

1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.2467 OF 2021

1. Mrs.Pratibha w/o Suryakant Kale, aged about 58 years, occupation : retired, Residing at 19, "Padmavati", Konark Vasahat, Near Bank of India, Besa, Nagpur, district Nagpur – 440 037.

2. The Pune Seva Sadan Society, Nagpur Branch, through its Secretary/ President, Lady Satybhamabai Kukday Building, North Ambazari Road, Nagpur – 440 010.

3. Yashodabai Khare Jr.College of Education, through its Principal, North Ambazari Road, Zashirani Square, Sitabuldi, Nagpur – 440 010.

4. Seva Sadan Jr.College of Education, through its Principal, North Ambazari Road, Zashirani Square, Sitabuldi, Nagpur – 440 010.

..... **Petitioners.**

:: V E R S U S ::

1. State of Maharashtra, through its Secretary, Department of School Education and Sports, Mantralaya, Mumbai-32.

2. The Deputy Director of Education, Nagpur Division, Nagpur.

3. The Education Officer (Secondary), Pay and Provident Fund Unit, Zilla Parishad Nagpur, Nagpur.

4. The Superintendent, Pay and Provident Fund Unit (Education), Nagpur.

..... **Respondents.**

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Shri Anand Parchure, Advocate for Petitioners.
Mrs.Sangita Jachak, Assistant Government Pleader for Respondents.
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CORAM : **A.S.CHANDURKAR & URMILA JOSHI-PHALKE, JJ.**
DATE : **03/10/2022**

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard Shri Anand Parchure, learned Advocate for petitioners and Mrs.Sangita Jachak, learned Assistant Government Pleader for respondents. **Rule.** Rule made returnable forthwith and heard finally.

2. Petitioner No.1 - Mrs.Pratibha w/o Suryakant Kale has challenged communication by respondent No.3 - The Education Officer (Secondary) dated 22.12.2020 issued to petitioner No.3 - Yashodabai Khare Junior College of Education by which benefit of pension under the Old Pension Scheme was denied to her. She had obtained degrees of Bachelor of Arts (B.A.), Bachelor of Physical Education (B.P.Ed.), Bachelor of Education (B.Ed.), Master of Arts (M.A.) and Master of Education (M.Ed.). She was appointed as Part Time Physical Training Instructor on a fixed pay in petitioner No.3 - Yashodabai Khare Junior College of Education on 18.7.1987 initially for a period of ten months. Her appointment was time to time renewed, till 30.4.1996. Her appointment was also approved time to time by respondent No.2 - The Deputy Director of Education,

3

Nagpur Division, Nagpur and respondent No.3 - The Education Officer (Secondary), Nagpur.

3. Petitioner No.2 - The Pune Seva Sadan Society, Nagpur is a society registered under The Societies Registration Act and Bombay Public Trusts Act to run colleges petitioner No.3 - Yashodabai Khare Junior College of Education and petitioner No.4 - Seva Sadan Junior College of Education, Nagpur. Petitioner No.2 - Society, after following due procedure, appointed petitioner No.1 - Pratibha Kale in petitioner No.3 College as Part Time Physical Training Instructor on half pay for a period of ten months on 1.7.1996. The said appointment was approved by respondent No.2 - Education Officer on 4.2.1997. As petitioner No.1 - Pratibha Kale discharged duties satisfactorily, petitioner No.2 - Society by passing Resolution dated 10.6.1997 approved the appointment of petitioner No.1 - Pratibha Kale as Permanent Physical Training Instructor with half pay on probation for a period of two years i.e. until 10.6.1999 in petitioner No.3 - College. The said appointment was also granted approval by respondent No.2 - Education Officer on 17.3.1998. After 10.6.1999, the probation period of petitioner No.1 - Pratibha Kale was extended, until further orders as per decision taken by Committee in meeting dated 24.4.1999. Petitioner No.2 - Society, vide its resolution dated 24.5.1999, resolved to appoint petitioner

4

No.1 – Pratibha Kale as Permanent Part Time Physical Training Instructor in petitioner No.3 - College. The said appointment was approved by respondent No.2 - Education Officer on 30.8.1999.

4. It is further contention of petitioner No.1 – Pratibha Kale that in year 2008, due to promotion of one Shri Surendra Panjabrao Mankawde, post of Part Time Physical Training Instructor became vacant in petitioner No.4 - College. Therefore, petitioner No.1 – Pratibha Kale applied for the said post on 12.2.2008 by making an application to petitioner No.2 – Society and requested to appoint her as Part Time Physical Training Instructor in addition to her existing appointment. Accordingly, she was appointed as Part Time Physical Training Instructor on 1.3.2008 in petitioner No.4 - College. As the appointment letter dated 1.3.2008, which clearly mentions that her appointment would be treated as Permanent Full Time Physical Training Instructor on regular Pay Scale considering the work load allotted to her in petitioner Nos.3 and 4 – Colleges, her salary would be drawn from office of petitioner No.3 - College. The said appointment of petitioner No.1 – Pratibha Kale was approved by respondent No.2 - Education Officer mentioning that petitioner No.1's appointment is made as Permanent Full Time Physical Training Instructor on regular Pay Scale. Accordingly, petitioner No.3 - College sent proposal for admitting petitioner No.1

5

– Pratibha Kale to General Provident Fund Scheme which was not accepted by respondent No.3 - Education Officer.

