IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 691 OF 2021

Dr. (Mrs.) Parvathi Venkatesh
Adult, Inhabitant aged about 60 years
Presently residing at
1002, Phoenix, Mahavir Universe CHS,
L. B. S. Marg, Bhandup (W),
Mumbai – 400 078. … Petitioner

Versus

1. State of Maharashtra
Through the Principal Secretary,
Department of Higher & Technical
Education, Mantralaya,
Madam Cama Road,
Mumbai – 400 032.
email :- writcellas@gmail.com

2. The Director,
Higher Education,
Maharashtra State
Central Building, Pune 411 001
To be served through the
Government Pleader,
High Court, Original Side,
Mumbai.
Email :- writcellas@gmail.com

3. The Joint Director,
Higher Education, Mumbai Region
Near Elphinstone Technical School,
3, Mahapalika Marg, Dhobi Talao,
Mumbai – 400 001.
To be served through the
Government Pleader,
High Court, Original Side,
Mumbai.
Email :- writcellas@gmail.com

4. University of Mumbai
Through the Registrar,
M. G. Road,
Fort, Mumbai – 400 0032.

5. Parle Tilak Vidyalaya Association's Mulund
College of Commerce
Through its Principal
S. N. Road, Mulund (West)
Mumbai – 400 080.

6. S. K. Somaiya College of Arts,
Science and Commerce
Through its Principal
Sarvoday Buddh Vihar Marg,
Vidyanagar, Vidya Vihar East,
Ghatkopar East,
Mumbai – 400 077.

7. The University Grants Commission
To be served through its Zonal Office
having office at Savitribai Phule
Pune University, Ganeshkhind
Pune – 411 009.

8. The Senior Auditor,
Higher Education,
Mumbai Region,
3, Mahapalika Marg,
Dhobi Talav, Mumbai – 400 001. … Respondents

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Mr. S.C. Naidu a/w Dr. Ramesh Asawa, Mr. T. R. Yadav, Mr. Aniketh Poojari, Mr.Sudeshkumar Naidu, Ms. Divya Yajurvedi, Mr. Pradeep Kumar i/by M/s. C.R. Naidu & Co. for the Petitioner.

Mr. Kedar Dighe, Asst. Govt. Pleader for the State-Respondent Nos. 1 to 3 and 8.
Mr. P. M. Palshikar for the Respondent No.4.

Ms. Sarika Mehra a/w Ms. Nidhi Chauhan i/by M/s. L J Law for the Respondent No.5.

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CORAM: R. D. DHANUKA AND ABHAY AHUJA, JJ.

RESERVED ON : 26th OCTOBER, 2021
PRONOUNCED ON : 10th JANUARY, 2022

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

. Rule. Mr. Dighe, learned Asst. Government Pleader for the respondent nos. 1 to 3 and 8 waive service. Mr. Palshikar, learned counsel for the respondent no.4 waive service. Ms. Sarika Mehra, learned counsel for the respondent no.5 waive service. None appeared for the remaining respondents though saved.

2. By consent of parties, writ petition is heard finally at the admission stage.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of mandamus against the respondent no.3 to settle the claim of the petitioner for 30 years 1 month of service and to pay the petitioner (i) Regular Pension, (ii) Gratuity, (iii) Commutation of pension and (iv) Leave encashment alongwith interest & penal interest as prescribed by the Pension Rules. The petitioner also seeks a writ of certiorari *inter-alia* praying for quashing and setting aside the oral directions issued to the respondent no.5 to withdraw from the service book the annual increment granted to the petitioner on 1st July, 2012 with cumulative effect, for quashing and setting aside the oral directions issued by the respondent no.3 to recover a sum of Rs.3,16,500/- from retiral dues payable to the petitioner on account of withdrawal of annual increment granted on 1st July, 2012.

4. The petitioner seeks an order and directions against the respondent no.3 to revoke and cancel all the notings for recovery of the amount in the pension file or service book of the petitioner and recall the recovery statements handed over to the respondent no.5. The petitioner also seeks cancellation and return of the undertaking obtained from the petitioner by the respondent no.3 and to restore the original entry in service book granting annual increment to the petitioner on 1st July, 2012.

5. The petitioner also impugns the communication dated 30th June, 2021 rejecting the claim of the petitioner for grant of pension and seeks a declaration that the petitioner is entitled to compensation pension as per Rule 62(4) of the MCS Pension Rules. In the alternate, the petitioner seeks a declaration that the petitioner is entitled to superannuation pension as per Rule 62(1) of the MCS Pension Rules.

