kindly be considered as full time librarian from the date of initial appointment of the petitioner i.e. 18/03/1995 till 31/03/2006 and further to grant necessary approval in favour of the petitioner as Full Time Librarian from 1996 till 31.03.2006, in view of the facts that the strength of the students was more than one thousand from 1996 till year 2006 of respondent No. 5 Secondary School, for that purpose this Hon’ble Court may pass appropriate orders.

(C) By appropriate writ in the nature of Mandamus or any other appropriate writ of like nature or with appropriate order or directions, the respondents and respondent No. 4 Education Officer (Secondary) Zillha Parishad, Jalgaon may kindly be directed to consider as full time librarian from 1996 till 31.03.2006 and further kindly be considered the initial appointment date of the petitioner for National Pay Fixation as well as for time bound promotion and for other retirement and pensionary benefits etc. for that purpose this Hon’ble Court may pass appropriate orders.

(D) Any other just and equitable orders may be passed in favour of the petitioner”.

3. The petitioner was appointed as a part time librarian on 12.03.1995. By the order dated 22.12.1995 the approval came to be granted for appointment of the petitioner as a part time librarian with effect from 12.03.1995. It is not in dispute that the petitioner has also been granted approval as a full time librarian with effect from 01.04.2006 vide order dated 11.01.2007.

4. In similar circumstances, this Court has passed an order dated 04.07.2020 in Writ Petition No. 6337/2019 (Rajendra Rangnath Sambhus Vs. The State of Maharashtra and others) which reads thus :

“By this petition under Article 226 of the Constitution of India, the petitioner is seeking upgradation to the post of full time Librarian as per the Government Resolution dated 28.06.1994 with effect from 15.03.1995.

2 The petitioner was appointed in Respondent No. 6-School as a part-time Librarian on 15.03.1995. The petitioner is holding the qualification as B.Com. and Librarian and Training Course (‘LTC’). The appointment of the petitioner was approved by the Education Officer. Subsequently, the petitioner has been appointed as a full time Librarian with effect from 01.04.2006, which appointment has also been approved by the Education Officer on 23.03.2007.

3 The petitioner is placing reliance on the Government Resolution dated 03.08.2006, by which it is provided that whenever and wherever strength of the students in the college exceeds one thousand, the post is required to be upgraded as full time Librarian.

*4 The learned Counsel for the petitioner has placed reliance on the decision of this Court in batch of writ petitions bearing **W. P. No.12902 of 2018 and others (Punjabari Baburao Dighe & others Vs. State of Maharashtra & others)**, decided on 06.05.2022, in order to submit that similar relief has been granted by this Court in identical circumstances.*

*5 On behalf of the Respondents, reliance is placed on the decision of this Court in **Writ Petition No. 2311 of 2013 (Satish Ganpatrao Patil Vs. State of Maharashtra & others)**,*

decided on 31.03.2015.

6 However, learned Counsel for the petitioner points out that the decision in **Satish Ganpatrao Patil** (supra) has been considered by this Court in W. P. No. 12902 of 2018 in paragraphs no. 56 and 57 of the judgment and order dated 06.05.2022.

7 We have heard learned Counsel for the respective parties. Perused record.

8 It appears that the petitioner was appointed as a part-time Librarian in the Respondent-School on 15.03.1995 and has been subsequently appointed as full time Librarian with effect from 01.04.2006. The record also discloses that the strength of the students in the school had exceeded one thousand in the year 1994-95 itself, which aspect is not disputed on behalf of the Respondent-State. Thus, in our considered view, the petitioner would be entitled to the benefit of the Government Resolution dated 03.08.2006. The petitioner has since retired from service on 31.03.2021. This petition was, therefore, amended in order to incorporate prayer clause “B-1”, as under:

B-1) Hold and declare that, the petitioner is entitled for upgradation to the post of full time librarian as per Government Resolution dated 28.06.1994 w.e.f. 15.03.1995 and to issue appropriate writ or direction in the like nature directing the respondents to issue orders for upgradation as a full time librarian and to release all consequential monetary and service benefits in favour of the petitioner and for that purpose issue necessary orders.

9 The learned Counsel for the petitioner is restricting his claim to the extent of prayer clause “B-1” except that the petitioner is not claiming any arrears of salary from 15.03.1995 till 01.04.2006.

10 In that view of the matter, the petition is allowed in terms of prayer clause “B-1”, subject to the condition that the petitioner shall not be entitled to the arrears of salary for the period from 15.03.1995 to 01.04.2006. However, the said period shall be notionally reckoned for giving pensionary and all consequential benefits to the petitioner. Such benefits be extended within eight weeks from today.”

5. The learned A.G.P submits that since the petitioner has been granted approval as a full time librarian with effect from 01.04.2006, the petitioner would be governed by the provisions of the new Defined Contributory Pension Scheme. However, we find that this issue is no more *res integra* and is covered by the judgment dated 06.05.2022 in **Writ Petition No. 12902/2018, Punjahari Baburao Dighe and others Vs. The State of Maharashtra and others**, para No. 53 of which reads thus :

“53. The Division Bench of this Court at Principal Seat, comprising one of us (R.D. Dhanuka, J.) in the case of Smt. Urmila Ashok Kamble Vs. The State of Maharashtra and Others in Writ Petition (St.) No. 57/2020 delivered on 27th October 2021, after considering the similar facts and also after considering the Full Bench judgment of this Court in case of Deshmukh Dilipkumar Bhagwan and Ors. Vs. State of Maharashtra in Writ Petition No. 8387/2013 decided on 26.8.2019 (supra) held that the petitioner had been appointed as librarian much prior to 1st November 2005 and therefore, the provisions of Defined Contributory Pension Scheme would not be applicable. The school in which the petitioner was working at the relevant time was a fully aided school and hence, the provisions of Defined Contributory Pension Scheme framed under the Government Resolution dated 31st October 2005 cannot be made applicable to the petitioner therein. This Court accordingly held that the case of the petitioner would be governed by the provisions of MCPS Rules 1982, The Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the existing General Provident Fund Scheme and not in accordance with the Defined Contributory Pension Scheme. The principles laid down in the said case of Smt. Urmila Ashok Kamble

(supra) would apply to the facts of the present cases. We do not propose to take any different view in the matter.”

Thus, the date of approval on the post of full time librarian would not decide the entitlement of the petitioner in respect of a particular pension scheme.

6. Accordingly the said objection raised by the learned A.G.P. does not find favour with this Court.

7. Learned advocate Mr. Patil for the petitioner makes a statement that the petitioner would not claim arrears of salary in respect of his service as a part time librarian.

7. The Writ Petition is disposed of. Rule is accordingly made absolute in terms of prayer clause 'B' & 'C'.

8. However, it is clarified that in respect of the services of the petitioner as a part time librarian, only 50% of his service shall be counted.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-