



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

915 WRIT PETITION NO. 10134 OF 2022

SUNIL MOTIRAM CHAUDHARY

VERSUS

**THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS**

...

AND

930 WRIT PETITION NO. 12700 OF 2023

RAMESH HARIBHAU SALVE AND OTHERS

VERSUS

**THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS**

...

Shri Vivek J. Dhage, Advocate for the Petitioners.

Shri S.K. Tambe, AGP for Respondent Nos.1 to 4/State.

...

CORAM : RAVINDRA V. GHUGE

&

Y. G. KHOBRAGADE, JJ.

DATE :- 13th June, 2024

Per Court :-

1. In the first Writ Petition No.10134/2022, the Petitioner was working as a part-time Librarian in the school run by Dnyanprakash Mandal, Hingone, Taluka Yawal, District Jalgaon.

2. In the second Writ Petition No.12700/2023,

Petitioner Nos.1 to 3 were working as part-time Librarians in the schools operated by Rayat Shikshan Sanstha and Petitioner No.4 was also working as part-time Librarian, but in the school operated by another Society, namely, Ahmednagar Zilha Maratha Vidya Prasarak Samaj, Ahmednagar.

3. It is undisputed that all these Petitioners joined as part time Librarians and retired from services on attaining the age of superannuation, as part-time Librarians. None of them was regularized as a full time Librarian.

4. We have considered the strenuous submissions of the learned Advocate for the Petitioners. He has also appeared for the Petitioners in Writ Petition No.7933/2021 (***Vijaysingh Ramsingh Patil vs. The State of Maharashtra and others***), Writ Petition No.12590/2021 (***Bhimrao Deochand Girade vs. The State of Maharashtra and others***) and in Writ Petition No.10423/2021 (***Chhotulal Jivan Patel vs. The State of Maharashtra and others***), which have been decided by the co-ordinate Bench of this Court, by the common judgment dated 19.08.2022. An identical issue was raised before the co-ordinate

Bench in **Vijaysingh Ramsingh Patil** (supra). The common issue that has been dealt with by the co-ordinate Bench, was recorded in paragraph No.2 as under:-

“The common issue that arises for our consideration in these three writ petitions is, whether part time librarians are entitled to the benefit of pension and other pensionary benefits?”.

5. Having considered the submissions of the learned Advocate for the Petitioners before us, who was also appearing for the Petitioners before the co-ordinate Bench in **Vijaysingh Ramsingh Patil** (supra), we have gone through the said judgment delivered in **Vijaysingh Ramsingh Patil** (supra), threadbare. After going through the said judgment, we noticed that all the contentions put forth by the learned Advocate before us and all the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (for short, “the MEPS Act”), the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, (for short, “the MEPS Rules”), the Maharashtra Civil Services (Pension) Rules, 1982, (for short, “the Pension Rules”) and the Secondary School Code as amended from time to time, which are cited

before us, were also cited before the co-ordinate Bench. The judgments cited by the learned Advocate for the Petitioners before the co-ordinate Bench in ***Vijaysingh Ramsingh Patil (supra)***, have also been cited before us.

6. We, therefore, called upon the learned Advocate for the Petitioners to state as to whether, any point canvased by him before us was not canvased before the co-ordinate Bench, which decided ***Vijaysingh Ramsingh Patil (supra)***. The learned Advocate has fairly stated that all the contentions advanced in ***Vijaysingh Ramsingh Patil (supra)***, have been advanced and repeated before this Court in these matters. He has also fairly stated that the case law cited by him before us was also cited before the said Court. He, however, tried to impress upon us that we should refer this matter to a Larger Bench.

7. Since we find that all the pleadings set out in the present petitions, the contentions of the learned Advocate for the Petitioners, the provisions of law and the reported judgments, were before the co-ordinate Bench which decided ***Vijaysingh Ramsingh Patil (supra)***, we do not find that there is any such

arguable point, which has been taken up before us by the learned Advocate and which was not canvased before the co-ordinate Bench in ***Vijaysingh Ramsingh Patil*** (supra). Moreover, the Division Bench hearing the matters after the co-ordinate Bench of equal strength has already delivered the judgment in identical cases, does not have the freedom to take a different view only because such a different view could be possible. If any provision of law or a reported judgment was not cited before the bench which has delivered a judgment or on facts, new material has been brought before this Court or which has been lost sight of by the co-ordinate Bench which earlier decided an identical issue, the said judgment could be looked at differently. Recently, the Honourable Supreme Court has held in ***Rajnish Kumar Rai vs. Union of India, AIR Online 2023 SC 1315***, that if a Court comes to the conclusion that a view taken earlier by a Bench of equal strength is *per incuriam*, the matter should be referred to the Chief Justice for constitution of a Larger Bench.

8. In the above backdrop, since the co-ordinate Bench, which decided ***Vijaysingh Ramsingh Patil*** (supra), has dealt with all the contentions of the Petitioners and considered the

various provisions of law and there is no such judgment delivered prior thereto which can be said to have not been cited before the Bench, which decided ***Vijaysingh Ramsingh Patil*** (supra), we do not find that it would be appropriate to take a different view.

9. In ***Sunil Subhash Ekhande vs. State of Maharashtra and others, AIR Online 2023 Bombay 1633***, the Division Bench of this Court at the Principal Seat, dealt with the case of part time Librarians, who were later regularized as full time Librarians and superannuated from employment, and has drawn a conclusion that the first judgment delivered by this Court [Coram : Mohit Shah, CJ and Ravindra V. Ghuge, J.] in ***Satish Ganpatrao Patil and others vs. State of Maharashtra and others, AIR Online 2015 Bombay 104***, lays down the correct position of law and the said decision has binding effect so far as the Government Resolution dated 03.08.2006 is concerned. While drawing such view, the said Bench came to a conclusion that the subsequent judgment delivered in the case of ***Ganesh Narhar Chavan and others vs. State of Maharashtra and others, AIR Online 2022 Bombay 1239***, does not lay down the

correct position of law. The said Court, which decided ***Sunil Subhash Ekhande (supra)***, drew a conclusion that the view taken in ***Satish Ganpatrao Patil (supra)***, could not have been ignored by the Bench which decided ***Ganesh Narhar Chavan (supra)***. However, since the benefits were already granted to those Petitioners in the judgments delivered on the basis of ***Ganesh Narhar Chavan (supra)***, the Court clarified that such benefits received by those Petitioners would not be disturbed.

10. In view of the above, since in an identical set of facts, this Court has already delivered the judgment in ***Vijaysingh Ramsingh Patil (supra)***, **both these Writ Petitions fail and stand dismissed.**

11. In the event the Petitioners approach the concerned Authorities for withdrawal of Provident Fund accumulations or similar such benefits which may be available, the dismissal of these two petitions would not be an impediment.