



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9054 OF 2023

Smt. Shakuntala Ambadasrao Deshpande @
Anagha Arun Dharmadhikari,
age 76 years, Occ. Retired,
R/o House No.5-4, Near Hanuman Mandir,
Holi Sarafa, Nanded,
Tq. & Dist. Nanded.

Petitioner

Versus

1. The State of Maharashtra,
Through it's Secretary,
Finance Department,
State of Maharashtra,
Mantralaya, Mumbai – 32.
2. The Secretary,
School Education and
Sports Department, Mantralaya,
Mumbai – 32.
3. The Accountant General,
India Audit and Accounts,
Department, Account and Entitlement-II,
Pension Wing, Old Building,
Post Box No.114, GPO,
Civil Lines, Nagpur
4. The Education Officer (Secondary),
Zilla Parishad, Nanded,
Dist. Nanded.
5. The Superintendent,
Pay and Provident Fund Unit,
Education Department, Nanded,
Dist. Nanded.
6. The Head Master,
Bharat Vidyalaya High School,

Shakti Nagar, Nanded, Tq. & Dist.
Nanded

Respondents.

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Mr. A.G. Ambetkar, advocate for petitioner.
Mr. P. S. Patil, AGP for Respondent Nos.1 to 5.
Mr. A.T. Kanawade, Advocate for Respondent No.6.

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

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Reserved on : 06th March, 2024.
Decided on : 15th March, 2024.

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JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

2. The Petitioner approached this Court under Article 226 of the Constitution of India, impugning communication dated 3.3.2005 issued by Respondent No.3, thereby declining pensionary benefits. The petitioner further prays for issuance of writ of mandamus against respondents to accord her pension by counting period of her part time service for qualified service, as admissible under Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension Rules), 1984 and release pension alongwith the arrears. The Petitioner also seeks directions against respondent no.6-School to submit her pension papers before respondent Authorities for grant of benefits as per old pension scheme.

3. The Petitioner contends that she was appointed as part time Librarian with 'Rashtriya Shikshan Samiti', Nanded vide appointment order dated 13.6.1990 by following due procedure of law. The School i.e. Bharat Vidyalaya, High School, Nanded was receiving grant-in-aid since 1967. The post of the Part time Librarian was also eligible for grant-in-aid. From 30.3.1998 the petitioner was approved as Full Time Librarian. She discharged her duties as full time Librarian till age of her superannuation i.e. 28.2.2005. By the time of her retirement, she had rendered total service of 14 years, 8 months and 19 days (7 years, 9 months and 16 days as part time and 6 years, 11 months and 3 days as full time). According to the petitioner, employees of Private School receiving grant-in-aid are governed by the provisions of Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977 (for short "Act of 1977") and lays down terms and conditions as regards to the salary, pay scale, seniority, promotion as well as pensionary benefits.

4. On retirement of the petitioner, respondent no.2-School had submitted her pension proposal, which was placed before respondent no.3, however, vide impugned order dated 3.3.2005 respondent no.3 returned/rejected the proposal, giving reason that part time service rendered by the Petitioner is not admissible for pension in terms of Rules of 1982. The petitioner submits that, inspite of several correspondence, her proposal was not considered favourably. However, respondent no.3 granted gratuity considering full time service of the petitioner vide order dated 3.1.2012. According to the

petitioner, if her part time service counted alongwith her full time service, she would be entitled to qualify for pensionary benefits. The impugned communication is based on incorrect reading of pension rules.

5. Respondent no.4 filed his affidavit-in-reply contending that the petitioner has completed 6 years, 9 months and 27 days service as full time Librarian and 3 years 10 months and 24 days service as a Part Time Librarian. Therefore, pension proposal was forwarded to Accountant General-II, at Nagpur which came to be rejected giving reason that part time service of the Petitioner during 13.6.1990 to 29.3.1998 cannot be counted for pension.

6. Respondent No.3 filed reply contending that rule 70.4 of Secondary School Code stipulates that part time employee would not be eligible for pension scheme. Therefore, part time service of the petitioner as a Librarian cannot be counted as pensionable service. Total qualifying service rendered by the Petitioner is less than ten years. Hence, she is not eligible for pension in terms of M.C.S. (Pension) Rules, 1982. The communication dated 3.3.2005 was issued to respondent no.4, asking him to satisfy the office of respondent no.3, on the point of admissibility of pension to the Petitioner and six reminders were given from time to time. However, compliance was not reported. The petitioner is already bestowed with service gratuity and terminal gratuity on 3.1.2012.

