



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13031 OF 2023

Anita Bhagawat Narkhede alias
Anita Avinash Kolhe
Age: 53 years, Occu: Service
R/o Plot No.6, Madhukunj, Shakarwadi,
Ring Road, Dist. Jalgaon.

... PETITIONER

V/s.

1. The State of Maharashtra
Through its Secretary of Education,
Mantralaya, Mumbai.
2. Deputy Director of Education,
Nashik, Dist. Nashik.
3. Education Officer (Secondary)
Zilla Parishad, Jalgaon.
4. Leva Educational Union,
Jilha Road, Jilha Peth,
District Jalgaon
through its Secretary
5. Dr. Annasaheb G.D. Bendale Mahila College,
Jilha Road, Jilha Peth, Dist. Jalgaon
Through its Principal
6. Kaviyitri Bahinabai Chaudhary
North Maharashtra University
P.B. No.80, Umavi Nagar, Jalgaon
Through its Registrar.

... RESPONDENTS

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Ms. Nayana Patil h/f. Surekha Mahajan, *Advocate for the Petitioner*
Mr. S.B. Narwade, AGP for Respondent-State
Mr. S.R. Patil, *Advocate for Respondent Nos.3 & 4*

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**CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRADE, JJ.**
RESERVED ON : 18th January, 2024
PRONOUNCED ON : 5th February, 2024

JUDGMENT (Per: Y. G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. By this petition under Article 226 of the Constitution of India, the Petitioner prayed for issuance of Writ of Mandamus directing the Respondents to consider 6 years of part time service w.e.f. September 2001 to September 2007 while computing qualifying service for the pensionary benefits.
3. The learned advocate for the Petitioner submits that, the Petitioner has qualified B.Sc, MP.Ed and DCM. She was appointed as Shikshan Sevak (Physical Education) with the Respondent No.5 Junior College on part time basis w.e.f. 18.09.2001. Her appointment was duly approved by Respondent no.2 vide order dated 11.02.2002. She worked with the Respondent no. 5 for the period of 6 years w.e.f. 18-09-2001 to 18-09-2007 as a part time lecturer in Physical Education. Thereafter, she was appointed on full time Shikshan Sevak (Physical Education) w.e.f. 20.06.2007.

The Respondent No.2 Deputy Director of Education granted approval to the appointment of the petitioner on 06.11.2007. In the year 2007, she was granted senior pay scale. Then, she was appointed as a Director of Physical Education with Respondent No.5-College on 25.09.2013 on 100% grant-in-aid basis against the vacant post. On 03.01.2014, the Respondent No. 6 University granted approval for said appointment w.e.f. 29.11.2013.

4. The learned counsel for the petitioner submits that, the Petitioner worked as a Part Time Teacher with grant of approval of Respondent No.2 from year 2001 to 2007 and as a Full Time Teacher from 20.06.2007 till 2013 and presently working being a Director of Physical Education from the year 2013 and She would be retiring on 16.05.2029. Since, she has performed six years as a Part Time Teacher, therefore, said period needs to be considered while computing her pensionary benefits.

5. The learned advocate for the Petitioner submits that Rule 30 of Maharashtra Civil Services Rules provides commencement of Qualifying Service. Qualifying service of Government employee commences from the date from which the employee substantially or temporary capacity is appointed. Therefore, at the time of the retirement, the service rendered by the petitioner being part time teacher required to be considered.

6. To buttress her submissions the learned advocate for the Petitioner relied on the cases of **Chitralekha M. Naik V/s. State of Maharashtra & Ors.; (2022) 1 AIR Bom R 510**, and **Mahatma Phule Krishi Vidyapeet V/s. Ganpat Kisan Karle; 2016 (3) AIR Bom R 697**, Single Judge Bench of this Court, authored by one of us (Coram: Ravindra V. Ghuge, J.). Further he relied on an order dated 24.03.2023 passed in **Writ Petition No.9545/2022 (Vandana Lakhichand Borole V/s. The State of Maharashtra and Ors.)**.

7. Per contra Mr. S.B. Narwade, the learned AGP appearing for the Respondent Nos. 1 to 3 vehemently canvassed that, initially the petitioner was appointed with the Respondent No.5 on 18.09.2001 on part time basis, but said appointment was not approved by the Respondent No.2. Deputy Director of Education. Therefore, said period as a part time cannot be considered for the purpose of pensionary benefits under Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982, and hence, prayed for dismissal of the petition.

8. Adv. S. R. Patil, the learned counsel appearing for Respondent Nos. 4 & 5 submits that, after due permission of Respondent No.2, the selection procedure was followed and the Petitioner was appointed. The Petitioner joined as Shikshan Sevak on 18.09.2001. Respondent No.2 granted approval to the appointment of the Petitioner on 11.02.2002, on full time basis w.e.f.

20.06.2007 vide letter dated 06.11.2007. Therefore, she was continuously working since then, and hence, prayed for passing an appropriate order.

