

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

WRIT PETITION NO. 12902 OF 2018

1. Punjahari Baburao Dighe,
Age : 48 years, Occu : Service,
R/o. A/p. Talgaon Dighe (Arampur)
Tq. Sangamner, Dist. Ahmednagar.
2. Rohidas Vishnu Ghule,
Age : 48 years, Occu : Service,
R/o. A/p. Bota, Tq. Sangamner,
Dist. Ahmednagar.
3. Nanasaheb Rangnath Gadekar,
Age : 51 years, Occu : Service,
R/o. A/p. Rajapur, Tq. Sangamner,
Dist. Ahmednagar.
4. Arjun Lahanu Avhad,
Age : 50 years, Occu : Service,
R/o. Sahyadri Colony,
Near Kopargaon Gokul Nagari,
Tq. Kopargaon, Dist. Ahmednagar.
5. Rajendra Ramchandra Tekawade
Age : 55 years, Occu: Service,
R/o. Bazar Road, R/o. Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
6. Digambar Savaleram Kale
Age: 52 years, Occu: Service,
R/o. Dhadarphal, Tq. Sangamner,
Dist. Ahmednagar.
7. Sahebrao Tukaram Gadekar,
Age: 54 years, Occu: Service,
R/o. Raskar Nagar, R/o. Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar. .. Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Director of Secondary and
Higher Secondary Education,
State of Maharashtra,
Central Building, Pune-1.
3. The Deputy Director of Education,
Aurangabad Division, Pune.
4. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar.
5. The President/Secretary,
The Maharashtra Shikshan Sanstha,
At Post Nimgaonjali, Tq. Sangamner,
Dist. Ahmednagar.
6. The President/Secretary,
The Pragatik Shikshan Sanstha,
At Post Rajapur, Tq. Sangamner,
Dist. Ahmednagar.
7. The President/Secretary,
The Sahyadri Bahujan Vidya Prasarak Samaj,
At Sangamner, Tq. Sangamner,
Dist. Ahmednagar.
8. The President/Secretary,
The Shrirampur Education Society,
At Godhawani Road, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
9. The President/Secretary,
The MP. Govindrao Adik Gramin Shikshan
Sanstha, At Post Nimpani Wadgaon,
Tq. Shrirampur, Dist. Ahmednagar.
10. The President/Secretary,

The Kopargaon Education Society,
C/o. Shriman Gokulchand Vidyalaya,
Tq. Kopargaon, Dist. Ahmednagar.

11. The President/Secretary,
The Ganesh Bahujan Vidya Prasarak Sanstha,
At Post Botha, Tq. Sangamner,
Dist. Ahmednagar. .. Respondents

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Shri S. T. Shelke, Advocate for Petitioners.

Shri A. S. Shinde, A.G.P for Respondent Nos. 1 to 3.

Shri G. T. Pahilwan, Advocate for Respondent Nos. 5 and 11.

Shri S. S. Wagh, Advocate for Respondent Nos. 6 to 10.

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**AND
WRIT PETITION NO. 11513 OF 2018**

Anand Haridas Navgire,
Age 58 years, Occu: Retired,
R/o. V.P. Road, Opp. Govt. Godown,
Pachora, Tq. Pachora, Dist. Jalgaon. .. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Accountant General-I,
2nd Floor, Pratishtha Bhavan,
101, Maharshi Karvey Road,
New Marine Lines – Churchgate,
Mumbai – 400020.
3. The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
Tq. and Dist. Jalgaon.
4. Smt. Sumanbai Girdhar Patil,
Madhyamik Vidyalaya, Bhadgaon,
Tq. Bhadgaon, Dist. Jalgaon,

Through its Headmaster.

.. Respondents

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Shri A. D. Pawar, Advocate for the Petitioner.

Shri S. B. Yawalkar, Addl.G.P. for Respondent Nos. 1 and 3.

Shri Gitte, Advocate h/f M. S. Deshmukh, Advocate for the Respondent No. 4.

AND

WRIT PETITION NO. 1579 OF 2022

Smt. Sharda Purushottam Patil,
Age:- 47 years, Occu:-Household,
R/o at Tembhe (bk.) post Sarangkhedha,
tq. Shahada, Dist. Nandurbar

(In capacity of Legal heir of deceased
Purushottam Vallabh Patil)

.. Petitioner

Versus

1. The State of Maharashtra,
Through, Secretary Education
Department, Mantralaya, Mumbai-32.
2. The Accountant General,
Pratishtha Bhawan old CGO building,
101, Maharshi Karve Marg,
Second Floor (AG), Mumbai-20.
3. The Education Officer (Secondary),
Zilla Parishad, Nandurbar,
Dist. Nandurbar.
4. Valimiki Madhyamik Vidyalay,
Purushottam Nagar tq. Shahada,
Dist. Nandurbar
Through its Headmaster/Headmistress .. Respondents

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Shri A. D. Pawar, Advocate for the Petitioner.

Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 and 3.

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AND

WRIT PETITION NO. 1660 OF 2022

Sumitra Ishwar Chaudhari @
Sumitra Ramdas Patil,
Age:- 58 years, Occu:- Retired,
R/o 55, vidya vihar, Mohide (Th.),
tq. Shahada, Dist. Nandurbar.

.. Petitioner

Versus

1. The State of Maharashtra,
Through, Secretary Education
Department, Mantralaya, Mumbai-32.
2. The Accountant General,
Pratishtha Bhawan old CGO building,
101, Maharshi Karve Marg,
Second Floor (AG), Mumbai-20.
3. The Education Officer (Secondary),
Zilla Parishad, Nandurbar,
Dist. Nandurbar.
4. Kuber Secondary and Higher Secondary
Vidyalay, Mhaswad, tq. Shahada,
Dist. Nandurbar.
Through its Headmaster/Headmistress .. Respondents

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Shri A. D. Pawar, Advocate for the Petitioner.
Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 and 3.