7. Mr. Ambetkar, learned advocate appearing for the Petitioner submits that the petitioner has rendered service on pensionable establishment, which was receiving grant-in-aid. Although, the petitioner had initially rendered her services as a part time librarian, she was brought on regular full time post. As such, she rendered approximately 7 years service as full time librarian. He would submit that Rule 57 of the M.C.S. Rules have been interpreted by this Court in case of **Shivappa s/o Bhujangappa Bembale Vs. State of Maharashtra and another reported in 2005 (3) Mh.L.J. 709**. In view of Note I and II of Rule 57, part time service rendered by the Petitioner can be counted for pensionary benefits. Mr. Ambetkar, further relies upon the Judgment of this Court in case of **Shalini w/o Asaram Akkarbote Vs. The State of Maharashtra through it's Secretary and others in Writ Petition no.8289 of 2013**, wherein the similar issue has been considered and decided in favour of the employee, thereby counting his part time service period alongwith full time service for counting service period required for releasing pensionary benefits. He would therefore submit that case of the petitioner is covered under various authoritative pronouncements from this Court.

8. Learned advocates appearing for the respondents submit that all the judgments relied upon by the petitioner are subsequent to the impugned order. Present petition is filed with huge delay and laches. The impugned order of 2005 is sought to be challenged in the year 2023. As such, on the ground of delay and laches, petition deserves to be dismissed.

9. We have considered the submissions advanced on behalf of the respective parties. We have perused record pressed into service before us. Admittedly, Petitioner was appointed as a 'Part Time Librarian' against clear and vacant post with Bharat Vidyalaya, High School, Nanded, which is receiving grant-in-aid. She rendered services as part time Librarian from 13.6.1990 till 29.3.1998. Thereafter, she was brought on full time post. In view of recommendations of the Chiplunkar Committee, the School received staff approval. One post of full time librarian was sanctioned from 1997-1998 onwards. Accordingly, petitioner came to be appointed as a full time librarian from 30.3.1998. The petitioner discharged her duties as a full time librarian till the date of her retirement. Her services as a full time librarian were approved in the pay scale of Rs.1200-2040 from the date of her appointment. The petitioner retired from service 28.2.2005. At the time of retirement, she had completed the consolidated service of 14 years 8 months and 90 days, out of which 7 years 9 months and 16 days was part time and 6 years 11 months and 3 days as a full time librarian. Her proposal for grant of Pension was submitted by the school, however, respondent no.3 - the Accountant General refused to grant pensionary benefit on the ground that part time service is not admissible for grant of pension. However, it was suggested that in case of any Government order, the proposal may be re-submitted. It appears that respondent no.6 filed another proposal, however, only benefit of the gratuity was sanctioned to the petitioner as against full time service rendered by her.

10. The issue that arises for consideration is as to whether part time service rendered by the petitioner can be counted for pensionable service. At this stage, reference can be given to the provisions of Rule 57 alongwith Notes appended thereto. Rule 57 of Maharashtra Civil Services (Pension), Rules 1982 alongwith Notes reads thus :-

“57. Non-pensionable service :-

As exceptions to rule 30, the following are not in pensionable service:-

- (a) Government servants who are paid for work done for Government but whose whole time is not retained for the public service,
- (b) Government servants who are not in receipt of pay but are remunerated by Honoraria,
- (c) Government servants who are paid from contingencies,
- (d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable.
- (e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.

Note 1 - In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.

Note 2- In the case of persons who were holding the posts of Attendants prior to 1st April 1966, one-half of their previous continuous service as Attendants, shall be allowed to count for pension.”