5. According to petitioner No.1 – Pratibha Kale, under wrong impression, proposal for admitting her for 'New Defined Contributory Pension Scheme' was sent. As per the Government Resolution dated 19.7.2011, employees, who were appointed prior to 1.11.2005, would receive pensionary benefits as per the Old Scheme. Petitioner No.1 – Pratibha Kale was entitled for such pensionary benefits as she was appointed as Permanent Part Time Physical Training Instructor prior to 1.11.2005. Petitioner No.3 - College again sent proposal for admission of petitioner No.1 – Pratibha Kale to the General Provident Fund Scheme on 16.4.2015 to respondent No.3 – Education Officer, but the same was not responded. Petitioner No.1 – Pratibha Kale, in personal capacity, had also sent proposal for admitting her to the General Provident Fund Scheme on 17.12.2015 to respondent No.4 - The Superintendent, Pay and Provident Fund Unit (Education), Nagpur, but respondent No.4, vide communication dated 13.1.2016, replied to the communication that as petitioner No.1 – Pratibha Kale was appointed as Full Time Permanent Physical Instructor since 1.3.2008, she would eligible for "New Defined Contributory Pension Scheme". Respondent No.4 by relying upon Government Resolution

6

dated 29.11.2010 communicated petitioner No.1 – Pratibha Kale that she would not be entitled for benefits of the Old Pension Scheme.

6. As per contention of petitioner No.1 – Pratibha Kale that her initial date of appointment as Part Time Physical Training Instructor relates back to 18.7.1997 and approval was granted to her appointment on 11.6.1999.

7. Petitioner No.1 – Pratibha retired from service on attaining the age of superannuation. Her pension papers are referred for approval on 21.8.2020. Respondent No.3 – Education Officer, vide communication dated 22.12.2020, informed her that she is not entitled for pensionary benefits as she was appointed as Full Time Physical Training Instructor after 1.11.2005. Being aggrieved with the said communication, petitioner No.1 Pratibha Kale filed the petition and challenged the said communication.

8. In response to the notice, respondent No.4 - The Superintendent, Pay and Provident Fund Unit (Education), Nagpur filed reply. As per contention of respondent No.4, petitioner is not entitled for pensionary benefits as she was appointed Permanent Physical Training Instructor after 1.11.2005 and approval was granted to her as Full Time Teacher on 1.3.2008. As the

7

appointment of petitioner No.1 – Pratibha Kale as Full Time Instructor is on 1.3.2008, she would not eligible for Old Pension Scheme. Respondent Nos.2 and 3 – Education Officers also raised the same contention by opposing the said petition.

9. Shri Anand Parchure, learned Advocate for petitioners reiterated the contention that petitioner No.1 – Pratibha Kale was appointed as Permanent Part Time Physical Training Instructor on 18.7.1987 and approval was granted to her on 10.6.1999. Thus, her appointment is prior to 1.11.2005 and, therefore, petitioner No.1 – Pratibha Kale is entitled for benefits under the Old Pension Scheme.

10. Learned Advocate for petitioners, to substantiate his contentions, placed reliance on the decision of the Division Bench of this Court in Writ Petition No.5421 of 2017 (Smt.Darshana wd/o Adikrao Gaikwad vs. State of Maharashtra and ors) decided on 9.7.2018. The Division Bench of this Court in the said case held that Clause 4(b) of Government Resolution dated 31.10.2005 makes no distinction between Part Time and Full Time Employees. It states that the decision contained in the said Government Resolution shall *mutatis-mutandis* apply to the employees who are recruited on or before 1-11-2005, to whom the existing Pension Scheme or General Provident Fund Scheme would be applicable. He further placed

8

reliance on the decision of the Division Bench of this Court in the case of Chitrarekha M.Naik vs. State of Maharashtra and ors, reported at 2002(1) A 510. The Division Bench of this Court in the said case also laid down the similar ratio.

11. Learned Advocate for the petitioners submitted that as petitioner No.1 – Pratibha Kale was appointed as Permanent Part Time Physical Training Instructor prior to 1.11.2005, she is entitled for the Old Pension Scheme.

12. On the other hand, Mrs.Sangita Jachak, learned Assistant Government Pleader for respondents placed reliance on the Government Resolutions and made an attempt to distinguish the aforesaid judgments. She submitted that since Full Time Appointment i.e. 100% grant of petitioner No.1 – Pratibha Kale is on 1.3.2008 i.e. after 1.11.2005, petitioner No.1 – Pratibha Kale would be eligible for New Defined Contribution Pension Scheme and supported the communication issued by respondent Nos.2 and 3 – Education Officers.

