



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11054 OF 2019

Sudhakar s/o. Nivruttrao Kadam
Age: 60 yrs. Occu. Retired
R/o. Parli Vaijnath, Tal. Parli Vaijnath,
Dist. Beed.

... PETITIONER

V/s.

1. The State of Maharashtra
Through the Secretary Social
Welfare Officer, Maharashtra State,
Mantralaya, Mumbai-32.
2. The Chief Accountant General Nagpur,
Dist. Nagpur
3. The Social Welfare Officer Grade I
Zilla Parishad Beed.
4. The Head Master Residential
Dumb and Deaf Vidyalaya
Sangam Road, Parli Vaijinath
Tal. Parli Vaijinath Dist. Beed.
5. Pradhnyaniketan Shikshan Sanstha
Degloor, Tal. Degloor
Dist. Nanded
Through its Secretary.
R/o c/o Head master
Nivasi Mukh Badhir Vidyalay,
Udgir, Tq. Udgir, Dist. Latur.

... RESPONDENTS

...
Mr. N.L. Jadhav, Advocate for the Petitioner
Mr. P.K. Lakhotiya, AGP for Respondent-State
Mr. P.D. Suryawanshi, Advocate for Respondent No.3
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.

DATE : 18th December, 2023

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. The Petitioner is an employee of the Deaf and Dumb School operated by the Social Welfare Department. Permission to run the school on unaided basis was granted on 13.07.1990. The Petitioner was appointed as an Art Teacher on 'no grants' basis on 11.10.1993 and on 28.05.1995, the School was extended grants in aid. On 13.08.2014, the Petitioner was relieved from service after opting for a voluntary retirement.
3. The question is as to whether the service of the Petitioner on no-grant in aid basis from 11.10.1993 to 28.04.1995 can be reckoned with for the purpose of concluding that his service is pensionable. It is undisputed that 20 years of service is the qualifying service for pension.
4. Reliance is placed on the judgment delivered by this Court at Principal Seat on 03.07.2018 in **Writ Petition No.1166/2018 (Shekhar P Deshmukh V/s. The Deputy Director Education and Ors.)**. However, the issue of the Petitioner working on no grant basis was not addressed to the Court

since that was not an issue in the proceedings. There is no contention that the service of the Petitioner **Shekhar (supra)** w.e.f. 30.11.1998 was on 'no grant basis'. In Writ Petition No.2185/2000 decided by this Court at the Principal Seat, by judgment dated 25.02.2014, also did not involve a case of a Petitioner working initially on no grant basis.

5. In **Homraj Hansaram Bisen and Ors. V/s. State of Maharashtra and Ors.; 2013 2 Mh.L.J. 401**, the issue was as to whether the Petitioners were working on 100% grant in aid prior to the cut-off date 01.11.2005. This case also did not involve an issue as like the present case before us. In **Deshmukh Dilipkumar Bhagwan and Ors. V/s. State of Maharashtra and Ors.; 2019 (3) Mh.L.J. 903**, the Full Bench of this Court was required to deal with an issue under Rule 19 of the M.E.PS. Rules 1981 as to whether the Petitioners were working on 100% grant in aid prior to 01.11.2005, so as to be eligible for the Old Pension scheme.

6. It is undisputed that if the 20 years from the date of reference i.e. the date of relieving of the Petitioner on 13.08.2014, are to be calculated, the period from 13.08.1994 would be the date from which the service will have to be reckoned with. It is also undisputed that the Petitioner joined service on 11.10.1993 as an Art Teacher when the school was on no grant in aid basis.

The grants in aid were received from 28.04.1995. To take care of such employees, the School Education and Sports Department, Government of Maharashtra issued a circular dated 08.04.2008 and has provided in Clause 1-B, 2 and 3 as under:

“ (ब) काही मान्यताप्राप्त अशासकीय विनाअनुदानित माध्यमिक शाळा सुरुवातीस काही ठराविक वर्षांपर्यंत शासनाच्या अनुदानाच्या उपलब्धतेअभावी विनाअनुदानित संवर्गात राहतात व कालांतराने अनुदानावर येतात. अशा शाळेतील सेवा असेल तर अशा शिक्षकांनी संबंधित विनाअनुदानित मान्य अशासकीय माध्यमिक शाळेच्या व्यवस्थापनाने त्याच्या अंशदायी भविष्य निर्वाह निधीच्या खात्यात जमा केलेली रक्कम त्यावरील व्याजासहीत शासकीय कोषागारात जमा कराची, परंतु व्यवस्थापनाने अंशदायी भविष्य निर्वाह निधी सुरुच केला नसेल तर शासन निर्णय, शिक्षण, क्रीडा समाज कल्याण विभाग, क्रमांक एसएसएन १९६९-जी, दिनांक २ मार्च, १९७१ अन्वये स्पष्टीकरण केल्याप्रमाणे अशासकीय माध्यमिक शाळेत केलेली सेवा कालावधीत अंशदायी भविष्य निर्वाह निधी भरण्याच्या अटी शिवाय अशी सेवा निवृत्ती वेतनासाठी ग्राह्य धरावी.

