

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8892 OF 2021

Dilip Vitthalrao Vedpathak,
age 57 years, Occ. Service,
R/o. c/o. Shri Dnyaneshwar Vidyalaya,
Turori, Taluka Omerga,
Dist. Osmanabad.

Petitioner.

VERSUS

1. The State of Maharashtra,
through the Department of
School Education and Sport
and Finance Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parisad, Osmanabad.
3. Dnyandeep Shikshan Sanstha,
Turori, Taluka Omerga,
District Osmanabad.
Through it's Secretary.
4. Shri Dnyaneshwar Vidyalaya,
Turori, Taluka Omerga,
District Osmanabad
through it's Head Master.

Respondents

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Mr. S.S. Jadhavar, Advocate for petitioner
Mr. P.K. Lakhotiya, AGP for respondent Nos.1 and 2.

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**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.
DATE : 8 JUNE, 2023**

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JUDGMENT :- (S.G. CHAPALGAONKAR, J.)

1. Rule. Heard finally with consent of the parties.

2. The petitioner approached this Court under Article 226 of the Constitution of India with following prayers :-

“B. By issuing writ of mandamus or any other appropriate writ, order or direction, it may kindly be held and declared that, the petitioner is entitled for pension scheme as was in existence prior to the Government Resolution dated 31.10.2005,

C. By issuing writ of mandamus or any other appropriate writ, order or direction, the respondents may kindly be directed to start deduction of contribution towards provident fund from the salary of petitioner.”

3. The petitioner contends that on 10.6.1995 he was appointed on the post of ‘Part time Librarian’ with respondent no.4-School, which is receiving 100% grant-in-aid from the State Government. His appointment was duly approved by the respondent no.2/Education Officer (Secondary), Zilla Parishad, Osmanabad. According to the petitioner, his initial appointment was on probation basis and after completion of probation period, it was approved on permanent basis with continuity of service vide order dated 30.10.1998.

4. On 28.6.1994 based on the report submitted by Chiplunkar Committee, the additional non-teaching posts were sanctioned. If the strength of students was more than 1000 and up to 2000, one full time post of Librarian was made admissible. According to the petitioner, since the date of his initial appointment, respondent no.4 School was having the strength of more than 1000 students in each of the academic year. As such, post of the Librarian ought to have been sanctioned as full time Librarian by the respondent nos.1 and 2, however, no specific order to that effect was passed and the petitioner was continued as part time Librarian.

5. Petitioner further contend that in the year 2006, status of the petitioner was upgraded as a 'Full Time Librarian', however, he was issued fresh appointment order dated 26.12.2006. According to the petitioner, his appointment as a Librarian ought to have been treated as prior to 1.11.2005 and the benefit of pension scheme as was in existence prior to Government Resolution dated 31.10.2005 ought to have been conferred on him.

6. Mr. S.S. Jadhavar, learned advocate appearing for the petitioner would submit that issue is no more res-integra. This Court in Writ Petition no.4258 of 2016 in the matter of Chandrakant Namdev Gund Vs. The State of Maharashtra and others considered plight of similarly situated employees and directed to confer benefit of old pension scheme by taking their initial date of appointment as part time Librarian as basis for applicability of the pension scheme. Mr. Jadhavar, learned advocate places his reliance on a judgment dated 24.08.2022 delivered by this Court in Writ Petition No.9542 of 2021 in case of Anil Popat Chobhe Vs. The State of Maharashtra and others to contend that even considering the note 1 to Rule 57 of the Maharashtra Civil Services (Pension) Rules of 1982, the employee paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service has to be allowed to count for pension. In that view of the matter, part time service rendered by the petitioner from the date of his initial appointment till full time appointment in the year 2006 has to be considered and benefit of the old pension scheme needs to be accorded to the petitioner.

7. Mr. P.K. Lakhotiya, learned AGP appearing for the respondents placing reliance on judgment of this Court dated 31.3.2015 in case of Satish Ganpatrao Patil Vs. The State of Maharashtra and others in Writ Petition No.2311 of 2013 would

submit that appointment of the petitioner in terms of clause nos.3 and 4 of the Government Resolution dated 3.8.2006 will have to be treated as fresh appointment and services of the petitioner would be governed by the “Defined Contribution Pension Scheme” introduced by the Government Resolution dated 31.10.2005 which is made applicable to the employees appointed on or after 1.11.2005.

