2024:BHC-AUG:6224-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

946 WRIT PETITION NO.3866 OF 2023

Mala Sreenivasan T.K.,
Age 63 yrs., Occ. Retired as Assistant Teacher,
R/o; C/o Shobha Arvind, 76, Jyoti,
Ruikar Colony, Gur Market Yard,
Kolhapur, Maharashtra.

… **Petitioner**

… **Versus** …

1 The State of Maharashtra,
Through it's Principal Secretary,
School Education Department,
Mantralaya, Mumbai - 32.

2 The Education Officer (Secondary),
Zilla Parishad, Aurangabad.

3 St. Francis De sales Education Society,
Through it's Secretary,
Jalna Road, Aurangabad.

4 The Head Master,
St. Francis De sales High School,
Jalna Road, Aurangabad.

… **Respondents**

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Mr. R.A. Joshi, Advocate for petitioner

Mr. P.S. Patil, AGP for respondent Nos.1 and 2

Respondent Nos.3 and 4 - served

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 13th MARCH, 2024

<u>**ORDER**</u> **: [PER : SMT. VIBHA KANKANWADI, J.]**

1 The petitioner seeks directions to hold and declare that she is entitled for pension as per Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "MCS (Pension) Rules") for rendering qualifying service of 25 years in respondent No.3 Educational Institute. The consequential prayers of directing respondent No.2 to forward the pension papers and to decide her representation has been prayed.

2 The factual matrix leading to the petition are that the petitioner came to be appointed as Assistant Teacher in Saint Xavier High School on non grant-in-aid post on 01.09.1992. She stood retired from the service on attainment of age of superannuation on 30.07.2017. Salary certificate has also been issued by the Head Master. The petitioner as well as one Smt. Chitra Kulkarni from the same school were transferred on administrative ground on 07.06.2006 to respondent No.4. The said school was recognized and aided. When proposal of seeking approval to their transfer was considered and sanctioned by respondent authorities from 25.01.2007, it was challenged in Writ Petition No.7284 of 2011. In fact, prior to that upon the

instructions by the Management they both had tendered resignation on 16.09.2006 and came to be immediately appointed on the aided post on 25.01.2007. The petition filed by the petitioner and said Smt. Chitra Kulkarni came to be partly allowed. In respect of prayer clause 'B' this Court declined the relief by stating that the grant-in-aid post was given to the petitioner on 07.06.2006 and the cut off date for the new pension scheme was 01.11.2005. Respondent No.4 had failed to take her contribution towards DCPS during the period from her appointment till she retired. Now, she is getting a very meagre amount as pension and, therefore, she has filed the present petition.

3 Affidavit-in-reply has been filed by Mr. Madhukar Dharmnath Avad, working as Superintendent, Pay and Provident Fund (Secondary), Chhatrapati Sambhajinagar on behalf of respondent No.2. He relies on the observations by this Court in the earlier writ petition and submitted that prayer in respect of opening of GPF account was already rejected by this Court. It was taken that the petitioner was appointed in the grant-in-aid post since 07.06.2006 which is beyond the cut off date for applicability of the new pension scheme i.e. on 01.11.2005. Taking into consideration the fact that the petitioner worked on the said post from grant-in-aid from 01.07.2006 to 30.07.2017, it is only 11 years and 29 days, whereas the qualifying service

for getting pension is 20 years. Therefore, petitioner is not eligible for any pensionary benefits.

4 Heard learned Advocate Mr. R.A. Joshi for petitioner and learned AGP Mr. P.S. Patil for respondent Nos.1 and 2.

5 Learned Advocate for the petitioner reiterating the same facts and taking us through the documents on record submitted that the proposal of the co-petitioner Smt. Chitra Kulkarni has been accepted and, therefore, petitioner cannot be singled out. The petitioner's service was in fact from 01.09.1992. In spite of serving for requisite years the petitioner is unable to get the benefits. Though the fresh appointment is shown from 01.07.2006 by the respondent Management; yet, neither the Defined Contributory Pension Scheme (DCPS) was made applicable to the petitioner nor the GPF Account was opened in her name.

6 At the outset, merely because co-petitioner is now getting some benefit, it cannot be made applicable to the petitioner unless there is entitlement. The petitioner cannot rely upon the Judgment passed by this Court in her matter earlier i.e. Writ Petition No.7284 of 2011 decided on 10.07.2015. This Court while concluding the said petition observed that - *there is no hesitation to conclude that the petitioners are continuously in*

service since the year 1992 till 07.06.2006 on non grant-in-aid post and from 07.06.2006 towards grant-in-aid post. Therefore, prayer clause 'A' was granted, however, as regards prayer clause 'B' which was in respect of opening of GPF Account it was observed that – *it cannot be considered Defined Contributory Pension Scheme (DCPS). The petitioner was brought on grant-in-aid post on 07.06.2006 and the cut off date is 01.11.2005. Up to 07.06.2006 petitioner was working on non grant-in-aid post.* This order passed by this Court was never then challenged by the petitioner before the Hon'ble Apex Court. This Court cannot sit as an Appellate Court to decide the same point again. Another fact to be noted is that said order in earlier petition was passed on 10.07.2015. The petitioner stood retired on 30.07.2017, but till 12.01.2023 she has not filed any representation or agitated her pension order. The present petition has been filed on 12.03.2023. The learned Advocate for the petitioner submitted that it can be presumed when no contribution has been taken or deducted from the petitioner towards her share in DCPS, then it can be presumed that, that amount has been received or abrogated to the petitioner. But then the Government should give its share to her. We do not accept the said submission for the simple reason that DCPS is not only for deducting the contribution plus adding contribution and then giving it to the employee concerned. The said scheme requires that the contribution deducted from the salary of the employee would then be invested by the Government and then at the time of retirement the benefit of the same to be given to the employee. Here, since the petitioner's salary was not deducted at all and at that time i.e. since 01.07.2006 till retirement on 30.07.2017 the petitioner never complained of about the non deduction of her salary, we cannot now say that the amount equivalent to the said amount should be treated as abrogated.

7 We do not find this to be a fit case where we should exercise our constitutional powers, when this Court at the time of deciding the earlier petition had refused to consider the case of the petitioner under old pension scheme. Writ Petition stands dismissed.

(S.G. CHAPALGAONKAR, J.) **(SMT. VIBHA KANKANWADI, J.)**

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