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AND

WRIT PETITION NO. 3912 OF 2022

Sanjay s/o. Ramnath Ingle,
Age : 49 years, Occu : Librarian,
R/o. Jorve, Tq. Sangamner,
Dist. Ahmednagar.

.. Petitioner

Versus

1. The State of Maharashtra

Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.

2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. Rayat Shikshan Sanstha, Satara,
Through its Secretary .. Respondents

Shri S.T. Shelke, Advocate for the Petitioner.
Shri. A.S. Shinde, A.G.P for respondent Nos. 1 and 2.

**CORAM : R. D. DHANUKA AND
S. G. MEHARE, JJ.**

CLOSED FOR ORDERS ON : 13TH APRIL, 2022

ORDER PRONOUNCED ON : 6th MAY, 2022

JUDGMENT (Per R. D. Dhanuka, J.) :-

. Rule. Mr. Yawalkar, learned Additional Government Pleader and Mr. A. S. Shinde, learned Assistant Government Pleader waive service on behalf of the respondents in respective writ petitions. By consent, Rule made returnable forthwith.

2. By Writ Petition No. 12902 of 2018 filed by petitioners under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus against respondent Nos. 1 to 4 to direct them to (up-grade them/petitioners) as full time Librarian from the effective dates as mentioned in the Chart annexed at Exhibit – A in view of the provisions of G. R. dated 28.06.1994 with all consequential benefits including pay fixation, increments, arrears of salary and placement in higher pay scales under time bound promotion and pensionary benefits as per the

Pension Rules.

3. The petitioners also pray for writ of mandamus for an order and direction that the provisions of the Government Resolution dated 03.08.2006 restricting the up-gradation as full time Librarian from 01.04.2006 and treating the up-gradation as fresh appointments of forfeiting the benefits of past services as part time librarian be declared as ultra-vires the provisions of basic Government Resolution dated 28th June, 1994 and contrary to Rule 30 and 33 of the Maharashtra Civil Services (Pension) Rules, 1982 (for the sake of brevity hereinafter referred as to the “Pension Rules”). The petitioners also pray for writ of mandamus to grant benefit of regular pension and retirement benefits as per the provisions of the Pension Rules.

4. By Writ Petition No. 11513 of 2018, the petitioner seeks a writ of certiorari for quashing and setting aside order dated 16th May, 2018 passed by the Accountant General, refusing to grant pensionary benefits to the petitioner as a librarian, for a declaration that the petitioner is entitled to a family pension thereby counting the part time service rendered by the petitioner as a librarian to the extent of 50% along with the full time services rendered by the petitioner by issuing appropriate writ order or directions and for granting family pension in favour of the petitioners.

5. By Writ Petition No. 1579 of 2022 filed under Article 226 of the Constitution of India, the petitioner prays for a writ of certiorari for quashing and setting aside the impugned order dated 20.09.2021 passed by the Accountant General refusing to process the pension papers of the petitioner as legal heirs of deceased Purushottam Vallabh

Patil under the provisions of the Pension Rules and for an order and direction against the respondent No. 2/Accountant General to accept pension case of the petitioner and to grant benefit of old pension scheme.

6. By Writ Petition No. 1660 of 2022 filed under Article 226 of the Constitution of India, the petitioner seeks writ of certiorari for quashing and setting aside the impugned order dated 20th September, 2021 passed by the respondent No. 2/Accountant General refusing to process the pension papers of the petitioner under the provisions of the Pension Rules and for an order and direction against the respondent No. 2 to accept pension case of the petitioner and grant benefit of old pension scheme.

7. By Writ Petition No. 3912 of 2022 filed under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus against respondent Nos. 1 and 2 to extend the benefits of full time librarian to the petitioner as per the Government Resolution dated 28th June, 1994.

8. **The facts and submissions in Writ Petition No. 12902 of 2018 are as under :**

The petitioners were appointed as part time librarian and thereafter as full time librarian on various dates in various schools. The details of their appointments as part time librarian, full time librarian, their qualification and year in which the strength of students in the schools in which they were appointed crossed more than 1000 students are as under.

Sr. No.	Name of petitioner	School Name	Qualification	Date of appointment as part	Date of appointment as Full	Strength of students
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				time librarian	time librarian	in the schools more than 1000
01.	Punjabari Baburao Dighe	New English School & Secondary Vidyalaya, Talegaon Dighe, Tq. Sangamner, Dist. Ahmednagar	H.S.C. L.T.C.	13.06.1994	01.04.2006	1993- 1994
02.	Rohidas Vishnu Ghule	Nathababa Vidyalay, Bota, Tq. Sangamner, Dist. Ahmednagar	B. A. B. Lib	14.06.1995	01.04.2006	1998- 1999
03.	Nanasaheb Rangnath Gadekar	Nutan Madhyamik Vidyalaya, Rajpur, Tq. Sangamner	B. Com. B. Lib	09.01.1995	01.04.2006	1995- 1996
04.	Arjun Lahanu Avhad	Shriman Gokulchandaji Vidyalaya, Kopergaon, Dist. Ahmednagar	B.A. B. Lib.	03.10.1998	01.04.2006	2004- 2005
05.	Rajendra Ramchandra Tekawade	Shrirampur Education Society High School, Shrirampur, Dist. Ahmednagar	B.A. B. Lib	12.02.1996	01.04.2006	1995- 1996
06.	Digambar Savaleram Kale	Haribhau Sangale Yashwant Madhyamik Vidyalaya, Nimon, Tq. Sangamner, Dist. Ahmednagar	B. A. B. Lib.	01.08.1993	01.04.2006	1993- 1994
07.	Sahebrao Tukaram Gadekar	New English School Ukkalgaon, Tq.	M. Com, B. Lib.	02.01.1995	01.04.2006	1995- 1996