9. Needless to say that, the Petitioner was fully qualified for appointment being a Shikshan Sevak as she did B.Sc., MP.ED, DCM. No doubt, initially, she was appointed as a Shikshan Sevak (Physical Education) on part time basis w.e.f. 18.09.2001 and her service was duly approved by Respondent No. 2 on 11.02.2002. Subsequently, she was brought on half pay basis with continuity in service vide order dated 22.09.2006 issued by the Respondent No.2. It is not in dispute that, Respondent No.2 accorded approval to the appointment of the Petitioner on full time basis w.e.f 20.07.2007 vide letter dated 06.11.2017. Therefore, from the date of initial appointment, she is continuously discharging her duty. She served as a part time Assistant Teacher (Physical Education) for six years. However, She apprehends that, the Respondents may not consider her 6 years of part time service for the pensionary benefits at the time of her retirement.

10. Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 rules provides as under:

“30. Commencement of qualifying service Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:

[Provided further that, in cases where a temporary Government servant retires, on Superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of Superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.] Exception- The rules regarding grant of terminal benefits to temporary Government servants [except those mentioned in the second proviso] who retire without being confirmed in any post in Government service are embodied in Appendix II.

Note 1.- If a Government servant is holding a temporary post when the permanent post on which he holds a lien is abolished in the circumstances described in the rule 81, or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service.

Note 2.- In the case of the employees of former India States who have been absorbed in Government service previous pensionable service rendered by them under the same State should it immediately followed by Government service be taken into account for purposes of pension on his final retirement from Government service. Pensionable service rendered under different States should be taken into account for purposes of pension provided that the employees were transferred or sent on deputation from one State to another under a written agreement between the Governments of the States concerned.

The term "immediately" appearing in Note 2 above includes a break in service if it does not exceed six months, between the date on which the service was terminated and the date of his re-employment in service). The question whether the previous

service in Indian States in pensionable or not should be determined in accordance with these rules as if those rules were applicable to that service.”

11. In the case of **Chitralekha M. Naik, (supra)**, this Court has held that, 50% of the part time service rendered by the employees has to be taken into consideration along with the services rendered by the Petitioner as full time teacher, for grant of superannuation pension benefits.

12. In the case of **Mahatma Phule Krishi Vidyapeet, (supra)**, the Single Judge Bench of this Court considered various case law cited therein and observed in Para Nos.38 to 40 as under:

“38. A careful perusal of the second proviso to Rule 30 will indicate that it is with regard to the case of a temporary Government servant who retires on superannuation. So also, an employee being declared permanently incapacitated by the appropriate medical authority or an employee who has voluntarily retired from service is also held eligible for grant of superannuation, invalid or as the case may be, retiring pension, retirement gratuity and family pension at the same scale, as is admissible to a permanent Government servant. It is, therefore, provided by the said proviso that a temporary Government servant, who retired on superannuation and who has completed not less than ten years of service, obviously as a temporary employee, is also held entitled for retiring pension, retirement gratuity and family pension at the same scale as is admissible to a permanent Government servant. As such, in my view, Rule 30 is aimed at covering the cases of all such employees, who have been working temporarily for a period of atleast ten years, are held to have satisfied the definition of "Qualifying Service under Rule 30 and who are not covered by Rule 57.

39. In the light of the above, though I have come to a conclusion that the Industrial Court has erroneously relied upon Rule 110 while

allowing the complaint of the respondent, I am not inclined to remit the matter back to the Industrial Court since I have dealt with the said issue of pension in this judgment. So also, it would cause grave hardships and manifest inconvenience to the respondent - employee, who has retired from service on 30.11.2000, which is practically more than 15 years ago, to undergo the rigors of litigation again.

40. In the light of the above, the direction in Clause (3) of the operative part of the impugned judgment by which the petitioner was directed to pay pension as per Rule 110 of the 1982 Rules, stands modified with the direction to the petitioner to pay pension to the respondent - employee as he has fulfilled the requirement of Rule 30 of the 1982 Rules, as expeditiously as possible and preferably within a period of three months from today.”

13. The same issue has been followed subsequently in the order dated 24.03.2023 passed in Writ Petition No.9545/2022 and held that, the part time service which was approved by the Competent Authority can be considered to the extent of 50% to be added up with the regular service put in by an employee, so as to calculate qualifying service for the purposes of the retiral benefits.

14. Similarly, in the case in hand, the Petitioner rendered six years service as a part time teacher w.e.f. 18.09.2001 till 18.09.2007. Therefore, considering the Rule 30 of Maharashtra Civil Services (Pension) Rules, 1982 and the view taken in above cited case law, 50% of the service rendered by the Petitioner as part time teacher is required to be computed for the pensionary

benefits by adding it to the full time service (Assistant Teacher) w.e.f. 18.09.2007.

15. In view of the above discussion, **the petition is partly allowed**. The Respondents are hereby directed to consider 50% service rendered by the Petitioner as a part time teacher for the pensionary benefits. Accordingly, Rule is made partly absolute in the above terms.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]