6. Some of the relevant facts for the purpose of deciding this petition are as under :-

7. On or about 12th October, 1987, the petitioner joined as approved lecturer in N. G. Acharya & D. K. Marathe College. On 8th July, 1996, the petitioner resigned from the said N. G. Acharya College and joined the respondent no.6 on 9th July, 1996. It is the case of the petitioner that with the consent of the respondent no.6, the petitioner applied for the post of Regular Permanent Principal in the respondent no.5 College and was selected. The respondent no.6 turned down the request of the petitioner vide letter dated 29th November, 2012 for keeping lien on the post of Associate

Professor and relieved the petitioner from the service from the respondent no.6 as Associate Professor w.e.f. 30th November, 2012. The petitioner joined as Principal with respondent no.5 college w.e.f. 1st December, 2012. The petitioner served as Principal in college of the respondent no.5 for a tenure of five years commencing from 1st December, 2012 till 30th November, 2017.

8. It is the case of the petitioner that the total pensionable/University approved service of the petitioner is 30 years, 1month and 15 days. The respondents however did not sanction pension or pay the retiral benefits to the petitioner. On 8th November, 2017, the respondent no.5 informed the petitioner that the appointment of the petitioner, which was approved for a period of 5 years from 1st December, 2012 as the Principal of N. G. Acharya College of Commerce will come to an end on 30th November, 2017. Being aggrieved by the said communication dated 8th November, 2017, the petitioner preferred an appeal bearing no. 04 of 2018 before the Mumbai University and College Tribunal. By a judgment dated 28th June, 2018, the said appeal filed by the petitioner came to be dismissed.

9. It is the case of the petitioner that since the respondents were not releasing the retiral benefits and pension of the petitioner, the petitioner filed this petition in the Month of December 2020 for various reliefs. On 19th March, 2021, this Court directed that the respondent no.5 to submit the necessary pension papers to respondent no.3 within a period of four weeks and directed that the respondent no.3 would take a decision giving reasons and communicate the same to the petitioner. The respondent no.5 thereafter prepared the pension papers as per Rule 120 of the MCS Pension rules. The

respondent no.3-college however by letter dated 30th June, 2021 rejected the claim of the petitioner for pension and retiral benefits on the sole ground that the petitioner does not come within any of the clause specified in Rule 62 of MCS Pension Rules for granting of pension. The petitioner has impugned the said communication dated 30th June, 2021 also in this petition by carrying out the amendment to the petition permitted by this Court on various grounds.

10. Mr.Naidu, learned counsel for the petitioner invited our attention to some of the annextures to the writ petition and would submit that the petitioner claims Compensation Pension. She retired at the age of 57 and half years. It is submitted that the petitioner was relieved on completion of her tenure by the respondent no.5 by relying upon UGC Regulations dated 30th June 2010, Government Resolution dated 15th February 2011 and Circulars dated 7th June 2011 and 19th March 2013 issued by the respondent no.4- university. Her appointment as Principal was for a tenure of 5 years effective from 1st December 2012 and came to an end on and from 30th November 2017. The petitioner preferred an appeal before the Mumbai University and College Tribunal which came to be rejected by an order dated 28th June 2018.

11. It is submitted by the learned counsel that the petitioner was first appointed on a regular permanent post of Lecturer w.e.f. 12th October 1987, in aided, non-government college affiliated to the respondent no.4 University which appointment was duly approved by the university. The petitioner was thereafter selected and appointed in regular permanent post of Lecturer in respondent no.6 college effective from 9th July 1996 and was

promoted to the post of Selection Grade Lecturer. The said appointment was duly approved by the respondent no.4 university. The petitioner was thereafter granted final registration for Ph.D. program in the subject of Economics. The petitioner thereafter was designated as Associate Professor Effective from 1st January 2006. On 4th April 2012, the petitioner was issued provisional Certificate admitting her to the Degree of Doctor of Philosophy.

12. It is submitted by the learned counsel that under Rule 62(4) - Compensation Pension of the MCS Pension Rules is one of the class of pensions payable to an employee who is discharged from Government service otherwise than on medical certificate and for no fault of his own, before earning a Retiring or Superannuation Pension. On account of premature discharge/relieving of the petitioner from services on expiry of tenure, she was prevented for reasons beyond the control of the petitioner to continue in service till she attains the age of superannuation without any fault on the part of the petitioner.

13. It is submitted by the learned counsel that according to the Circular dated 1st March 2019 issued by the Department of Finance, Government of Maharashtra, linkage of full pension with 33 years of qualifying service as per Rule 110(2)(a) of MCS Pension Rules is dispensed with effect from 1st January 2006. An eligible employee who has rendered minimum qualifying service of 20 years, pension on superannuation, retiring, invalid or compensation pension shall be paid at 50% of the last basic wage or 50% of average basic pay received during the last 10 months of service, whichever is more beneficial to the employee. The said provision is further continued in 7th Pay Commission recommendation also. It is submitted that Rule

110(2)(a) of the MCS Pension Rules shall be treated as amended to that extent.