13. After hearing both the sides and perusing record, it is evident that petitioner No.1 – Pratibha Kale was initially appointed as Part Time Physical Training Instructor on 18.7.1987 for ten months. Before she was appointed as Part Time Physical Training

Instructor, petitioner Nos.3 and 4 - Colleges were getting 100% grant. The Annexure-1 dated 23.12.1965 shows that petitioner No.3 - College receives grant-in-aid @ 100% from the Government. After initial appointment of petitioner No.1 - Pratibha Kale for temporary period of ten months, her appointment was renewed from time to time, till 30.4.1996 and said renewal was approved by respondent Nos.2 and 3 - Education Officers by granting the approval from time to time. Thereafter, on 11.6.1997, petitioner No.1 - Pratibha Kale was appointed as Part Time Physical Training Instructor for two years probation and the same was approved by the Education Officer for the period 11.6.1997 to 10.6.1999. Petitioner No.2 - Society extended the probation until further orders. On 24.5.1999, petitioner No.1 - Pratibha Kale was appointed as Permanent Part Time Physical Training Instructor by appointment order dated 24.5.1999 and the same was approved by the Education Officer i.e. respondent Nos.2 and 3 - Education Officers on 30.8.1999. It is further evident that as in the year 2008 employee namely Shri Surendra Panjabrao Mankawde was promoted, post of Part Time Physical Training Instructor in petitioner No.4 - College became vacant. Therefore, petitioner No.1 - Pratibha Kale applied for the same and after following due process, she was appointed as Part Time Physical Training Instructor in petitioner No.4 - College. Accordingly, appointment letter

10

1.3.2008 which was issued to her mentioned that the appointment would be treated as Permanent Full Time Physical Training Instructor on Regular Pay Scale considering the work load allotted to her in petitioner Nos.3 and 4 - Colleges and her salary would be drawn from the office of petitioner No.3 - College. Thus, it is crystal clear from the record that petitioner No.1 - Pratibha Kale was appointed by petitioner No.2 - Society as Permanent Part Time Physical Training Instructor in petitioner No.3 - College on 24.5.1999 and it was approved by the respondent No.2 - Education Officer on 30.8.1999.

14. As per Government Resolution dated 31.10.2005, the Government has introduced New Pension Scheme for the employees who enter in service on 1.11.2005. The respondents had referred Resolutions dated 29.11.2010 and 19.7.2011 and submitted that as the appointment of the petitioner was as Full Time Permanent Physical Training Instructor i.e. 100% grant of petitioner No.1 - Pratibha Kale is on 1.3.2008, she is not entitled for the Old Pension Scheme. Government Resolution dated 31.10.2005 was dealt with by the Division Bench of this Court in the case of **Darshana Gaikwad vs. State of Maharashtra** cited *supra* and the Division Bench of this Court held that Clause 4(b) of Government Resolution dated 31.10.2005 makes no distinction between Part Time and Full Time

11

Employees. It states that the decision contained in the said Government Resolution shall *mutatis-mutandis* apply to the employees who are recruited on or before 1-11-2005, to whom the existing Pension Scheme or General Provident Fund Scheme would be applicable.

15. In the present case, petitioner No.1 – Pratibha Kale was appointed as Permanent Part Time Physical Instructor on 24.5.1999 i.e. 1.11.2005. The first decision in respect of the above issue is in the case of Jyoti Prakash Chougule Vs. State of Maharashtra reported at AIR Online 2018 Bom.532, wherein it is held that once the very same pension rules are applicable to teachers in terms of Rule 19 of the MEPS Rules, the said principle would apply in the facts of the said case. The same view is reiterated by the Division Bench of this Court in the Chitrarekha M.Naik vs. State of Maharashtra and ors., cited *supra*, wherein also in a catena of decisions this Court has held that 50% of the Part Time services rendered by Part Time Librarian is required to be counted for the purposes of pensionary benefits along with Full Time Services rendered by the employee. It is further held that the principles laid down by this Court in the case of Jyoti Prakash Chougule Vs. State of Maharashtra cited *supra* and Abaso Ganapati Aoute vs. State of Maharashtra & Ors. has would apply to the case. The Division

12

Bench also referred the decision in the case of Darshana Gaikwad vs. State of Maharashtra cited *supra* wherein identical facts where the petitioner was appointed as Part Time Librarian and, thereafter, Full Time Librarian were considered. There is no reason for us also to deviate from the said decisions and take the contrary view.

16. In this view of the matter, the following order is passed:

ORDER

(1) The writ petition is allowed.

(2) The communication dated 22.12.2020 is quashed and set aside.

(3) After computing 50% of the services rendered by petitioner No.1 – Pratibha Kale as Part Time Physical Training Instructor in petitioner No.3 - College and 100% service rendered as per Full Time Physical Training Instructor by her in petitioner Nos.3 and 4 - Colleges, petitioner No.1 – Pratibha Kale would be entitled to the Old Pension Scheme Benefits under the relevant rules. The respondent No.2 – The Deputy Director of Education, Nagpur Division, Nagpur and respondent No.3 - The Education Officer (Secondary), Nagpur are directed to calculate the pensionary benefits available to petitioner No.1 – Pratibha Kale within a period of one month after re-

ceipt of the copy of this judgment. The petitioner shall be paid the entire arrears within a period of three months.

Rule is made absolute in above terms. No order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

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