

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8796 OF 2022

Radhika Nandkishor Mote

....Petitioner

Vs.

The State of Maharashtra & Ors.

....Respondents

- Mr. C.G. Gavnekar a/w. Mr. Ashutosh Gavnekar & Mr. Rohit Parab, for the Petitioner.
- Mr. N.C. Walimbe, AGP for the Respondent-State.
- Mr. Chetan G. Patil, for Respondent Nos.5 and 6.

CORAM : SUNIL B. SHUKRE &  
FIRDOSH P. POONIWALLA, JJ

DATE : 3<sup>rd</sup> OCTOBER, 2023

ORAL JUDGMENT : {Per : Sunil B. Shukre, J.}

1. Hseard. Rule. Rule is made returnable forthwith, by consent of learned counsel for the parties.

2. Mr. Gavnekar, learned Senior Counsel for the petitioner submits that facts of the present case in their material particulars are identical to the facts in the case of *Shri Ashok Laxman Sasthe & Ors. Vs. State of Maharashtra & Ors.*, Writ Petition No.1669 of 2014, decided on 25<sup>th</sup> February, 2019, and therefore, this petitioner would also be entitled for consideration of her service rendered as Part Time Teacher for pensionary benefits by applying Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to the Rules, 1982).

3. Learned AGP submits that even though the facts insofar as they relate to service rendered by the petitioner as Part Time Teacher are concerned, there is no doubt about them being same, but what is important to know in the present case is the date on which the post the petitioner was rendering her service as Part Time Teacher became an aided post. He points out from the record that this date is of 05.07.1994. Therefore, according to the learned AGP, the petitioner should not be entitled to receive any benefits under Rule 57 of the Rules, 1982.

4. We are not inclined to accept the argument of learned AGP for the State for the reason that the question of pension or the reason being aided or not aided is not relevant for the purpose of calculating the partial service rendered by the Teacher, with a view to make a discrimination about eligibility of pensionary benefits in terms of Rule 57 of the Rules, 1982, and therefore, the argument is rejected. Otherwise, as stated earlier, facts of this case are similar to those involved in the case of Ashok Laxman Sasthe (*supra*), which itself relies upon the view taken by this Court in the case of *Jyoti Prakash Chougule Vs. State of Maharashtra & Ors., in Writ Petition No.2354 of 2012*. That being so, this petition deserves to be allowed and we do so.

5. We direct that the continuous part time service as a Teacher rendered by the petitioner shall be counted for the purpose of pension in terms of Rule 57 of the Rules, 1982 in particular Note 1 thereof, and accordingly, pensionary benefits shall be made available to the petitioner within a period of twelve weeks from the date of receipt of this order.

6. We also direct the respondents to transfer the amount contributed by the petitioner from DCPS scheme to Provident Fund Account (PF) within a period of twelve weeks from the date of receipt of this order.

7. Rule is made absolute in the above terms.

8. Writ Petition is disposed of accordingly.

[ FIRDOSH P. POONIWALLA, J. ]

[ SUNIL B. SHUKRE, J. ]