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

WRIT PETITION NO. 2419/2020

Digambar Domaji Sahare,
Aged 56 Years, Occu-Service,
R/o Netaji Ward, Paoni, Tah-Paoni, Dist-Bhandara. **PETITIONER**

.....VERSUS.....

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

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

3. The Superintendent,
Pay & Provident Fund Unit (Sec.),
Zilla Parishad, Nagpur.

4. Ashok Madhyamik Vidyalaya and Jr. College,
Mangalwari Peth, Umred, Dist-Nagpur,
Through its Principal. **RESPONDENTS**

Shri P.N. Shende, counsel for the petitioner.
Shri D.P. Thakare, Additional Government Pleader for the respondent nos.1 to 3.
Shri Anand Parchure, counsel for the respondent no.4.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : 15TH JUNE, 2022.
ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner was appointed on 07.07.1993 as a Part Time Physical Education Teacher. His appointment initially was till 30.05.1995. The said appointment was approved by the Education Officer on 21.10.1993. The petitioner continued in employment till

14.10.2003 when his services were orally terminated. In the proceedings initiated by the petitioner seeking reinstatement, the School Tribunal dismissed the appeal preferred by him on 24.01.2005. This Court however allowed Writ Petition No.1733 of 2006 on 06.01.2011 and directed reinstatement of the petitioner with continuity in service and arrears of salary. This adjudication has attained finality and after the petitioner was reinstated, he rendered service till superannuation at the respondent no.4-School/Junior College. Since the petitioner was appointed prior to 01.11.2005 he claimed that he was governed by the Old Pension Scheme which operated till 31.10.2005. Since the petitioner was not granted the benefit of the Old Pension Scheme he has approached this Court.

3. Shri P.N. Shende, learned counsel for the petitioner after referring to the aforesaid facts submitted that the School/Junior College where the petitioner was serving was receiving 100% grant-in-aid. Admittedly, the petitioner was appointed prior to the cut-off date which was 01.11.2005. Merely because the initial appointment was on part-time post the same would not deprive the petitioner of the benefits under the Old Pension Scheme. Placing reliance on the decision in *Purushottam Harishchandra Shirsekar & Another Versus State of Maharashtra & Others* [**2022(2) Mh.L.J. 390**] it was submitted that the petitioner was entitled for the benefit under the Old Pension Scheme. He also invited

attention to the decision in **Writ Petition No.5421 of 2017** [*Darshana Adikrao Gaikwad Versus State of Maharashtra & Others*] decided at Nagpur on 09.07.2018 to contend that part-time service rendered would be required to be taken into consideration to the extent of 50% while calculating the pensionary benefits. It is thus submitted that the petitioner is entitled to the reliefs as prayed for.

4. Shri D.P. Thakare, learned Additional Government Pleader for the respondent nos.1 to 3 opposed the aforesaid submissions. He referred to the affidavit-in-reply and submitted that the initial appointment of the petitioner was on part-time basis. He relied upon the judgment of the Full Bench in *Deshmukh Dilipkumar Bhagwan & Others Versus State of Maharashtra & Others* [**2019(3) Mh.L.J. 903**] and submitted that the petitioner's services were governed by the D.C.P. Scheme which came into effect on 01.11.2005.

Shri Anand Parchure, learned counsel for the respondent no.4 submitted that the issue raised is considered and decided in the decisions on which the learned counsel for the petitioner has placed reliance. He submitted that the school has been receiving 100% grant-in-aid.

5. We have heard the learned counsel for the parties. Undisputed facts are that the petitioner was initially appointed on

07.07.1993 on a part-time post. The petitioner's services were terminated on 14.10.2003 which is prior to the cut-off date. This Court while allowing the writ petition preferred by the petitioner directed his reinstatement with continuity in service. Thus, the petitioner was entitled to the benefit of the aforesaid adjudication. Moreover the petitioner was given full work load from 03.10.2009 and his services were also approved.

6. Similar question has been considered and decided in *Purushottam Harishchandra Shirsekar* (supra). In paragraph 18 it has been held as under:-

> "*18. It has thus been a consistent view of this Court that the services of the employee of the Educational Institution is to be counted from the first date of appointment irrespective of whether it is on a part time or full time post. Further, if such appointment is prior to 1st November, 2005, then the old pension scheme would be made applicable to the employee. This requirement is further made clear from the Government Resolution dated 31st October, 2005 which provides in Clause 4 that the employees who are to be recruited on or after 1st November, 2005 in the services of the recognized and aided educational institutions for the new pension scheme (DCPS) is made applicable.*"

This adjudication is after considering the judgment of the Full Bench in *Deshmukh Dilipkumar Bhagwan* (supra). We find that the petitioner is similarly situated and is entitled for such relief. Similarly, part-time service rendered is required to be considered to the extent of 50%

alongwith full time service while determining the pensionary benefits. It is clear that part-time service of the petitioner is from 07.07.1993 to 30.06.2008. His full time service is from 01.07.2008 till his superannuation.

7. In that view of the matter, the following order is passed:-

(I) It is held that the petitioner is entitled to pensionary benefits by applying the Old Pension Scheme which was in operation prior to 01.11.2005.

(II) 50% of the part-time service of the petitioner from 07.07.1993 to 30.06.2008 is also required to be taken into consideration while determining the pensionary benefits.

(III) The respondent nos.2 and 3 shall take necessary steps within a period of eight weeks from the date of receipt of the copy of this judgment. The benefits should be made available to the petitioner thereafter.

8. Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.) (A.S. CHANDURKAR, J.)

APTE

Signed By: Digitally signed byROHIT DATTATRAYA APTE
Signing Date:16.06.2022 10:34