

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION (MCA) 445/2021
IN
WRIT PETITION 6971/2018 (D)

SMT. SHEELA W/O KISAN SIRSATH @ SHEELA D/O UTTAMRAO GAIGOLE
..VS..
THE STATE OF MAHARASHTRA AND ORS.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. B.G. Kulkarni, Advocate for the petitioner
Mr. S.M. Ukey, Addl. G.P. for respondents 1 to 3

CORAM : ROHIT B. DEO AND
M. W. CHANDWANI, J.J.

DATED : 11/07/2023

Heard.

2. Issue notice to the non-applicants/respondents.
3. Mr. S.M. Ukey, the learned Additional Government Pleader, waives notice on behalf of the non-applicants 1 to 3.
4. Considering the nature of relief, it is not necessary to issue notice to the respondent 4 – school.
5. With consent, the review application is finally heard. The review is sought of the judgment dated 10.12.2019 in Writ Petition 6971/2018.
6. We have already considered the judgment under review in extenso in the judgment dated 22.06.2023 in

Writ Petition 80/2020 (Smt. Pratibha Prakash Almast and ors. Vs. The State of Maharashtra through its Secretary and ors.) and have noticed that the judgment under review was rendered without noticing the statutory provisions.

7. We observed in paragraphs 20 to 24 in ***Writ Petition 80/2020 (Smt. Pratibha Prakash Almast)*** (supra), which read thus:-

*“20. In view of the authoritative decision in **Renuka Umredkar** (supra), the stand of the State Government that petitioner 1 is not entitled to pension since, her full-time appointment is after the relevant date, will have to be rejected. We shall be failing in our duty if we do not consider the judgment dated 10.12.2019 in **Writ Petition 6971/2018 (Smt. Sheela W/o. Kisan Sirsat Vs. State of Maharashtra)** to which one of us (Rohit B. Deo, J.) was a party, which is pressed in service on behalf of the State Government and is annexed to the affidavit in response.*

*21. In **Sheela Sirsat** (supra), after reproducing Rule 57(a) of the Pension Rules, the Co-ordinate Bench observed that since the petitioner was appointed as full-time Librarian, the services rendered by her as part-time Librarian cannot be considered for the purpose of qualifying service.*

*22. It cannot be gainsaid, that what is held by the Co-ordinate Bench in **Sheela Sirsat** (supra) is inconsistent with and contrary to the catena of the decisions rendered and which we have noted supra. We did give anxious consideration to the need of referring the issue to the Larger Bench. However, on a deeper*

examination, we find that it would not be necessary to make a reference, and we may briefly spell out our thinking process.

*23. Plain reading of the decision in **Sheela Sirsat** (supra), which is rendered on 10.12.2019, reveals that the said decision proceeds on the premise that part-time employment, and even portion thereof, cannot be counted for the purpose of qualifying service, in view of the provisions of Rule 57 of the Pension Rules. The attention of the Division Bench was neither invited to Note 1 to Rule 57 nor was the attention of the Division Bench invited to catena of the decisions which are rendered after considering the statutory provision holding the field.*

*24. The well entrenched position of law is that it is not the conclusion manifested in the judgment which is precedent, it is only the principle which is laid down in the judgment after considering the applicable statutory provisions and the submissions which may have been advanced, which has a precedential value as would bind the Co-ordinate Bench. With due respect to the Co-ordinate Bench, which rendered the decision in **Sheela Sirsat** (supra), we nurture no doubt that the said decision is not a precedent. In the teeth of authoritative pronouncement of the Co-ordinate Benches, there is no reason for us to mull a reference.”*

8. In this view of the matter, we allow the review application and restore Writ Petition 6971/2018 to file.

Writ Petition 6971/2018

Issue notice for final disposal to the respondents,

returnable on **02.08.2023**.

2. Mr. S.M. Ukey, the learned Additional Government Pleader, waives notice on behalf of the respondents 1 to 3.

3. Let the respondent 4 be served by Hamdast.

(M. W. CHANDWANI, J.)

(ROHIT B. DEO J.)