14. In his alternate submission, learned counsel submits that if the petitioner does not come within the class of 'Compensation Pension' then she is entitled to 'superannuation pension' on the basis of the ratio laid down by the Division Bench of this Court in case of ***Mrs.Kavita Rege Vs.Joint Director of Higher and Technical Education, Mumbai*** in Writ Petition (L) No.3111 of 2017 decided on 7th December 2017.

15. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of ***Chairman, Railway Board & Ors. Vs. C.R. Rangadhamaiah & Ors., (1997) 6 SCC 623*** and would submit that pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government servant. He submits that the petitioner has right to receive pension which has to be treated as property under Articles 31(1) and 19(1)(f) of the Constitution of India. Government servant acquires right to pension and other retirement benefits on the date he retires from service. He submits that refusal of payment of pension on the part of the respondents amount to deprivation of such a valuable vested right after retirement and is thus unreasonable, arbitrary and in violation of Article 14 of the Constitution of India.

16. Learned counsel placed reliance on Rule 66 of MCS Pension Rules and would submit that even otherwise after completing 20 years qualifying service, at any time, Government servant may by giving notice of three

months in writing to the appointing authority, retire from service. The pension and retirement gratuity of the Government servant retiring under that Rule shall be based on the pay as defined under Rules 60 and 61 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for the purpose of calculating pension and gratuity.

17. Learned counsel for the petitioner invited our attention to Rule 57 of the MCS Pension Rules and would submit that the case of the petitioner would not fall under any of the conditions prescribed for non-pensionable service. He submits that rights of the petitioner are classified under Rule 30 and is a constitutional right. His entitlement is under Rule 110(2)(a) of the said MCS Pension Rules. The petitioner was not discharged on medical certificate or for any fault on the part of the petitioner before earning or retiring superannuation pension. He placed reliance on Rule 64 of the MCS Pension Rules and would submit that even under the said provision, the petitioner would be entitled to payment of pension.

18. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of ***V.Sukumaran Vs. State of Kerala & Anr., (2020) 8 SCC 106*** and more particularly paragraphs 1 and 22 in support of the submission that pension is not a bounty payable at will, but social welfare measure as post-retirement entitlement to maintain dignity of employee.

19. Learned counsel for the petitioner placed reliance on the judgment of the Hon’ble Supreme Court in case of ***State of Jharkhand & Ors. Vs.***

Jitendra Kumar Srivastava & Anr., (2013) 12 SCC 210 and in particular paragraphs 14, 16 and 17 thereof in support of the submission that right to receive pension is recognised as a right in 'property' of the Constitution of India. He also placed reliance on the judgment of Supreme Court in case of ***Deokinandan Prasad Vs. State of Bihar, (1971) 2 SCC 330.***

20. In his alternative submission of the learned counsel for the petitioner that the petitioner is entitled to superannuation pension, he placed reliance on the judgment of Supreme Court in case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors., (2015) 4 SCC 334*** and more particularly paragraph 18 thereof.

21. Mr.Dighe, learned AGP for the respondent nos.1 to 3 and 8 invited our attention to the contentions raised by the respondent no.3 in the affidavit-in-reply dated 3rd August 2021 and stated that the petitioner was employed with the respondent no.6 college and voluntarily resigned from her post in the said college on 30th November 2012 and had not kept any lien or certificate of permanency in respect of her past service. She had accepted 5 years tenure post as Principal which came to an end by efflux of time on 30th November 2017. He submits that the post occupied by the petitioner is abolished. Mr.Sarode was appointed as in-charge principal of the respondent no.5 college w.e.f. 1st December 2017 after resignation of the petitioner.

22. It is submitted by the learned counsel that Government Resolution dated 11th March 1992 relied upon by the petitioner is not applicable to the case of the petitioner as she did not retire or superannuated or took

Voluntary Retirement Scheme from her service with the respondent no.6 without keeping her lien or obtaining certificate of permanency in respect of her services.

23. It is submitted by the learned AGP that Rule 62 of MCS Pension Rules does not qualify a government servant whose services came to an end by efflux of time. He submits that proposal for payment of pension of the petitioner was thus rightly rejected.