		Shrirampur, Dist. Ahmednagar				
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9. Some time prior to 1994, the State of Maharashtra had constituted Shri V. V. Chiplunkar Committee for recommending staffing pattern of non teaching employees for the schools, high schools and junior colleges based upon the strength of students. The staffing pattern prescribed in the Secondary School Code was found to be inappropriate and efficiency of the administration was adversely affected. Shri V. V. Chiplunkar Committee submitted its report to the State Government. The State Government thereafter issued a Government Resolution dated 28th June, 1994 accepting the said report submitted by Shri V. V. Chiplunkar committee. In so far as controversy involved in these petitions is concerned, the provisions of the said Government Resolution regarding post of librarian and which are material for the purposes of deciding these petitions are as under :

Sr. No.	As per school code (strength)	Post	As Chiplunkar committee (strength)	per Post
Librarian				
1	1000 to 1500	01 Part time Librarian	501 to 1000	01 Part time Librarian
1	More than 1500	01 Full time Librarian	1001 to 1500	01 Full time librarian
			1501 to 2000	01 Full time Librarian 01 Part Time Librarian
			More than 2000	01 Librarian & 01 Assistant Librarian

10. It is case of the petitioners that, after issuance of said Government

Resolution dated 28th June, 1994, staffing pattern of non teaching employees in the school was governed by the provisions of the Secondary School Code. Clause 4 of the said Government Resolution provided that for filling up the vacancies of non teaching staff in the secondary school, it should be presumed that the existing norms prescribed in Secondary School Code are changed accordingly. The Director of Education, Maharashtra State, Pune should submit a draft of necessary amendment to Secondary School Code to the Government.

11. It is the case of petitioners that, the norms prescribed in the Secondary School Code were accordingly changed and new norms were required to be made. The formal amendment to Secondary School Code was also contemplated, but it was not necessary to wait till the amendment. The Education Officer (Secondary) of each district was directed to evaluate the strength of each school and submit the report as to in which schools the post of full time librarian would become available and from which year the post of full time librarian was required to be approved.

12. The State Government issued Government Resolution dated 03rd August, 2006 by relying upon the Government Resolution dated 28th June, 1994. It was provided in the said Government Resolution that the Government had already granted its approval for creation of 284 posts of full time librarian in the Government Resolution dated 28.06.1994. In terms of Government Resolution dated 03rd August 2006, the State Government up-graded posts of part time librarian of 924 schools to full time librarians stating that it would be a fresh appointment as full time librarian and as part time librarian service would not be counted for pay-fixation and that the appointment would be on the lowest scale as

basic as full time librarian with effect from 01st April, 2006.

13. It is the case of petitioners that, various representations were made by petitioners from time to time for their lawful entitlement to the status of full time librarians which was taken away by the State Government by issuing the said Government Resolution dated 03rd August, 2006 in total ignorance of provisions of the G. R. dated 28.06.1994.

14. Mr. Shelke, the learned counsel for petitioners invited our attention to various resolutions passed by the State Government including the resolution dated 28.06.1994 and would submit that based on the report submitted by Shri V. V. Chiplunkar Committee, the posts of part time librarian and full time librarian were prescribed in the said G. R. He submits that, the provisions of G. R. dated 28.06.1994 were clear and unambiguous. He placed reliance on the judgment delivered by the Nagpur Bench of this **Court on 22nd July, 2005 in Writ Petition No. 1197 of 2005** filed by one of the part time librarian. The Nagpur Bench of this Court directed the petitioner therein to make a fresh application and directed the authorities to make an enquiry and to pass appropriate orders. The Education Officer thereafter in that case passed an order dated 12th September, 2009 granting approval to the appointment of the said petitioner as full time librarian with effect from 01st July, 1994 on the basis that the strength of the students in the concerned school had become more than 1000 from the year 1994-1995.

15. It is submitted by the learned counsel for the petitioners that, through-out the State of Maharashtra number of similarly situated employees had been benefited with the pay scale of full time librarian

from the actual date from which the strength of the students was as per the guidelines contained in the G. R. dated 28.06.1994. The petitioners have annexed copies of the orders granting pay scale of full time librarians to the similarly situated employees at Exhibit – G collectively.

16. It is submitted by the learned counsel for the petitioner that, there was no requirement of creation of the posts. It was only up-gradation of approved part time posts to full time posts. As per G. R. dated 28.06.1994, the up-gradation of part time posts as to full time post was automatic, once the strength of students had become 1000 or above. The respondents were thus obliged to grant status of full time librarian to the petitioners from the date of the strength of students had become 1000 or more along with all consequential benefits, pay fixation from due date, arrears of salary, time bound promotion and pensionary benefits. It is submitted by the learned counsel that the services of the petitioners as part time librarian were on sanctioned posts and in terms of valid and approved appointments. The petitioners cannot be deprived of the benefit of the said services.

17. It is submitted by the learned counsel that, the posts of librarian were already existing and approved in the schools. The criteria of strength of students was changed. There was no cut off date, but the strength of students was the sole criterion. In case of the petitioner No. 4, the strength of students was more than 2000. The strength of students was more than 1000 in all the cases. It is submitted that, the staffing pattern was governed by the provisions of the Secondary School Code. The norms of staffing pattern were modified as per the recommendations of Shri V. V. Chiplunkar committee and as per G. R. dated 28.06.1994. The revised norms were brought into force with

immediate effect. He submits that clause 4 of the G. R. dated 28.06.1994 made it clear that the provisions of the Secondary School code were deemed to have been amended and action should have been taken as per the revised staffing pattern. No specific order approving posts of full time librarian was necessary.

18. It is submitted by the learned counsel that, it is an admitted position that even according to the respondents, it was a case of up-gradation of post from part time librarian to full time librarian and ought to have been from the effective date on which the schools had become eligible for full time posts and thus it could not have been treated to be a fresh appointment. It is submitted that, the rights already created in favour of petitioners and various other part time librarians in terms of the G. R. dated 28.06.1994 could not have been taken away by issuing G. R. dated 03rd August, 2006 issued by the State government. The State Government has abrogated the rights of the petitioners by not granting status of full time librarian from the notional date of pay fixation. He submits that, once the up-gradation came to be granted to the petitioners as full time librarian from part time librarian, there was no scope for treating the appointment as fresh. He submits that, the said G. R. dated 03.08.2006 being arbitrary and irrational, it is thus liable to be quashed and set aside. He submits that, the said G. R. is contrary to the principles enumerated in Rule 30 and 33 of the Pension Rules.

19. It is submitted by the learned counsel that the State Government has discontinued the regular pension scheme with effect from 01st November, 2005 and has introduced Defined Contribution Pension Scheme from 01st November, 2005. The State Government has taken

away the benefit of old pension scheme by illegally contending that the appointments of the petitioners as full time librarians were fresh appointments with effect from 01st April, 2006, hence the new pension scheme became applicable.

20. It is submitted by the learned counsel that, by virtue of the said G. R. dated 03.08.2006, the persons continuing as part time librarians would be entitled for all the benefits including pensionary benefits by taking into account the entire length of service. However, the persons who have been granted up-gradation as full time librarian with effect from 01st April, 2006 are deprived of all the benefits. The similarly situated employees and having similar service conditions cannot be treated differently. The impugned Government Resolution is thus discriminatory, arbitrary and in violation of Article 14 of the Constitution of India.

21. Learned counsel for petitioners placed reliance on the following judgments delivered by this Court at Aurangabad Bench.

- (i) Judgment dated 09th March, 2015 in Writ Petition No. 7799 of 2012 in case of Ravindra Nana Patil Vs. The State of Maharashtra and others and
- (ii) Judgment dated 01st April, 2015 in Writ Petition No. 2732 of 2013 in case of Sayed Khaled Sayed Abdul Hameed Vs. The State of Maharashtra and others,
- (iii) Judgment delivered by this Court at Principal Seat dated 27th October, 2021 in Writ Petition Stamp No. 57 of 2002 in case of Smt. Urmila Ashok Kamble @ Smt. Mandabai Gundaji Khamkar Vs. State of Maharashtra and others,
- (iv) Judgment delivered by this Court at Principal Seat

delivered on 27th October, 2021 in Writ Petition No. 960 of 2019 with other connected writ petitions in case of Vijay Purushottam Pathak Vs. State of Maharashtra and others,

- (v) Judgment delivered by this Court at Aurangabad Bench delivered on 11th March, 2022 in Writ Petition No. 14935 of 2017 with other connected writ petitions in case of Ganesh Narhar Chavan and others Vs. The State of Maharashtra and others,

22. The learned counsel for the petitioner also placed reliance on the judgment of the Apex Court in the case of **Sundarjas Kanyalal Bhatija : Pralhad Hiranand Advani Vs. Collector, Thane** reported in ***1990 AIR (SC) 261***. He also placed reliance on various judgments forming part of the compilation of judgments filed by Mr. Pawar, the learned counsel for petitioners in Writ Petition No. 11513 of 2018 and other writ petitions.

23. **The facts and arguments in Writ Petition No. 3912 of 2022**

The School Education and Sports Department, Government of Maharashtra issued G. R. dated 28.06.1994 as per recommendations of Shri V. V. Chiplunkar Committee. As per the said resolution, the post of one full time librarian became admissible to the school where the strength of the students was 1000 or exceeded 1000. On 01st September, 1994, the petitioner came to be appointed as part time librarian for the academic year 1994-1995. The services of the petitioner came to be continued. On 08th November, 1995, the Education Officer granted approval to the up-gradation of the petitioner as a full time librarian with effect from 01.05.2007. On 28.02.2017, the

Chief Secretary of Government of Maharashtra issued circular thereby directing all the departments to extend the benefits of the judgments to all other identically situated employees, if the particular set of employees are given relief by the Court.

24. Mr. Shelke, the learned counsel for the petitioner submits that, as per the certificates issued by the Head Master of the school, where the petitioner worked as part time librarian, the strength of students in the said school was more than 1000 students since 1993-1994. This Court has granted benefit of full time librarian as per the said G. R. dated 28.06.1994 to number of part time librarians. He extracts rest of the arguments advanced in Writ Petition No. 12902 of 2019.

25. **The facts and submissions in Writ Petition No. 11513 of 2018.**

With effect from 01st July, 1995, the petitioner came to be appointed as part time librarian in H. B. Sangve High School, Khedgaon, Tq. Pachora, Dist. Jalgaon. The petitioner had requisite qualification of B. A. B. Lib for the appointment of librarian. The respondent No. 3/Education Officer granted approval to the appointment of the petitioner as a part time librarian.

26. With effect from 01st May, 2012, the respondent No. 4 gave appointment to the petitioner as full time librarian. The petitioner has rendered service as part time librarian with effect from 01st July, 1995 till 30th April, 2012 and from 01st May 2012 to 01st May, 2018 as full time librarian. The petitioner came to be retired from service with effect from 01st May, 2018.

27. The respondent No. 4 thereafter submitted a proposal for

pensionary benefits to the Education Department payable to the petitioner. The Education Department forwarded the said proposal to the Accountant General. The Accountant General by order dated 16th May, 2018 rejected the pension proposal of the petitioner on the ground that initial service of the petitioner from 01st July, 1995 to 30th April, 2012 was as part time librarian. The petitioner had become full time librarian only with effect from 01st May, 2012 and thus the petitioner was not entitled for pensionary benefits under the Pension Rules.