11. This Court in case of **Jayshree Narayan Mhaske Vs. State of Maharashtra & others and others reported in 2005 (6) Bom.C.R. 382 : 2005(3) Mh.L.J. 492** has interpreted the aforesaid provision and observed thus :-

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“There appears no specific provision under the Pension Rules which deals the cases of part-time employees. Present petitioner's husband was appointed in 1971 as a part-time class-IV worker and he was promoted and brought on regular establishment by order dated 28-6-1993. In view of this order of promotion, it can be inferred that he was holding a substantive post. If his case is viewed by this angle in view of Rule 20 as he was brought to a post for which these Pension Rules apply, his service shall be subject to pension rules. His past service rendered as part-time employee on substantive post needs to be taken into consideration in view of Note (1) of Rule 57 of the Pension Rules. The respondents admitted that he was on regular establishment from 28-6-1983 to 20-11-1990 and had completed total service of seven years, four months and twenty two days. Subsequently, he was retired compulsorily in 1993 and his absence was also regularized and two weeks' period was ordered to be treated as leave and remaining period should be treated as an unauthorized absence. He has rendered about twelve years of service as part-time employee on substantive post. One half of such service needs to be taken into consideration in view of Note (1) of Rule 57 of Pension Rules for the purpose of determination of qualifying service. By addition of such service with regular service, the total service will be more than thirteen years. So, deceased employee was entitled to receive pension as his qualifying service would have been more than ten years.”

12. Similar view is reiterated by this Court in case of **Shivappa s/o Bhujangappa Bembale Vs. State of Maharashtra and another** reported in 2005 (3) Mh.L.J. 709. Even reference can be given to the judgment of this Court in case of **Shalini w/o Asaram Akkarbote Vs. The State of Maharashtra and others** in Writ Petition No.8289 of 2013 decided on 29.4.2014. Pertinently, in that case, the petitioner was a part time librarian appointed in the year 1982 and she was brought on full time post w.e.f. 1.8.1997 and she retired from service on 30.4.2004.

This Court, after considering the law laid down in case of Jayashri Narayan Mhaske (supra) uphold the contention of the Petitioner that her part time service can be counted for pensionary benefit. Looking to the aforesaid authoritative pronouncement of this Court, we have no hesitation to hold that the petitioner's part time service can be considered in terms of Note I of Rule 57 of the Pension Rules, 1982 as a qualifying service.

13. So far as the contention raised on behalf of the Respondent regarding delay and laches, we find that although the impugned order is passed in 2005, petitioner's claim was not rejected at the threshold, but liberty was given to forward fresh proposal in case of any Government order that supports the claim of the petitioner. Even, subsequent proposal was moved by the Respondent-School, and the petitioner has been granted gratuity vide order dated 3.1.2013. As such, there is delay of almost 10 years in filing the present writ petition, however, we find that, entitlement of the petitioner to receive pensionary benefit has been endorsed in view of the legal position that has been clarified by the authoritative pronouncements of this Court. Since the petitioner is claiming the pensionary benefit, every default in non-payment of pension can be treated as recurring cause of action. At this stage, reference can be given to certain observations of the Supreme Court of India, particularly, in paragraph no.7 in case of **Union of India and others Vs. Tarsem Singh reported in (2008) 8 Supreme Court Cases 648**, which reads thus :-

"7. To summarize, normally, a belated service related claim will be rejected on the ground of delay and laches

(where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

14. In view of the aforesaid observations, though we are inclined to ignore delay in raising challenge to impugned order, we deem it fit to restrict grant of arrears of pension only for three years preceding the date of filing of the Writ Petition. Resultantly, we pass the following order.

ORDER

- i. The Writ Petition is partly allowed.
- ii. The impugned communication dated 3.3.2005 issued by respondent no.3 thereby refusing to grant pension and pensionary benefits to the petitioner is hereby quashed and set aside.
- iii. We hold and declare that the period of one half ($\frac{1}{2}$) of part time service rendered by the petitioner is eligible to be counted as qualifying

service in addition to the period of regular service in view of Note I of Rule 57 of Maharashtra Civil Services (Pension), Rules 1982 for the purpose of determination of qualifying service .

- iv. Since cumulative service period counts for more than Ten years, pension proposal of the petitioner shall be processed accordingly.
- v. Respondent no.6-School shall forthwith submit the fresh proposal in tune with the aforesaid order before respondent nos.4 and 5 for grant of pensionary benefits/old pension scheme, who shall take further steps to forward the proposal to respondent no.3 for passing the necessary orders.
- vi. Respondent no.3 is shall pass necessary orders on pension proposal of the petitioner in tune with the directions indicated here-in-above and direct release of pension as admissible within the period of Three (3) Months from the date of receipt of the proposal alongwith arrears w.e.f 20.7.2020 i.e. period of three years preceding the date of filing of this petition.
- vii. Writ Petition is accordingly disposed off. Rule is made absolute in above terms. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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