24. The appeal filed by the petitioner before the Mumbai University and College Tribunal was admittedly rejected. She did not challenge the said order by filing any appropriate proceedings. In so far as the compensation pension claimed by the petitioner under Rule 81 of the MCS Pension Rules is concerned, it is submitted that the said clause can be pressed in service only if the conditions are satisfied. The petitioner did not exercise any option for payment of compensation pension under the said Rule 81.

25. Learned AGP placed reliance on the affidavit-in-reply filed by the respondent no.8 and would submit that the petitioner is not entitled to a pension on the ground that between two increments, it is statutorily necessary that there has to be a gap of minimum 6 months based on Government Resolution dated 12th August 2009.

26. Learned AGP distinguished the judgment of the Division Bench of this Court in case of ***Mrs.Kavita Rege (supra)*** on the ground that the petitioner in that matter had kept lien which is not a situation in this case. The appointment of the petitioner in that matter was before 2010. The claim

for keeping lien of the petitioner was already rejected by the respondent no.6- S.K. Somaiya College of Arts, Science and Commerce by letter dated 29th November 2012. Learned counsel for the respondent no.4 placed reliance on the order passed by the Mumbai University and College Tribunal and would submit that the findings rendered by the said Tribunal would apply to the petitioner.

27. Mr.Naidu, learned counsel for the petitioner in his rejoinder arguments strongly placed reliance on Government Resolution dated 1st March 2019 and would submit that in view of the said Government Resolution, the petitioner is entitled to get full pension.

REASONS AND CONCLUSION :

28. The short question that arises for consideration of this Court is whether the petitioner is entitled to recover pension from the respondents and if so, which type of pension under the provisions of the Maharashtra Civil Services (Pension) Rules, 1982.

29. With the assistance of the learned counsel for the parties, we have perused the record. The record of the proceedings indicates that the petitioner was appointed on regular permanent post of Lecturer with effect from 12th October, 1987 in the aided non-government college affiliated to the respondent no.4 University. The said appointment was duly approved by the respondent no.4. The petitioner was thereafter selected on regular permanent post of Lecturer in the respondent no.6 College with effect from 9th July, 1996 and was promoted to the post of Selection Grade Lecturer

subsequently. The said appointments were duly approved by the respondent no.4 University.

30. The petitioner was thereafter granted final registration for Ph.D programme in the subject of Economics. The petitioner was designated as Associate Professor with effect from 1st January, 2006 consequent to the implementation of 6th pay commission recommendation. On 4th May, 2012, the petitioner was issued provisional certificate admission to degree of doctor of Ph.D. The petitioner was granted three non-compoundable incentive increments on acquiring Ph.D degree by pay fixation approval dated 25th October, 2012. The said letter stipulated that non-compoundable increments was due on 1st July, 2012. The petitioner thereafter received annual increment in July, 2012.

31. It is the case of the petitioner that for the reasons beyond the control and on account of Rules and Regulations, the petitioner could not continue beyond the tenure of five years fixed by UGC and University of Mumbai for the post of Principal. On successful completion of tenure of five years, the petitioner could not be continue and served as full time Lecturer on aided college. According to the petitioner, as per the service book, the petitioner has qualified service of 30 years one month and 18 days. The last drawn basic pay of the petitioner was Rs.67,000/- with grade pay of Rs.10,000/- as per 6th pay commission and corresponding fixation as per 7th pay commission as on 30th November, 2017.

32. According to Rule 9.5, the teachers who completed Ph.D while in service is entitled to three non- compoundable incentive increments which

is an independent and separate from annual increment. Under Rule 36, an employee is entitled to annual increment as a matter of course except when it is withheld as disciplinary action. In our view, annual increment is vested right accrues to the employee on completing one year of service as per Rule 39 of Pay Rules.

33. In our view under clauses 7, 9 and 10 of the Maharashtra Civil Services (Revised Pay) Rules, 2009, an employee will be fixed in the revised pay structure i.e. pay band and grade pay specified against the post. We are inclined to accept the submission of the learned counsel for the petitioner that the petitioner was entitled to increment in the revised pay scale @ 3% of the sum pay in the pay band and grade pay which was due on and from 1st July, 2012. The petitioner had received annual increment on 1st July, 2011 in the pay band of Associate Professor and had completed 12 months in the said pay band. The petitioner thus became entitled to regular annual increment as and from 1st July, 2012. In our view, the senior auditor could not have withdrawn the increment granted to the petitioner as on and from 1st July, 2012 with cumulative effect. The withdrawal of the increment already granted to the petitioner thus deserves to be set aside.