28. Mr. Ajay D. Pawar, the learned counsel for the petitioner invited our attention to various exhibits to the petition and submits that the service rendered by the petitioner as part time librarian was required to be considered to the extent of 50% along with full time service rendered by him as librarian for the purpose of payment of pension under the provisions of the Pension Rules. The petitioner had rendered service of 14 years 09 months and was thus entitled for pensionary benefits under the provisions of the Pension Rules. The learned counsel placed reliance on the judgment of this Court at Nagpur Bench dated 09th July, 2018 in Writ Petition No. 542 of 2017 in case of Smt. Darshana Wd/o Adikrao Gaikwad Vs. State of Maharashtra and others and the judgment delivered by this Court at Aurangabad Bench dated 18th July, 2012 in Writ Petition No. 5389 of 2009 in case of Shripad Bapurao Kulkarni Vs. The State of Maharashtra and others and another judgment delivered by the Full Bench of this Court in a case of in case of **Deshmukh Dilipkumar Bhagwan and others Vs. State of Maharashtra** reported in *2019 (3) Mh. L. J. 903*.

29. Mr. Ajay D. Pawar, the learned counsel for the petitioner in Writ Petition No. 11513 of 2018, Writ Petition No. 1579 of 202, Writ Petition

No. 1660 of 2022, Writ Petition No. 3912 of 2022 relied upon following judgments delivered by this Court at Aurangabad bench and at its Principal Seat at Bombay.

- (I) Judgment dated 04.08.2021 in Writ Petition No. 3386 of 2021 in Case of Smt. Vina Vinayak Upasani Vs. State of Maharashtra and others.
- (II) Judgment dated 04.08.2021 in Writ Petition No. 1673 of 2021 in Case of Smt. Kalpana Jagatrao Dahiwalé Vs. State of Maharashtra and others.
- (III) Judgment dated 11.03.2020 in Writ Petition No. 3719 of 2021 in Case of Smt. Prema Narsinha Herkal Vs. State of Maharashtra and others.
- (IV) Judgment dated 29.04.2014 in Writ Petition No. 8289 of 2013 in Case of Shalini Asaram Akkarbote Vs. The State of Maharashtra and others.
- (V) Judgment dated 07.01.2014 in Writ Petition No. 2354 of 2017 in Case of Jyoti Prakash Choughule Vs. State of Maharashtra and others.
- (VI) Judgment dated 11.03.2022 in Writ Petition No. 14935 of 2017 in Case of Ganesh Narhar Chavan and others Vs. The State of Maharashtra and others.
- (VII) Judgment dated 01.04.2015 in Writ Petition No. 2732 of 2013 in Case of Sayed Khaled Sayed Abdul Hameed Vs. The State of Maharashtra and others.

30. **Facts and submissions in Writ Petition No. 1579 of 2022.**

The petitioner is a widow of Purushottam Patil. The husband of the petitioner was B. A. B. Lib and was appointed as librarian in the

respondent No. 4/school with effect from 03rd July, 1995. The strength of the students of the respondent No. 4 school was more than 1000. The Education Officer granted approval to the appointment of the husband of the petitioner as part time librarian. The husband of the petitioner expired on 01.06.2021 due to post Covid complications and heart attack. The respondent No. 4 submitted the detailed proposal to the office of the respondent No. 2 after demise of her husband on 03.06.2021. It was requested in the said proposal that the earlier part time service of the husband of the petitioner from 03.07.1995 to 01.04.2006 shall be counted as half of the service rendered by the husband of the petitioner.

31. It is the case of the petitioner that on 18th June 2021 the proposal came to be forwarded to the Accounts Officer, Pay and PF Unit (Secondary) Nandurbar about the provident fund which had been deposited by the husband of the petitioner in the account number NDB-12696. The petitioner received the provident fund amount after the demise of her husband. The respondent No. 2, however, refused to grant the old pension scheme in favour of the petitioner only on the ground that the services of the husband of the petitioner from 1995 to 2006 were as part time librarian and the husband of the petitioner became full time librarian only from 1st April 2006. This impugned order is passed on 20th September 2021. The petitioner, thus, filed this writ petition for various reliefs.

32. Mr. A.D. Pawar, learned counsel for the petitioner invited our attention to various documents annexed to the writ petition and would submit that the respondent No. 2 could not have denied the pension to the husband of the petitioner under the Pension Rules, on

the ground that the husband of the petitioner had become full time librarian on 1st April 2006. He submits that the service rendered by the husband of the petitioner as part time librarian was required to be considered to the extent of 50% along with the period of service rendered by the husband of the petitioner from 1st April 2006 for the purpose of considering the pension payable under Pension Rules.

33. **Facts and submissions in Writ Petition No. 1660 of 2022.**

On 19th July 1995 the petitioner was appointed as part time librarian in respondent No. 4-school. The strength of the students in the respondent No. 4-school as on the date of appointment of the petitioner as part time librarian was more than 1000. The petitioner was a part time librarian from 19th July 1995 till 1st April 2006 without break in service.

34. On 16th June 2021 the Education Officer granted approval to the appointment of the petitioner as a part time librarian from 1995 and, from 2006 as a full time librarian. The petitioner retired on 31st May 2021. On 16th June 2021 the management submitted the pension proposal of the petitioner to the Accounts Officer, Pay and PF Unit (Secondary) Nandurbar. The said proposal, however, was rejected by the Accountant General Mumbai on 20th September 2021. The petitioner, thus, filed this writ petition for various reliefs.

35. Mr. A.D. Pawar, learned counsel for the petitioner submitted that the respondent No. 2 ought to have considered 50% of the period of the service of the petitioner as part time librarian out of 11 years service and 100% of the period of service of the petitioner as full time librarian from 1st April 2006 till 31st May 2021 for the purpose of

payment of pension under the provisions of Pension Rules. He reiterated submissions made on behalf of the petitioner in the above referred writ petition.

