

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14899 OF 2022

Savita Bhikaji Barmukh
Age : 59 Years, Occ. Retired,
R/at: Vidya Sahkari Gruh Nirman Society
Talegaon Dabhade Tal – Maval
District Pune – 412307

Versus

1. State of Maharashtra
[Summons to be served on the Learned
Government Pleader appearing forth
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908]
 2. The Accountant General,
State of Maharashtra
 3. The Education Officer
(Secondary)
Pune Zilla Parishad, Pune
 4. Poona District Education Association Poona @
Pune Zilla Shikshan Mandal, Pune
Address: 48/1 A, Erandvana,
Poud Road, Pune-38
- Respondents

Mr.Rahul S.Kadam for the Petitioner
Mr.N.C.Walimbe, Addl. G.P. a/w Mr.K.S.Thorat for the Respondents –
State

**CORAM: A.S.CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ.**
RESERVED ON: 28TH NOVEMBER 2023
PRONOUNCED ON: 6TH DECEMBER 2023

JUDGMENT (PER : FIRDOSH P. POONIWALLA, J) :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this Petition, the Petitioner has challenged the Orders dated 12th November 2021 and 6th May 2022 passed by Respondent no.3 wherein it has been held that the Petitioner is not entitled for the pension benefit under the Maharashtra Civil Services (Pension) Rules, 1982, on the ground that the initial service of the Petitioner was Part Time.

3. The Petitioner was initially appointed as a 'Part Time Librarian' at New English School, Chandkhed, Tal-Maval, District Pune, run by Respondent No.4 on 15th October 1996. The said appointment of the Petitioner was approved by the then Education Officer (Secondary), Zilla Parishad, Pune by an Order dated 2nd January 1999.

4. Thereafter, on 30th March 2007, the Petitioner was transferred from the said New English School to Shri Shivaji Vidyalaya, Dehu Road, Taluka Haveli, District Pune as a Full Time Librarian w.e.f. 1st April 2007. The Transfer Order dated 30th March, 2007 was approved by the then Education Officer on 8th October 2007.

5. On 1st February 2019, the Petitioner was transferred to Pandit Nehru Vidyalaya, Kamshet, Taluka Maval, District Pune where she worked as a Full Time Librarian till 31st May 2020, when she retired due to

superannuation.

6. Thus, the Petitioner had worked as a Part Time Librarian from 15th October 1996 till 1st April 2007 i.e. for a period of ten years and five months and as a Full Time Librarian from 1st April 2007 till her retirement on 31st May 2020 i.e. for thirteen years.

7. It is the case of the Petitioner that, as per the Maharashtra Civil Services (Pension) Rules, 1982, for counting the services for pension benefit, half of the period of the Part Time service has to be treated as Full Time, and therefore the Petitioner's total service would be five years plus thirteen years i.e. eighteen years. It is also the case of the Petitioner that therefore she is clearly entitled to the pension benefits as per the Maharashtra Civil Services (Pension) Rules 1982.

8. Further, it is also the case of the Petitioner that, she being entitled for the said pension benefit, the Respondent no.4- Education Institution rightly forwarded the proposal for grant of the said pension benefit to Respondent no.3.

9. By Orders dated 12th November 2021 and 6th May 2022, Respondent no.3 held that the Petitioner was not entitled for the pension benefit under the Maharashtra Civil Services (Pension) Rules, 1982, on the ground that the initial service of the Petitioner was on a part time post.

10. The said reason given by Respondent no.3 cannot be sustained in the light of the settled law to the contrary. The settled position in law is that

the date of appointment on Part Time basis is required to be treated as the date of entry into service for the purpose of applicability of the pension scheme under the Maharashtra Civil Service (Pension) Rules, 1982, and that further, even in respect of part time employees, their part time services have to count towards qualifying service for pension, albeit only 50%. This settled position of law has been laid down in various judgments of this Court. However, in order not to burden this judgment, we would like to refer to the following judgments; (i) *Anil Popat Chobhe v. State of Maharashtra*¹ and (ii) *Pratibha Prakash Almast and Others vs. State of Maharashtra and Ors.*² which have been cited on behalf of the Petitioner, which uphold the aforesaid position in law.

11. In the aforesaid circumstances, and for the aforesaid reasons, the impugned Orders dated 12th November 2021 and 6th May 2022 are required to be set aside and necessary directions are required to be given to the Respondents.

12. Accordingly, we pass the following Orders:

- a. Orders dated 12th November 2021 and 6th May 2022 passed by Respondent no.3 are quashed and set aside.
- b. Respondent no.3 is ordered and directed to forward the pension proposal of the Petitioner to Respondent nos.1 and 2 for the grant of pension benefit under the Maharashtra Civil Services

1 (2022) SCC Online BOM 1726

2 (2023) SCC Online BOM 1262

(Pension) Rules, 1982, within a period of three weeks from the date of uploading of this Order.

c. Respondent nos.1 and 2 are directed to determine the entitlement of the Petitioner to pensionary benefits by taking into account 50% of the total part time service rendered alongwith the entire full time service rendered by him and thereafter, grant the Petitioner pensionary benefits in accordance with law within a period of eight weeks from the date of receipt of the proposal.

d. Rule is made absolute in the aforesaid terms.

e. Writ Petition is disposed of.

f. In the facts and circumstance of the case, there shall be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(A.S.CHANDURKAR, J.)