34. The respondent no.5 had issued an advertisement in the newspaper calling for the applications from the eligible candidates for the appointment to the permanent post of Principal. The petitioner was appointed on the said post on probation by the appointment letter dated 22nd October, 2012. It is not in dispute that the respondent no.4 University had approved the appointment of the petitioner on 15th January, 2013. However the respondent no.5 vide letter dated 8th November, 2017 informed the

petitioner that her appointment as Principal was for a tenure of five years effective from 1st December, 2012 and that her tenure would come to an end on 13th November, 2017. The respondent no.5 did not reappoint the petitioner though she had four years and six months of service as on 30th November, 2017 prior to her reaching the age of superannuation. As a result of the said letter dated 8th November, 2017, the petitioner was relieved from the said post of Principal and her services as full time approved teacher came to an end due to the reasons beyond her control. The Mumbai University & College Tribunal rejected the appeal preferred by the petitioner by an order dated 28th June, 2018. The petitioner was not responsible for her relieving from the said post of Principal by the respondent no.5 before attaining the age of superannuation.

35. A perusal of the record further indicates that by an interim order dated 19th March, 1991 in this petition, this Court recorded the statement made by the learned AGP for the State that the State Government had not received any proposal or statement of pension of the petitioner from the respondent no.5 College. This Court accordingly directed the respondent no.5 to submit the pension papers of the petitioner to the respondent no.3 within a period of four weeks. The respondent no.3 however, rejected the said proposal submitted by the respondent no.5 by an order dated 30th June, 2021.

36. Before deciding the issue as to whether the petitioner is entitled to recovery of any pension and other benefits, it would be apposite to refer to some of the provisions of the MCS (Pension) Rules and other relevant provisions. Rule 9(12) of the MCS Pension) Rules defines the date of first appointment.

Rule (9)

Sub-rule (12) ***Date of first appointment*** means the date the Government servant assumes the duties of his first post in Government service, or, if this be earlier, the date of his assumption of any duty which is treated, as service counting for pension.

Sub-rule (39) ***Pensionable Service*** means service which qualifies the Government servant performing it to receive a pension from the Consolidated Fund.

Sub-rule (40) ***Permanent post*** means a post carrying a definite rate of pay sanctioned without limit of time.

Sub-rule (53) ***Temporary post*** means a post carrying a definite rate of pay sanctioned for a limited time.

Sub-rule 54) ***Tenure post*** means a permanent post which an individual Government servant may not hold, for more than a limited period without reappointment.

Rule 27. ***Right of Government to withhold or withdraw pension***

(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole

or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

30. ***Commencement of qualifying service***

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:

Rule 57. ***Non-pensionable service :***-

As exceptions to rule 30, the following are not in pensionable service:-

(a) Government servants who are paid for work done for Government but whose whole time is not retained for the public service,

(b) Government servants who are not in receipt of pay but are remunerated by Honoraria,

(c) Government servants who are paid from contingencies,

(d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable.

(e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government."

As per section 80 of "Uniform Statutes Governing the Terms and Conditions of Service of the Teachers working in the University Schools, University Departments, Conducted Colleges and University Institutions" petitioner is entitled for post retiral benefits.

S.2 ***Definitions***

In these Statutes, unless the context otherwise requires :

1 …….

2. …….

7. …….

8. '***Continuous Service'*** means service rendered by the teacher, under the Appointing Authority or Authorities, without any break or with condoned breaks (s) competent authority :

19. ***<u>First Appointment</u>*** means the appointment of the teacher who is not holding any appointment, for the time being, under the University, Institution, even though he may have previously held any such appointment either temporary or on tenure basis ;

36. ***<u>Permanent Post</u>*** means the post approved by Government or the University, carrying a definite scale of pay, sanctioned without time limit ;

37. '***Pension'*** means the monthly emoluments payable to the teacher after his retirement from the service, as per the Government Rules, specified from time to time and includes gratuity, commutation and family pension ;

38. '***<u>Pensionable Pay'</u>*** means pay earned by the teacher for the period as may be decided by the Government, from time to time ;

39. ***<u>Pensionable Service</u>*** means service, which qualifies the teacher to receive a pension from the Government or the University ;

44. '***Qualifying Service'*** means service rendered by the teacher for which pension is payable, under these Statutes or otherwise as prescribed by the Government from time to time ;

53. '***<u>Temporary appointment'</u>*** means an appointment made on purely temporary basis as per the provisions made in Act ;

54. ‘***Tenure post’*** means a permanent post which the teacher may not hold, for more than a limited period without reappointment.

S.80. ***Post Retirement Benefits***

(1) The teacher working in the University against the post approved by the Government and who is covered under Salary Grant shall be eligible for the post-retirement benefits such as Pension, Gratuity, Commutation of Pension, and other post-retirement benefits as sanctioned by the Government, for its employees working in comparable pay scales, from time to time.

(2) The teacher working in the University against the post approved by the Government and/or who is covered by the Contributory Provident Fund scheme by choice or working in a post which is not covered under salary Grant or covered by the Self Supporting Scheme, shall be eligible for the contribution from the employer at the rate as may be prescribed by the Government, and under the Statutes of the University, amended from time to time. The teacher’s subscription and the employer’s contribution and the interest thereon shall be maintained in separate account/fund as provided by the Statutes. The teacher on retirement shall be entitled to the amount accrued to his account, both as teacher’s subscription and employer’s contribution and interest thereon till the date of disbursement. The teacher shall also be entitled to such other terminal benefits as gratuity etc., at the rates applicable to the teacher covered by pension or other scheme of Government,

but all the payment for these benefits shall be made by the University from its own funds.

(3) The teacher shall clear all dues payable to the University, outstanding to his account and vacate the residential accommodation, if provided, before the post-retirement benefits are extended to him/her, as may be prescribed by the Government, from time to time.

(4) The teacher who has been declared as deserter or who ceases to be in service or who is absent from his duties for one year or more, may be entitled to the post-retirement benefits, as prescribed by the Government, from time to time, upto the date he attended his duties regularly, provided the said period qualifies for such benefits."

Whether the petitioner is entitled to superannuation pension.

37. Rule 63 of the MCS Pension Rules provides that the Government servant who retires on attaining the age of superannuation fixed by the relevant sub-rule of Rule 10 shall be granted superannuation pension. It is not the case of the petitioner that the petitioner retired upon attaining the age of superannuation. The appeal filed by the petitioner before the University and College Tribunal was rejected. The petitioner did not impugn the said order passed by the University and College. In our view, the petitioner is thus not entitled to seek superannuation pension from the State Government.

38. Insofar as the judgment of this Court in case of ***Mrs.Kavita Rege***

(supra) relied upon by the learned counsel for the petitioner is concerned, a perusal of the said judgment clearly indicates that the State Government, Management as well as the University of the petitioner had permitted the petitioner therein to continue as Principal till the end of October, 2018. Only after a representation was made by some of the office bearers of the University, the employee realized the mistake. It was observed that if the said complaint would not have been made, may be the petitioner would have been continued and considered as Principal in the year 2020. In the facts and circumstances of that case and particularly in view of the fact that the petitioner had worked upto 31st October, 2017, this Court found that it would be in the interest of justice that the petitioner was treated as superannuated on 31st October, 2017 as Principal. The facts before this Court in the case of ***Mrs.Kavita Rege*** (supra) were different and are distinguishable with the facts of this case.

39. It is not the case of the petitioner that the petitioner is entitled to seek payment of Retiring Pension or Invalid Pension or Wound or Injury Pension or Compulsory Retirement Pension or Compassionate Pension or Family Pension or Extraordinary Pension as provided in Rule 62 of the MCS Pension Rules. In the alternative to the claim for superannuation pension as defined in Rule 63 of the MCS Rules, the petitioner has claimed for compensation pension prescribed under Rule 62(4) which provides that the said compensation pension is granted to the Government servant who is discharged from Government service otherwise than on medial certificate and for no fault of his own, before earning a Retiring or Superannuation Pension.

40. A perusal of record indicates that it is not the case of the respondents that the petitioner was discharged from service on medical certificate. The petitioner was discharged from services otherwise than on medial service and for no fault of her own before earning retiring or superannuation pension. The only objection raised in the affidavit in reply filed by the State on the claim for compensation pension is that no such claim for compensation pension is made by the petitioner. In our view, this objection is based on incorrect premise. The petitioner has made such claim in the writ petition and more particularly in Exhibits 43-H to 43-LL of the petition.

41. A perusal of the impugned order dated 30th June, 2021 passed by the respondent no.3 indicates that the claim for payment of pension and terminal benefits is rejected by the respondent no.3 only on the ground that the petitioner did not come within any of the clauses specified in Rule 62 of the MCS Rules for grant of pension. In the facts and circumstances of this case, it is clear that in view of the letter dated 8th November, 2011, addressed by the respondent no.5 to the petitioner, her appointment as Principal came to an end on and from 30th November, 2017. The respondent no.5 did not reappoint the petitioner though she had four years and six months time left prior to reaching the age of superannuation. Before expiry of tenure, the petitioner was relieved from the said post of Principal and her services automatically came to an end due to the reasons beyond her control. In our view, the petitioner thus has satisfied all the conditions for her entitlement to claim compensation pension under Rule 62(4) of the MCS (Pension) Rules.