36. Mr. Yawalkar, learned Additional Government Pleader, on the other hand, relying on the Government Resolution dated 3rd August 2006, would submit that in view of the said Government Resolution dated 3rd August 2006, the petitioners were appointed as full time librarians and each of the petitioner has accepted such fresh appointment as full time librarian under the said Government Resolution dated 3rd August 2006. The petitioners have taken the benefit as full time librarian under the said Government Resolution till the date of filing the petitions. He submits that none of the petitioners, thus, can claim the benefit of pension under Pension Rules and to contend that 50% of the services rendered by these petitioners as part time librarian shall be counted alongwith full time services rendered as librarian for the purpose of claiming pension under Pension Rules. He submits that since the appointment of the petitioners is after the date of the said Government Resolution dated 1st November 2005, the Defined Contribution Pension Scheme (DCPS) is applicable to these petitioners and not the provisions of Pension Rules.

37. The learned Additional Government Pleader placed reliance on the judgment delivered by this Court on **31st March 2015 in Writ Petition No. 2311/2013 in case of Satish Ganpatrao Patil and others Vs. The State of Maharashtra and others** and would submit that this Court in the said judgment after considering the Government Resolution dated 3rd August 2006 has held that the petitioners had accepted the benefits of the said Government Resolution dated 3rd August 2006 without any

protest and have accepted their appointment as fresh appointment on the post of full time librarian which were created under the said Government Resolution. In view of the said Government Resolution, the petitioners were not required to apply, pursuant to any advertisement and compete with other applicants.

38. The learned Government Pleader placed reliance on the judgments of the Supreme Court in the case of **Rajasthan Public Service Commission with State of Rajasthan Vs. Harish Kumar Purohit and Kishanlal Banshal, AIR 2003 (SC) 3476** and in case of **Homraj Hansaram Bisen and Ors. Vs. State of Maharashtra and others 2013(2) Mh.L.J. 401** and more particularly on paragraph Nos. 7 and 16 and would submit that though they were appointed as full time librarian after the Government Resolution of 2006, there would be discrimination between the full time librarian appointed prior to the said Government Resolution of 2006.

39. The learned Additional Government Pleader placed reliance on the judgment of this Court in the case of **Deshmukh Dilipkumar Bhagwan and others Vs. State of Maharashtra and others, 2019 (3) Mh.L.J. 903** delivered by the Full Bench of this Court and would submit that the petitioners having been appointed on the post of full time librarian after 1st November 2005, the petitioners will be entitled to pension, if any, under the provisions of Defined Contributory Pension Scheme 2005 since the rights of these employees to claim the pensionary benefits are not crystallized earlier for the purpose of eligibility under the Old Pension Scheme.

40. The learned Additional Government Pleader placed reliance

on the judgment of the Supreme Court in the case of **Rajasthan Public Service Commission with State of Rajasthan Vs. Harish Kumar Purohit and Kishanlal Banshal** (supra) and more particularly para No. 18 and would submit that if this Court is of the view that the judgment delivered by the co-ordinate bench of this Court in the case of **Satish Ganpatrao Patil and Others Vs. The State of Maharashtra and others** (supra) is not correct view, the matter has to be referred to the larger bench for resolving the conflict.

REASONS AND CONCLUSIONS

41. It is not in dispute that some time prior to 1994 the State Government had constituted Shri. V. V. Chiplunkar Committee for recommending staffing pattern of non teaching employees for the schools, high schools and junior colleges based upon the strength of the students. The staffing pattern prescribed in the Secondary School Code was found to be inappropriate and efficiency of the administration was adversely affected. Shri. V.V. Chiplunkar Committee submitted its report to the State Government. It is not in dispute that pursuant to the report of Shri. V.V. Chiplunkar Committee, the State Government issued Government Resolution dated 28th June 1994. In the said report, insofar as the post of part time librarian and full time librarian is concerned, considering the number of students in each school, post of such part time librarian and full time librarian were recommended.

42. In view of the said Government Resolution dated 28th June 1994, the staffing pattern of non teaching employees in the school was governed by the provisions of the Secondary School Code. Clause 4 of the said Government Resolution dated 28th June 1994 clearly provided

that for filling up the posts of non teaching staff in the secondary school, it should be presumed that the existing norms prescribed in the Secondary School Code were changed accordingly. The Director of Education, Maharashtra State, Pune should submit a draft of necessary amendment to Secondary School Code to the Government. New norms prescribed in the Secondary School Code were accordingly changed. The Education Officer (Secondary) of each district was directed to evaluate strength of each school and submit the report as to in which school the post of full time librarian would become available and from which year the post of full time librarian was required to be approved.

43. The State Government issued Government Resolution dated 03rd August, 2006, by relying upon the Government Resolution dated 28th June, 1994. It was clearly provided in the said Government Resolution that the Government had already granted approval for creation of 284 posts of full time librarian in the Government Resolution dated 28.06.1994. The State Government up-graded posts of part time librarian of 924 schools to full time librarians contending that it would be a fresh appointment as full time librarian and accordingly the period of services rendered by part time librarian would not be counted for pay fixation and that the appointment would be on the lowest scale as basic as full time librarian with effect from 01st April, 2006. A perusal of the said Government Resolution dated 28th June 1994 would indicate that based on the report submitted by Shri. V.V. Chiplunkar Committee, the posts of part time librarian and full time librarian were prescribed in the said Government Resolution.

44. Nagpur Bench of this Court delivered a judgment **on 22nd July 2005 in Writ Petition No. 1197/2005** filed by one of the part time

librarian pursuant to the directions issued by this Court in the said matter. The Education Officer in that case passed order dated 12th September 2009, granting approval to the said petitioner as full time librarian with effect from 1st July 1994 on the basis that the strength of the students in the concerned school had become more than 1000 from the year 1994-95.

