

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10475 OF 2017**

Sunil Bhanudas Salunkhe	]	Petitioner
Vs.		
State of Maharashtra through	]	
the Secretary Minister of Finance,	]	
Mantralaya, Mumbai and others.	]	Respondents

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Mr. S.A. Rajeshirke, for Petitioner.

Mr. N.K. Rajpurohit, A.G.P, for Respondent-State.

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CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 18th APRIL, 2022.

P.C.

1. Heard.
2. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.
3. The petitioner in this petition is seeking direction not to make Government Resolutions dated 31st October, 2005, 29th November, 2010 and subsequent Government Resolutions applicable to him. It is the case of the petitioner that he was appointed as “Part Time Librarian” on 15th December, 1995. On 1st April, 2006, he was

appointed in regular pay scale of full time. It is the case of the petitioner that respondent No.4 – The Deputy Director of Education (Secondary and Higher Secondary) has accorded approval to his appointment. The approval was granted on the basis of the relevant record submitted by the School Authorities. It is his case that since he was appointed prior to 1st November, 2005, he is governed by the Old Pension Scheme. It is stated that there has been denial on the part of the Authorities benefit of the Old Pension Scheme to him. In order to substantiate his claim, he has placed on record copies of the service record.

4. Learned A.G.P advanced submission without filing reply on behalf of respondents No.1 to 6 - State. Notice to respondent No.7 in the factual background is dispensed with.

5. We have heard the learned Counsel for the petitioner and the learned A.G.P for respondents No.1 to 6 - State. We have gone through the record and proceedings.

6. The facts which can be seen on the basis of the record need to be stated at the outset. A perusal of the service record would show that the petitioner was appointed as a part time Librarian on 15th December, 1995. It would also show that he was appointed on full time basis in regular pay scale with effect from 1st April, 2006. It seems that only because of subsequent appointment on full time basis in regular pay scale, the Authorities are not according the benefit of old pension scheme prevailing prior to 1st November,

2005. At this stage, we may mention that similar issue arose before this Court in **Writ Petition No.8990 of 2021 (Manashi Sudhir Mane @ Aruna Yashwant Patil Vs. The State of Maharashtra and others)** with other Petitions. The petitions were disposed of vide order dated 11th April, 2022. It is held in the case of **Manashi Sudhir Mane** (supra) that if a school employee is appointed on a post which is sanctioned aided post on part time basis, he would be governed by the old pension scheme. It is also held that if a school employee had been appointed prior to 1st November, 2005 on un-aided post but the school has been receiving 100% aid since prior to 1st November, 2005, even such employee would be qualified as per the Government Resolutions dated 19th July, 2011 to get the benefits of the old pension scheme. On perusal of the record of this petition and observations of this Court in the order dated 11th April, 2022, in our opinion, the issue raised by the petitioner in this petition has been fully covered by this decision. Therefore, purpose of the petition would be served by adopting the same course of action in this case.

7. The learned A.G.P on being confronted with this situation submitted that the State has no objection for adopting similar course in this petition.

8. In view of this position, the petition is partly allowed. Respondent No.4 – Deputy Director of Education is directed to decide the case of the petitioner regarding applicability of the old pension scheme as per Maharashtra Civil Services (Pension Rules) 1982, Maharashtra Civil Services (Computation of Pensions) Rules,

1984 and General Provident Scheme by keeping in mind law laid down by this Court in its various judgments including the judgment referred to in earlier writ petitions decided on 11th April, 2022.

9. If it is found that the petitioner is governed by the Old Pension Scheme, respondent No.4 shall issue necessary direction not to deduct any amount from the salary payable to the petitioner governed by the old pension scheme for the purpose of it's applying to the Defined Contribution Pension Scheme and National Pension Scheme and shall issue necessary directions for refund of the amount to the petitioner if the same are deducted within six weeks from the date on which such determination is made. The issue is, therefore, relegated to respondent No.4 for taking decision on the issue in accordance with law and in the backdrop of the law laid down in the judgments referred to hereinabove. The petitioner shall appear before respondent No.4 on 26th April, 2022. The petitioner is granted liberty to produce necessary documents before respondent No.4 so as to enable him to take the decision within a stipulated time. Respondent No.4 shall take a decision on the claim/dispute of the petitioner within four weeks from 26th April, 2022.

10. Rule is made absolute in the above terms. No costs.

11. Writ Petition is disposed of.

[G.A. SANAP, J.]

[A.S. CHANDURKAR, J.]