42. Under Rule 9 of sub-rule 12 of the MCS (Pension) Rules, date of

first appointment means the date of the Government servant assumes the duties of his first post in Government service, or, if this be earlier, the date of his assumption of any duty which is treated, as service counting for pension. Admittedly the provisions of MCS (Pension) Rules, 1982 are made applicable to the petitioner also.

43. In our view, the petitioner had completed minimum qualifying services as contemplated under Rule 30 of the MCS (Pension) Rules. The petitioner in this case has completed the services of 30 years one month and 16 days. When the petitioner had published the advertisement in the month of June, 2012 calling for the application from eligible candidates for the permanent post of Principal, the advertisement was issued for permanent post of Principal. This Court in the judgment in case of ***Dr.Dinesh Kudav vs. University of Mumbai & Ors.*** in Writ Petition No.1812 of 2017 delivered on 22nd October, 2021 has construed Rule 30 of Pension Rules and has held that even if the petitioner was appointed on temporary basis on sanctioned post, the period of service rendered by the said employee would be also counted for the purpose of computing the qualifying services and once having completed the qualifying services would be eligible to receive pension.

44. In our view, the judgment of this Court in case of ***Dr.Dinesh Kudav*** (supra) would apply to the facts of this case. Similar view has been also taken by another Division Bench of this Court in case of ***Dr.Bhimrao T. Munde vs. Marathwada Agricultural University*** in Writ Petition No.2074 of 2010 delivered on 3rd August, 2011. This Court in the said judgment has held that Rule 30 has to be read with Rule 57 of the MCS (Pension) Rules.

It is held that upon reading Rule 30 and 57 in conjunction, it is apparent that the Government servant is entitled to club the service rendered by him as a temporary employee or in an officiating capacity together with his service as a permanent employee, if there is no interruption in his service. He is entitled to pension on the basis of his qualifying service, which commences from the date he joins service in any capacity and not only as a permanent employee.

45. In this case, it is not the plea of the respondent State that the petitioner was given any break in service since inception till the date of her retirement on 30th November, 2017 by efflux of time. The judgment of this Court in case of ***Dr.Dinesh Kudav*** (supra) and ***Bhimrao T. Munde*** (supra) would apply to the facts of this case. We are respectfully bound by the principles laid down by these two judgments. We do not propose to take a different view in the matter. The respondents could not demonstrate before this Court that case of the petitioner would fall under Rule 57 of the MCS (Pension) Rules which creates an exception to Rule 30 and provided as to when the services rendered by an employee would be “non-pensionable service”.

46. The Hon’ble Supreme Court in case of Chairman Railway Board & Ors. (supra) has reiterated the principles laid down in its earlier judgment in case of ***Deokinandan Prasad vs. State of Bihar, (1971) 2 SCC 330*** in which it was held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right visiting in a Government servant. In that case, the right to receive pension was treated as

property under Articles 19 (1)(f) and 31(1) of the Constitution of India.

47. In case of ***D.S. Nakara Vs. Union of India, (1983) 1 SCC 305***, the Hon’ble Supreme Court held that the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. The reckonable emoluments which are the basis for computation of pension are to be on the basis of emoluments payable at the time of retirement. In our view, the principles laid down by the Hon’ble Supreme Court in the said judgment apply to the facts of this case. We are respectfully bound by the principles laid down by the Hon’ble Supreme Court in the said judgment.

48. The Supreme Court in case of ***V. Sukumaran*** (supra) has held that the pension is succour for post-retirement period. It is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee. It is further held that the pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to Rules, but the very basis for grant of such pension must be kept in mind i.e. to facilitate a retired government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities. In our view the genuine claim of the petitioner for compensation pension for the services rendered for more than 30 years is rejected purely on technical ground so as to deprive the petitioner of her legitimate claim which is not a bounty payable on the sweet will of the employer. The petitioner having satisfied the criteria for claiming the pension is entitled to receive such pension as a matter of right which cannot

be deprived of by the State Government.

49. The Hon’ble Supreme Court in case of State of **Jharkhand & Ors.** (supra) has considered Article 300-A of the Constitution of India and has held that persons cannot be deprived of pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced. The principles laid down by the Hon’ble Supreme Court in case of S***tate of Jharkhand & Ors.*** (supra) would apply to the facts of this case. The rejection of pension by the State Government is in violation of Article 300-A of the Constitution of India.

50. In our view, Mr.Naidu, learned counsel for the petitioner has rightly placed reliance on the circular dated 1st March, 2019 issued by the Department of Finance, Government of Maharashtra in support of the submission that the length of full pension with 33 years of qualifying service as per Rule 110(2)(a) of MCS (Pension) Rules is dispensed with effect from 1st January, 2006 and the eligible employee who has rendered minimum qualifying service of 20 years, pension on superannuation, retiring, invalid compensation pension shall be paid of 50% of last basic wage of 50% of the average basic pay received during last 10 months of service, whichever is more beneficial to the employee. The said provision is further continued in the 7th pay commission recommendation also.

51. Learned counsel has also rightly placed reliance on Rule 66 of the

MCS (Pension) Rules in support of the submission that even otherwise after completing 20 years qualifying service at any time, the Government servant may by giving a notice of three months in writing to the appointing authority, retire from service. The pension, retirement gratuity of the Government servant retiring under that Rule shall be based on pay as defined under Rules 60 and 61 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay including pension and gratuity. The entitlement of the petitioner is under Rule 110(2)(a) of the MCS (Pension) Rules and would be entitled to recover the amount of pension under the said provision.

52. In our view, the said Government Resolution dated 12th August, 2009, only regulates grant of regular increment and has no bearing or connection with special incentive increments granted to the petitioner on being conferred with Ph.D. special increment though non-compoundable and annual increment operated in two different fields. In our view, the increment is an accrued right. There is thus no substance in the submission of Mr.Dighe, learned AGP that the petitioner having been granted two increments within a period of six months and was thus not eligible to claim pension on that ground. Reliance placed on Rule 40 of the MCS (Pension) Rules by the learned AGP is also misplaced.

53. There is no substance in the submission of the learned AGP that there was no continuity of service between 1st December, 2012 and 30th November, 2017. Though the respondent no.6 did not allow the petitioner to claim her lien on the said post, the fact remains that the petitioner was granted permission and no objection certificate by the respondent no.6 to

joint the post of the Principal in the respondent no.5 college. There was thus continuity of service without any break all through out.

54. There is no substance in the submission of the learned AGP that Rule 62 of the MCS (Pension) Rules does not qualify the Government servant whose services came to an end by efflux of time. The entire period of qualifying service has to be considered for the purpose of computing the pension. Though at the first instance, it is the case of the petitioner that the petitioner is entitled to superannuation pension, the petitioner in the alternate the submission has claimed compensation pension. In the earlier paragraphs of this judgment, we have rejected the claim for superannuation pension which is one of the types of pension prescribed under Rule 62 of the MCS (Pension) Rules. The petitioner however having satisfied the criteria for claiming compensation pension, we are inclined to accept the said claim.

55. There is no substance in the submission of the learned AGP that there has to be gap of six months based on the Government Resolution dated 12th August, 2009 between the two increments for being eligible to claim pension. The petitioner has been granted increments rightly as reflected in the earlier paragraphs of this judgment and thus is not ineligible to claim pension under the said Government Resolution dated 12th August, 2009 or any other resolution. In our view, there being gross delay on the part of the State Government in releasing the pension amount to the petitioner, the petitioner is also entitled for payment of interest. The respondent State Government can withheld the benefit of pension only as per Rule 27 of the MCS (Pension) Rules and in absence of any order under the said Rule, the

benefit is required to be settled expeditiously. The State Government has not invoked the provisions of Rule 27 of the MCS (Pension) Rules for withholding the genuine claim of the petitioner of payment of pension ion this case.

56. In our view, the petitioner has made out a case for claiming compensation pension to be computed under Rule 110(2)(a) of the MCS Rules, 1982 for completing 30 years and one month of service and also regular pension, gratuity, commutation of pension and leave encashment along with interest from due date. In our opinion, the State Government is fully responsible for not releasing the payment of pension and other retiral benefits as claimed within the time prescribed under sections 129-A and 129-B of the MCS (Pension) Rules and is thus liable to pay interest at the rate prescribed under sections 129-A and 129-B to the petitioner on the separate heads of claim after expiry of six months from the date of retirement of the petitioner from the last employment.

57. We accordingly pass the following order :-

a) The writ petition is allowed in terms of prayer clause (a). It is however, made clear that the petitioner would be entitled to compensation pension and not regular pension prescribed under Rule 62 (4) of the MCS (Pension) Rules along with other claims made in prayer clause (a) with interest at the rate provided under Rule 129-A and 129-B of the MCS (Pension) Rules payable after expiry of six months from 30th November, 2017. The amounts as awarded shall be paid within 30 days from today, without fail.

b) Rule is made absolute in terms of prayer clause (bb) (i) to (vii).

c) The Reliefs granted in respect of prayer clauses (bb) (iii) to (v) shall be implemented within two weeks from today.

d) Rule is made absolute in aforesaid terms. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

(ABHAY AHUJA, J.) ***(R.D. DHANUKA, J.)***