8. We have considered the submissions advanced by the learned advocates appearing for respective parties. With their assistance we have perused the record. The parties are *ad-idem* as regards the factual aspects. The contentious issue canvassed before us is, as to whether the date of initial appointment of the petitioner as a part time Librarian can be taken as basis for application of old pension scheme, or date of fresh full time appointment of the petitioner under scheme floated for absorption as a full time librarian is relevant. In our considered view, the issue is no more res-integra and is covered by the judicial pronouncement of this Court in a group of writ petitions along with writ petition no.14935 of 2017 in the matter of **Ganesh Narhari Chavan and others Vs. State of Maharashtra**, as well as in writ petition no.12902 of 2018 in case of **Punjhari Baburao Dighe and others Vs. The State of Maharashtra and others** dated 6.5.2022. Further this Court in the group of writ petitions along with writ petition no.2074 of 2020 in the matter of **Raju Kishanrao Pawar Vs. The State of Maharashtra and others** elaborately discussed the legal position arising out of inconsistent opinion expressed in case of Satish Ganpatrao Patil (*supra*) vis-a-vis Ganesh Chavan (*supra*) and Punjahari Baburao Dighe (*supra*) and observed in paragraph nos.13 to 16 as under :-

“13. We find that the State of Maharashtra has neither challenged ***Ganesh Narhar Chavan (Supra)*** nor ***Punjahari Baburao Dighe (Supra)***, before the Hon'ble Supreme Court, nor Review Petitions are filed.

14. The law must be settled at some point in time in a long journey of litigation involving hundreds of employees. Uncertainty cannot persist in the backdrop of a series of Judgments which have consistently taken a particular view. If the State is of the opinion that its contentions or the actual effect of Clause 3 and 4 of the GR dated 03/08/2006, has not been considered in ***Ganesh Narhar Chavan (Supra)*** and ***Punjabari Baburao Dighe (Supra)*** and that, the view taken in ***Satish Ganpatrao Patil (Supra)*** was binding in the above two cases, the remedy for the State Government lies either by taking those matters to the Hon'ble Supreme Court or by filing review petitions. Judicial discipline requires that a consistent view taken for a long period of time in similar set of facts, by co-ordinate Benches, should not normally be disturbed. Many of the petitioners who were before this Court in the earlier cases and in cases of ***Ganesh Narhar Chavan (Supra)***, ***Punjabari Baburao Dighe (Supra)*** etc. and in the present group of cases, have retired. Certain benefits have been granted to them by the earlier Judgments of this Court. Just because a different view is possible in the backdrop of the submissions advanced for the first time by the learned AGP, reproduced herein above, would not mean that the benefits already granted to such petitioners, should be either withdrawn or should be again subjected to scrutiny. A 'quietus' after such a long journey of litigation, needs to be rendered in these matters.

15. In view of the above, the benefits granted to the petitioners in ***Ganesh Narhar Chavan (Supra)*** and in ***Punjabari Baburao Dighe (Supra)***, need to be granted in these matters as well. However, the prerogative of the State of Maharashtra in scrutinizing and verifying the facts in each case in the light of the Law pronounced by this Court in the earlier Judicial pronouncements, cannot be placed under an embargo and the authorities, therefore, have to be left at liberty to scrutinize and verify each case and, thereafter, grant benefits to them. In the event the State/authorities come to a conclusion that particular petitioners are not entitled for certain benefits, they are at liberty to pass reasoned orders in each of such cases and such orders shall be communicated to such petitioners within a period of 30 days from the date of the passing of the adverse orders so as to enable them to seek redressal of their grievance by availing such legal remedies as would be permissible in law."

16. The learned AGP submits that the State would take a call as regards, either filing a review in ***Ganesh Narhar Chavan (Supra)*** and ***Punjabari Baburao Dighe (Supra)*** or assail the said Judgments before the Hon'ble Supreme Court."

9. Considering the aforesaid authoritative pronouncement of this Court, we have no hesitation to hold that once part time librarian becomes a full-time librarian, he qualifies for pension by considering his tenure which would include part time employment to the extent of 50% of the tenure. Hence, we are inclined to accept submissions of the petitioner that he is entitled to the relief as prayed since already identically placed employees are extended the benefit by the State Government by following the law laid down by this Court in the case of Ganesh Narhar Chavan (WP 14935 of 2017) and Punjahari Baburao Dighe (WP 12902/2018) (supra). Hence, we proceed to pass the following order.

ORDER

1. The Writ Petition is allowed.
2. We hold and declare that the petitioner would be governed by the Pension Scheme as was in existence prior to the Government Resolution dated 31.10.2005 and direct the Respondents to accord the benefits to the petitioner considering his initial date of appointment in the service on part time post of Librarian. However, only 50% of service rendered by him on part-time basis would be counted towards qualifying service for pension. The petitioner would accordingly be entitle to get the consequential benefits.
3. Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE