

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO.2691 OF 2021

VAISHALI VILAS PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for Petitioner : Mr. Y.H. Jadhav
AGP for Respondent/State : Mr. S.G. Karlekar

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.**
DATED : 29th MARCH, 2023.

PER COURT :-

1. We have considered the submissions of the learned Advocate for the Petitioner and the learned AGP. Since the issue raised in this petition has been dealt with in several judgments by various Co-ordinate benches of High Court, we would be passing a short order in this matter.

2. The Petitioner has put-forth prayer clause "B" as under :-

"B) By issuing the writ of mandamus or any other writ or order in like nature the respondent no.2 may kindly be directed to count the services of the husband of the Petitioner as a part time Librarian from 26.09.1995 to 31.03.2006 as a qualifying service for the purpose of grant of Family Pension benefits, for that purpose issue necessary orders."

3. The Petitioner widow claims that part time employment of her husband as librarian was converted into a full time librarian vide decision dated 11.01.2007, conveyed by the Education Officer (Secondary), Zilla Parishad, Jalgaon to the Principal of his school.

The said document was not on record and is tendered across the bar, which is taken on record and marked as "X-1" for identification.

4. The learned A.G.P. rightly points out that unless the strength of the students in the school reaches 1000, a part time librarian cannot become a full time librarian. He submits that this needs to be verified and as the original employee has passed away and this petition has been filed by his widow, a verification exercise will have to be undertaken.

5. The issue is that the Petitioner will be entitled for pension , if her late husband secured qualifying service. Request is that the earlier tenure as a part time librarian, should be reckoned with while calculating the qualifying service for pension. The Petitioner concedes that there is no order passed by any authority as regards refusing her the pension. Her deceased husband has put in service as part time librarian from 26.09.1995 till 31.03.2006. From 01.04.2006, vide order `X-1`, he was declared as a full time librarian.

6. In view of the above, we deem it appropriate to follow the view taken by this Court vide order dated 1st October, 2022 delivered in writ petition no.2074 of 2020 filed by Raju Kishanrao Pawar Vs. State of Maharashtra and connected matters, wherein we have concluded in paragraph nos.18 to 21, which read as under :-

"18. Clause 70.4 of the Secondary School Code reads as under :-

"70.4 Part-time employees and those working in Night High Schools are not eligible either to the Provident Fund Scheme or to Pension Scheme."

Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981, reads as

under :-

"19. An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after the 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above-mentioned respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools."

19. Considering these provisions and the earlier directions of this Court in the above referred Judgments, we find that once a Part Time Librarian becomes a Full time Librarian, he qualifies for pension by taking into account his tenure of employment which would include Part Time employment to the extent of 50 % portion of the tenure. In these peculiar facts, we are inclined to accept the submission of the petitioners that such relief has already been granted to identically placed colleague employees of the petitioners and the State Government has neither filed a review petitioner nor have challenged the same before the Hon'ble Supreme Court.

*20. It needs mention that our conclusion is based on the reliefs granted by the earlier Benches in the cases in **Ganesh Narhar Chavan** (Supra) and **Punjabhari Baburao Dighe** (Supra). In the event, such a specific issue crops up in any proceeding, the same can be dealt with as regards the interpretation of the above reproduced provisions in the light of the Judgment.*

*21. In view of the above, these petitions are partly allowed in terms of the benefits granted in the operative part of the orders in **Ganesh Narhar Chavan** (Supra) and in **Punjabhari Baburao Dighe** (Supra). We would add the following directions to the above :-*

*(A) The State of Maharashtra would verify the case of each petitioner before us in the light of their service conditions and tenure of employment and upon confirming that they are entitled for the benefits in the light of the directions set out in **Ganesh Narhar Chavan** (Supra) and in **Punjabhari Baburao Dighe** (Supra), would proceed to extend*

such benefits to them as expeditiously as possible and preferably on or before 31/03/2023.

(B) In cases where the State of Maharashtra comes to a conclusion that a particular petitioner is not entitled for the benefits, a reasoned order would be passed and the said order would be communicated to the concerned petitioner within a period of 30 days, on the last known address or on the address mentioned in the memo of the petition.

(C) Such aggrieved petitioners would be at liberty to assail the said order by resorting to a remedy as is permissible in Law.

*(D) Akin to the orders passed by this Court at the Nagpur Bench and in **Punjabari Baburao Dighe** (Supra), none of these petitioners would be entitled for the arrears of difference of wages.*

*(E) Since it has been granted in **Ganesh Narhar Chavan** (Supra) and in **Punjabari Baburao Dighe** (Supra), the State is required to compute 50 % of the service rendered as a Part Time Librarian along with the period of 100 % service rendered as full time Librarian, for the purposes of computing pensionable service."*

7. By applying the above directions to the case of the petitioner, this petition is disposed off.

8. Let the competent authority abide by the directions set out in **Ganesh Narhar Chavan & Others vs. The State of Maharashtra & Others**, in writ petition no. 14935 of 2017, decided on 11.03.2022, judgment dated 06.05.2022 in writ petition no.12902 of 2018 filed by **Punjabari Baburao Dighe and others Vs. The State of Maharashtra** and the directions reproduced in paragraph nos.21(A) to (E) as above.

9. Let this exercise of verification be completed within 90 days. Thereafter, if the Petitioner widow is entitled for pension, such

pensionary benefits would be granted within 60 days and arrears of pension would also be paid.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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