2. शासनाने वरीलप्रमाणे स्वयंस्पष्ट आदेश असतानाही शामन मान्य अशासकीय निअनुदानित परंतु कालांतराने अनुदानावर आलेल्या शाळातील शिक्षकांची निवृत्तीवेतन प्रकरणे मान्य करताना विनाअनुदानित कालावधीतील सेवेच्या कालावधीचे अंशदायी भविष्य निधीची रक्कम व्याजासह कोषागारात भरण्याची सक्ती केली जात आहे. असे शिक्षक लोक प्रतिनिधींनी शासनाच्या निदर्शनास आणले आहे.

३. शिक्षण, क्रीडा व समाज कल्याण विभाग, क्रमांक एसएसएन १९७१-जी, दिनांक १४ फेब्रुवारी, १९७२ या शासन निर्णयतील आदेश लक्षात घेता असे स्पष्ट करण्यात येते की, मान्य शासकीय विनाअनुदानित माध्यमिक शाळा कालांतराने अनुदानावर आलेल्या आहेत अशा शाळामध्ये विनाअनुदानित कालावधीत केलेली सेवा निवृत्ती वेतनासाठी ग्राह्य धरण्याचे व सदर कालावधीचे अंशदायी भविष्य निर्वाह निधी वर्गणी जर व्यवस्थापनाने शिक्षकाच्या खात्यात जमा केली असेल तर अशा शिक्षकांनी सदर रक्कम व्याजासहित शासकीय कोषागारात जमा करावी परंतु व्यवस्थापनाने अंशदायी भविष्य निर्वाह निधी सुरुच केला नसेल तर अशी रक्कम संबंधीत शिक्षकाकडून वसूल करण्यात येऊ नये.”

7. It is, therefore, obvious from the GR that the service put in by the employee prior to the school receiving grant in aid has to be considered while reckoning the qualifying service period. Issue as regards whether the Management was deducting contribution towards the pension prior to 01.11.2005, was also dealt with and in an extreme case where the school did not even open the pension account or did not deduct contribution towards the pension prior to receiving grants, the Government provided that if the contributions were made, they should be added to the Petitioner's account for pension purposes. But, if no such contribution was made, the amount should not be recovered from the employee.

8. In the judgment of the learned Full Bench in **Deshmukh Dilipkumar Bhagwan** (supra), it was observed in paragraph 32, 33 and 34 as under:

“32. Rule 19 of the Rules of 1981 only recognizes the right of employees of the aided schools and colleges to receive pension at the rates and in accordance with the rules as sanctioned by the Government to the employees of such schools. Under GR dated 31.10.2005, the Government replaced the existing pension scheme by the DCP scheme which would be applicable to certain class of employees. Rule 19 of the Rules of 1981 does not prescribe any specific pension scheme, it only refers to payment of pension at the rates and in accordance with the rules as sanctioned by the Government. The DCP scheme which replaced the existing pension scheme would also be in consonance with Rule 19 of the Rules of 1981. As per this rule, it was within the powers of the Government to prescribe the rates and the rules in accordance with which the employees would be eligible to receive pension. The contention of the learned counsel for the petitioners, therefore, that the DCP scheme could not have been implemented without amending Rule 19 of the Rules of 1981 cannot be accepted.

33. It is true that the relevant rules under grant-in-aid code refer to an aided school and does not make a distinction between a partially or fully aided school. Nevertheless, the liability of the Government to pay pensionary benefits to a retired employee of a private school can arise only if the Government has undertaken to pay 100% grant to the school. As noted, very concept of expecting the Government to pay such pension even in a case where the Government has so far not undertaken the liability to pay 100% grant is abhorrent to the basic principle of service law.

