

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10643 OF 2017

Dilip Bhupal Kanwade (Since Deceased),]
Through his Heirs and Legal Representatives,]
1. Sunita Dilip Kanwade,]
Age : 55 years, Occ.: Household]
2. Pramod Dilip Kanwade,]
Age : 34 years, Occ.: Service]
3. Pankaj Dilip Kanwade,]
Age : 30 years, Occ.: Service]
All are residents of Amrutvel Niwas,]
Near Jain Temple, Datta Mandir Road,]
Shirol, Tal. Shirol, Dist. Kolhapur.] **.. Petitioners**

Versus

1. The State of Maharashtra,]
Through Secretary, Education & Sports Dept.,]
Mumbai – 400 032.]
2. Director of Education (Secondary) and]
Higher Secondary Shikshan Sanchanalaya,]
Maharashtra State, Pune.]
3. Divisional Deputy Director of Education,]
Kolhapur Division, Kolhapur.]
4. Education Officer (Secondary School Division),]
Zilla Parishad, Kolhapur.]
5. The Head Master,]
Sane Guruji Vidyalaya, Kurundwad,]
Tal. Shirol, Dist. Kolhapur.]
6. The President,]
Sane Guruji Shikshan Sanstha, Kurundwad,]
Tal. Shirol, Dist. Kolhapur.] **.. Respondents**

Mr. Nagesh Y. Chavan for the Petitioners.

Mr. K.S. Thorat for Respondent Nos.1 to 4.

**CORAM : A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ**

DATE : 19TH DECEMBER, 2023.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. RULE. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. The learned counsel for the petitioners to forthwith bring on record the legal heirs of the original petitioner, who expired on 10th March 2022. Permission in that regard has already been granted by the order dated 10th June 2022.

3. The original petitioner came to be appointed as part-time Librarian on 27th April 1995 with the 5th respondent – School that is being run by the 6th respondent – Public Trust. His part-time engagement continued till 31st March 2006. By an order dated 26th December 2006, his services were continued on a full time post with effect from April 2006. The original petitioner retired on attaining age of superannuation on 31st March 2016. Since the petitioner was not paid pensionary benefits, he had approached this Court in the present proceedings.

4. On hearing the learned counsel for the parties, we find that, undisputedly, the original petitioner discharged duties as Part Time Librarian from 27th April 1995 to 31st March 2006. In terms of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982, half of the service for the aforesaid period is required to be taken into consideration for determining qualifying service for entitlement to the pensionary benefits. Thereafter, from 1st April 2006, the petitioner was holding a full time post of Librarian till his superannuation. This period, from 1st April 2006 to 31st March 2016, is of ten years, which also entitles the original petitioner to grant of pensionary benefits. It is seen that though a request was made on behalf of the petitioners to submit the original petitioner's pension papers, the Head Master of respondent no.5 has not taken any steps till date.

5. We find that the entitlement of the original petitioner to receive pensionary benefits stands established in the light of the decision of this Court in *Smt. Darshana Adikrao Gaikwad Vs. State of Maharashtra and Ors.*, (Writ Petition No.5421 of 2017, decided on 9th July 2018). Hence, adopting similar reasons, the following order is passed :-

- (i) 50% of the part-time services from 27th April 1995 to 31st March 2006 and entire full time service from 1st April 2006 to 31st March 2016 shall be taken into consideration while computing the qualifying service of the original petitioner.

- (ii) The Head Master of the respondent no.5-School shall, within a period of three weeks of receiving copy of this judgment, forward the pension papers of the original petitioner to the 4th respondent – Education Officer (Secondary).
- (iii) The Education Officer (Secondary) shall, within a further period of four weeks of receiving the pensionary papers, take necessary steps to entitle the original petitioner to grant of pension as well as family pension to his legal heirs.
- (iv) The pensionary benefits shall be released to the legal heirs of the original petitioner within a further period of three months of the proposal being finalized.
- (v) In case the respondent no.5-School, where the original petitioner was serving, was receiving 100% grant-in-aid prior to 30th November 2005, the benefit of Old Pension Scheme shall be made applicable to the original petitioner.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

[FIRDOSH P. POONIWALLA, J.]

[A.S. CHANDURKAR, J.]