45. Large number of such employees who were initially appointed as part time librarian and were subsequently appointed as full time librarian were not granted the pension under the MCS (Pension) Rules, 1982, by computing 50% of their service as part time librarian alongwith their 100% of service as full time librarian. Nagpur Bench of this Court in the said judgment had considered the fact that the petitioner was working as librarian on part time basis on 7th December 1992 and at that time the total strength of the students of the school was less than 1000 and in or about the year 1999 the strength of the students had exceed to 1000. After considering the Government Resolution dated 28th June 1994 and after considering the effect of Shri V.V. Chiplunkar Committee Report, this Court directed the petitioner therein to make fresh application to the respondent No.2 to make enquiry and pass appropriate order. The respondent No. 2 had thereafter granted approval to the appointment of the petitioner as full time librarian with effect from the date of the strength of the students in the school exceeding to 1000.

46. Aurangabad Bench of this Court in the case of **Ravindra Nana Patil Vs. The State of Maharashtra** (supra) also considered the fact that when the strength of the students exceeding more than 1000, the said date shall be considered for the notional pay fixation, so also for

time bound promotion and other retiral and pensionary benefits after adverting to the judgment of Nagpur Bench referred to aforesaid in the case of full time librarian. In the said judgment, this Court also considered and rejected the argument of the State Government that in view of the Government Resolution dated 3rd August 2006 rights of the petitioners granted under 1994 Government Resolution were taken away.

47. Aurangabad Bench of this Court in the case of **Sayed Khaled s/o. Sayed Abdul Hameed Vs. The State of Maharashtra and others** (supra) has considered similar facts and also the Government Resolution dated 3rd August 2006 and after considering the judgment of Aurangabad Bench in the case of **Ravindra Nana Patil** (supra), this Court held that the petitioner shall be considered as full time librarian from the date of his initial appointment in view of the fact that the strength of the students had increased and crossed more than 1000. This Court clarified that the said date shall be considered for notional pay fixation, so also for time bound promotion and other retiral and pensionary benefits. This Court, however, made it clear that the petitioners would not be entitled for the difference of salary from 12.12.1995 till 2006.

48. Nagpur Bench of this Court in the judgment delivered on **9th December 2019 in Writ Petition No. 1994/2014 in case of Anil Parasram Shende Vs. The State of Maharashtra**, after considering the judgment in Writ Petition No. 1154/2015 delivered by this Court, directed the respondents to consider the claim of the petitioner regarding grant of status to him as full time librarian, subject to verification of the students strength in the petitioner's school within three months from the date of said order and further directed that if the

petitioner was found eligible for such status as full time librarian, same shall be conferred upon him, his pay would be notionally fixed shall be granted time bound promotion and also pensionary benefits in accordance with Rules.

49. The Division Bench of this Court in the case of **Ku. Nutan Appasaheb Kamble Vs. The State of Maharashtra and Ors. in Writ Petition No. 7126/2017 with connected matters decided on 4th October 2014**, after considering the similar facts and also after considering the Government Resolution dated 3rd August 2006 rejected the submission of the Government after adverting to the judgments of Nagpur Bench as well as Aurangabad Bench. This Court directed the State Government to grant notional pay fixation, time bound promotion and other retirement and pensionary benefits to the petitioners therein upon considering their full time appointment on the post of librarian from the date of their initial appointment, having regard to the fact that the strength of the students on such date was 1000 or more.

50. In the said judgment, this Court observed that vide Government Resolution dated 28th June 1994 the Government of Maharashtra had noticed that change needs to be effected in the existing policy of the Government of applying bench mark in the matter of the creation of post qua the workload and accordingly had constituted a committee headed by the former Director of Education Shri V. V. Chiplunkar. Based on the recommendations, the Government provided for creation of one part time post of librarian against the strength of 1000 to 1500 students. The said policy was reconsidered by the State Government pursuant to the request made by the association of part time librarian which had resulted into formulating fresh policy as reflected in the

Government Resolution dated 3rd August 2006.

51. The Division Bench of this Court at Principal Seat, comprising one of us (R.D. Dhanuka, J.) in the case of **Vijay Purushottam Pathak Vs. State of Maharashtra in Writ Petition No. 960/2019 and other companion matters decided on 27th October 2021**, after considering various earlier judgments directed the concerned respondents to consider the services of the petitioners and grant approval to petitioners to the post of full time librarian with effect from the academic years when the respective institutions had acquired the strength of 1000 students or more as per the Government Resolution dated 28th June 1994. This Court directed that the respondents shall grant notional pay fixation, time bound promotion and other retirement and pensionary benefits to the petitioners upon considering full time appointment on the post of librarian from the date of initial appointment, having regard to the academic years in which the strength of the students was 1000 or more. This Court also directed to consider the 50% services rendered by the petitioners as part time librarian for the purpose of service benefit and make the pay fixation, pension and time bound promotion. This Court directed the respondents to consider the respective proposals in accordance with the 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.

52. Aurangabad Bench of this Court, comprising both of us (R.D. Dhanuka & S.G. Mehare, JJ.) in case of **Ganesh Narhar Chavan and others Vs. The State of Maharashtra and others in Writ Petition No. 14935/2017 and other companion matters decided on 11.3.2022**, after

considering several judgments of this Court and also after considering the judgment of Division Bench of this Court in case of **Satish Ganpatrao Patil and Ors. Vs. The State of Maharashtra and Ors.** (supra) placed on record by the learned Additional Government Pleader distinguished the case of **Satish Ganpatrao Patil** (supra) on facts and held that the said judgment would not apply to the facts of cases under consideration even remotely. In our view, the said judgment delivered by this Court in the case of **Ganesh Narhar Chavan** (supra) would apply to the facts of present cases.

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 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.

54. The Division Bench of this Court at Principal Seat, comprising one of us (R.D. Dhanuka, J.) in the case of **Smt. Vina Vinayak Upasani Vs. State of Maharashtra in Writ Petition No. 3386/2021 decided on 4th August 2021** considered the similar facts and held that the petitioners are entitled to pension and pensionary benefits for service in respondent-school both as part time librarian from the order of initial appointment on the date on which services were approved by the Education Officer and thereafter, as full time librarian from the date from which approval was granted by the Education Officer.

55. By another Division Bench of this Court at Principal Seat comprising one of us (R.D. Dhanuka, J.) in case of **Smt. Kalpana Jagatrao Dahiwalé Vs. The State of Maharashtra and Others in Writ Petition No. 1673/2021 decided on 4th August 2021** considered the similar facts and held that the respondents shall compute 50% of the services rendered by the petitioner as part time librarian and 100% services rendered as full time librarian for the purpose of pensionable service.

56. Insofar as the judgment of this Court in the case of **Satish Ganpatrao Patil** (supra) relied upon by the learned Additional Government Pleader is concerned, a perusal of the prayers made in the said writ petition with the judgment would clearly indicate that the Division Bench of this Court was considering alterate prayer for

quashing and setting aside the word 'fresh' in the impugned Government Resolution dated 3rd August 2006 by substituting or deleting the same and held that the petitioners therein were promoted from part time librarians to full time librarians. In that context, this Court held that the petitioners had accepted the benefits of the said Government Resolution dated 3rd August 2006 and had accepted without any protest. Large number of judgments delivered by this Court taking different view prior to the said judgment in case of **Satish Ganpatrao Patil** (supra) were not brought to the notice of this Court. Be that as it may, the facts in the case of **Satish Ganpatrao Patil** (supra) were totally different and are distinguishable on facts. The said judgment is already distinguished by Division Bench of this Court recently in case of **Ganesh Narhar Chavan** (supra) and would not advance case of the respondents. We are thus not required to refer the issue to Larger Bench.

57. In our view, the State Government while issuing Government Resolution dated 3rd August 2006 could not have been taken away the benefits granted under the Government Resolution dated 28th June 1994 which were granted pursuant to the acceptance of Shri V. V. Chiplunkar Committee Report. The said Government Resolution dated 3rd August 2006 could not have been issued inconsistent with the provisions of Secondary School Code. In our view, by the said Government Resolution dated 28th June 1994 there was only up-gradation of approved part time posts of part time librarians to the post of full time librarians and such up-gradation was automatic once the strength of students had become 1000 or above. The respondents were thus obliged to grant status of full time librarian to the petitioners on the date of strength of the students had become 1000 or more

alongwith all consequential benefits, pay fixation from due date.

58. The learned Additional Government Pleader did not dispute that the schools in which each of these petitioners have been appointed initially as part time librarian and thereafter as full time librarian had already 1000 or more students prior to their appointment as full time librarian. It is submitted by the learned Additional Government Pleader that in none of the judgments relied upon by the petitioners, the Government Resolution of 2006 was considered and these judgments are thus *per incuriam*.

59. The respondents are required to compute 50% of the services rendered as part time librarian along with period of 100% service rendered as full time librarian for computing pensionable service.

60. There is no substance in the submission of the State Government that there would be any discrimination between the part time librarian given status of full time librarian on the date of the strength of the students having reached 1000 or more and the full time librarian appointed after D. C. P. S. scheme came into force. The said Government Resolution dated 03.08.2006 taking away the rights vested in employees under G. R. dated 28.06.1994 is illegal, arbitrary and in violation of Article 14 of the Constitution of India. The judgments relied upon by the learned Additional Government Pleader are distinguishable on facts and would not assist the case of the State Government.

61. In this case, since the petitioners have not pressed the difference in salary of full time librarian from the date of their appointment as part

time librarian, till the students had reached 1000 or more, we are not inclined to direct the respondents to pay the difference of salary between the salary payable to the part time librarian and full time librarian till 2006. We accordingly pass the following order.

ORDER

- (I) Writ Petition No. 12902/2018 is allowed in terms of prayer clauses 'A' to 'C'. It is clarified that the petitioners would not be entitled to difference of salary from their initial appointment as part time librarian till 2006.
- (II) Management is directed to submit the pension papers of the petitioners, if any of the petitioners have retired to the Education Officer within three weeks from the date of this judgment. Upon receipt of proposal, the Education Officer shall release the retirement benefits to the petitioners including arrears of salary/pension within four weeks thereafter without fail as per rules.
- (III) Writ Petition No. 11513/2018 is allowed in terms of prayer clauses 'B' to 'D'. Management is directed to submit the pension papers of the petitioner, if the petitioner is retired, within three weeks from the date of this judgment. In the event of receipt of proposal, the Education Officer shall release the retirement benefits to the petitioner including arrears of salary/pension within four weeks thereafter without fail as per rules.
- (IV) Writ Petition No. 1579/2022 is allowed in terms of prayer clause 'B' and 'C'. The payments of the retiral dues of the husband of the petitioner shall be released within four weeks from the date of this order as per rules.

- (V) Writ Petition No.1660/2022 is allowed in terms of prayer clauses 'B' and 'C'. Accountant General is directed to release the payment of retirement benefits in favour of the petitioner within four weeks from the date of this order as per rules.
- (VI) Writ Petition No. 3912/2022 is allowed in terms of prayer clause 'A'.
- (VII) Rule is accordingly made absolute in above terms. Petitions are accordingly allowed. There shall be no order as to costs.
- (VIII) Parties to act on the authenticated copy of this order.

[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

ssc/