34. It is true that the service put in by an employee of a recognized private school during the time when such school was not receiving grant, would also count towards the qualifying service for pension when such employee retires from a school which receives grant. This was also the context of G.R. dated 8.4.2018 noted earlier. This, however, would not mean that the employee appointed in a

school can claim to be governed by the pension scheme till the school starts receiving 100% grant.”

[The GR is dated 08.04.2008 (wrongly typed as 08.04.2018 in paragraph 34)].

9. It is thus obvious that service put in by an employee in a school which was without grants initially, but was 100% grant in aid prior to 01.11.2005 and he retired from service thereafter, can be considered for pension, meaning thereby that the short period of working when the school was without grants, will have to be reckoned with for the purposes of deciding qualifying service.

10. In Writ Petition No.8990/2021 (Smt. Manasi Sudhir Mane @ Aruna Yashwant Patil V/s. The State of Maharashtra and Ors.) along with other matters, decided by judgment dated 11.04.2022, it has been observed in paragraph 8 as under:

“8. In the case of Nilesh s/o Namdev Gurav (supra) after considering all these cases, this Court has held that the Government Resolution dated 31st October, 2005 and in particular Clause 4 thereof lays down that it is only those employees who are recruited on or after 1st November, 2005 in the services of the recognized aided educational institutions who would be governed by the new pension scheme i.e. DCP Scheme. It is further held that those employees appointed prior to 1st November, 2005 in aided educational institution and receiving 100% grant-in-aid prior to 1 November, 2005 shall be governed by the old pension scheme. It is further held that those employees, who were appointed prior to 1 November, 2005 and occupied a part time fully aided post receiving 100% grant-in-aid from the State Government, would be governed by the old pension scheme. It is also held, relying upon the decision in the case of Shri. Purushottam Harishchandra Sirsekar ¹, that if school employee is appointed on a post which is a

sanctioned aided post on part time basis, he would be governed by the old pension scheme. This Court further held that if school employee had been appointed prior to 1" November, 2005 on un-aided post but the school has been receiving 100% aid since prior to 1" November, 2005, even such employee would be qualified as per the Government Resolution dated 19th July, 2011 to get the benefits of the old pension scheme."

11. As such, in **Purshottam Harishchandra Sirsekar and Anr. V/s. The State of Maharashtra and Ors.**, Writ Petition No. 2538/2021 (Principal Seat), it was held that if a school employee is appointed on a post prior to 01.11.2005 on an unaided post, but the school has been receiving 100% aid prior to 01.11.2005, even such employee would be qualified, as per the GR dated 19.07.2011, to get the benefits of the old pension scheme. The judgment of the learned Full Bench in **Smt. Manasi Sudhir Mane** (supra) and **Purshottam Harishchandra Sirsekar** (supra) clears all doubts that the period of service of an employee in an unaided school in which 100% grant in aid was received by the school prior to 01.11.2005 and the employee has retired when the school was on 100% grant in aid, even such employee would be eligible for pensionary benefits by reckoning his period of service when the school was without grant in aid.

12. In view of the above, **this petition is allowed in terms of prayer clause-D-1** which reads as under:

"D-1) By issuing writ of certiorari, writ of mandamus or appropriate writ impugned communication dated 3.8.2019 issued by the Social

Welfare officer, Zilla Parishad Beed may kindly be quashed and set aside and the District Social Welfare Officer, Zilla Parishad, Beed may kindly be directed to grant approval to the service rendered by the petitioner w.e.f. 11.10.1993 to 31.3.1994 on the post of Craft Teacher for the purpose of counting the said service for grant of pension and pensionary benefit to the petitioner and accordingly he may be directed to submit the same to the A.G Nagpur, within one month or as directed by this Hon'ble Court.”

13. In the light of the above, the prayer set out at clause-D-2 would not survive.
14. Rule is made absolute in the above terms.
15. As such, a fresh proposal for grant of pensionary benefits by reckoning the period of employment of the Petitioner as an Art Teacher from 11.10.1993 shall be forwarded. While computing completion of qualifying service of 20 years, the date of his retirement being 13.08.2014 shall be considered. Let such proposal be forwarded within 45 days from today by the Management. The Petitioner would cooperate with the Management in the completion of such papers / proposal. Thereafter, the concerned authority from the Social Welfare Department would forward the papers after scrutiny to the Accountant General at Nagpur within further 45 days so as to commence the payment of pension to the Petitioner w.e.f. from the date of his retirement.

16. The Accountant General to calculate the interest component as per the permissible statutory rates of interest per annum for the delayed payment of pension from the date of retirement of the Petitioner, until the amount is actually paid.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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