

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3796 OF 2021

Babaso Ganpatil Awate ...Petitioner
Versus
The State of Maharashtra And Ors. ...Respondents

...
Mr. Narendra V. Bandiwadekar, Senior Advocate a/w Mr.
Rajendra B. Khaire, Mr. Aniket S. Phapale i/b. Mr. Vinayak R.
Kumbhar, Advocate for the Petitioner.

Ms. Ashwini A. Purav, AGP, for Respondent Nos.1, 2 and 6 –
State.

Dr. Vinod Joshi for Respondent No.5.

...

**CORAM : RAVINDRA V. GHUGE
&
M.M. SATHAYE, JJ.**

DATE :- 9th OCTOBER, 2024

Oral Judgment (Per : Ravindra V. Ghuge, J.) :-

1. **Rule.** Rule made returnable forthwith and heard
finally by the consent of the parties.

2. The Petitioner has put forth prayer clause 21(b) and
prayer clause 21(c), as under :-

“21.

(b) By a suitable writ, order or direction, this Hon’ble

Court be pleased to direct the Respondents to prepare and process the pension papers of the Petitioner having retired as a Full Time Assistant Teacher in Respondent No.4 College on 31.07.2015, by taking into considering not only the service in the post of Full Time Assistant Teacher from 20.06.2006 to 31.07.2015, but also 50% of service rendered prior thereto as Part Time Shikshan Sevak, and thereafter as a Part Time Teacher, and accordingly the Respondents be directed to pay the pension benefits to the Petitioner on the basis of such service together with arrears from 01.08.2015.

- (c) By a suitable writ, order or direction, this Hon'ble Court may be pleased to hold and declare that the Petitioner was and is entitled to receive pension benefits from the Respondents by taking into consideration the service rendered by the Petitioner as a Full Time Assistant Teacher in Respondent No.4 College from 20.06.2006 till 31.07.2015 and also the service rendered prior thereto as Part Time Shikshan Sevak and thereafter as Part Time Assistant Teacher, and accordingly the Respondents be directed to sanction and release the pension benefits to the Petitioner on the basis of service rendered by the Petitioner, and to pay the same w.e.f. 01.08.2015."

3. The Petitioner belongs to the Scheduled Caste Category and came to be appointed as a Part Time Shikshan Sevak with the Respondent No.4 – Junior College, on an aided post, on 18th July, 2002. By an order dated 6th September, 2005, delivered by the Deputy Director of Education, approval was granted to the engagement of the Petitioner as a Part Time

Shikshan Sevak. The Petitioner was subsequently granted the pay scale. On 20th June, 2006, the Petitioner came to be appointed as a Full Time Teacher with the sanctioned pay scale. On 31st July, 2015, the Petitioner superannuated at the age of 58 years.

4. The contention of the Petitioner is that he has put in 9 years and one month as a Full Time Teacher in 100% grant-in-aid Institution. As a Part Time employee, he had put in more than 4 years in service. The question that was raised, in these set of facts, by the office of the Accountant General was as to whether the Petitioner would be entitled for family pension as per the Old Pension Scheme.

5. In the above backdrop, the Petitioner approached this Court in Writ Petition No.8832 of 2015. By order dated 22nd July, 2016, this Court passed the following order:-

“1. Heard the learned Counsel appearing for the respective parties. There is no dispute that for the academic years 2002-2003, 2003-2004 and 2004-2005, the Petitioner worked as part-time Shikshan Sevak. There is also no dispute that for the academic year 2005-2006, the Petitioner worked as part-time teacher and with effect from 20th June 2006 till his superannuation on 31st July

2015, the Petitioner worked as full-time teacher with Respondent Nos.3 and 4. It is clear from the above facts that as a full-time teacher, the Petitioner has worked for continuous period of 9 years, 1 month and 5 days and as a part-time Shikshan Sevak and part-time teacher for 4 years. Admittedly, the qualifying service for pension is 10 years.

2. *The grievance of the Petitioner is that while considering the pensionary benefits to be extended to the Petitioner, the Respondents did not consider the services rendered by the Petitioner as a part-time shikshan sevak and teacher. This issue is squarely covered by the decision of this Court in Writ Petition No. 2354 of 2012 [Jyoti Prakash Chougule v. State of Maharashtra delivered on 7th January 2014]. In this decision, the Division Bench of this Court relying upon the provisions of Rule-30, Rule-57 Note-1 and Rule-110 Maharashtra Civil Services (Pension) Rules held that the Petitioner therein who is similarly situated is entitled to count 50% of the part-time services rendered by him as a teacher and a shikshan sevak. In the present case also, if 50% of the part-time services rendered by the Petitioner is taken into consideration along with services rendered by the Petitioner as full-time teacher, then, he is entitled to pensionary benefits. In the aforesaid circumstances, we dispose of this petition by directing Respondent Nos.3 and 4 to prepare and process pension papers of the Petitioner in the light of observations made herein above and submit the same to Respondent No. 2 – Dy. Director of Education. Respondent No. 2 in turn is directed to consider the case of the Petitioner and submit the same to Respondent No.5. Respondent No.5 is directed to consider the case of the Petitioner and take appropriate decision regarding the pension benefits to be extended to the*

Petitioner. Respondent No.5 shall take decision within two months from the date of receipt of proposal from Respondent No. 2.”

6. This Court has, therefore, specifically concluded in paragraph 1, that the Petitioner was working for 9 years, 1 month and 5 days, as a Full Time Teacher and had put in 4 years as a part-time Teacher. Reliance was placed on the judgment of this Court dated 7th January, 2014 delivered in Writ Petition No.2354 of 2012 (*Jyoti Prakash Chougule vs. State of Maharashtra & Ors.*).

7. In *Jyoti Prakash Chougule* (supra), this Court has recorded the fact that the Petitioner had put in eight years and seven months as a Full Time Assistant Teacher. She was declined pensionary benefits. This Court concluded that out of the total service of the Petitioner of 14 years and 15 days, 5 years, 5 months and 15 days, were as a Part Time Teacher. While referring to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (“MEPS” for short), it was recorded that if half of the part-time service of the Petitioner can be taken into account, she would be

completing 10 years of qualifying service and would be entitled for the pensionary benefits.

8. The Court relied upon a judgment in the case of ***Shivappa Bhujangappa Bembale Vs. State of Maharashtra & Anr.*** ***2005(3) Mh.L.J. 709***, more specifically, paragraph Nos.5, 6 and 7, which read as under:-

- “5. Relying on the above three provisions of Rule 30, Rule 57 Note 1 and Rule 110 of the Maharashtra Civil Services (Pension) Rules, Mr. Vivek Dhage, Advocate for petitioner, submits that present petitioner is entitled for pension as his part time service as Peon is approximately 20 years as he was appointed in the year 1970 and continued on the same post till 1990 and, thereafter, the Chief Executive Officer has taken him in regular cadre by giving appointment in the said cadre and he worked for three years. So, considering the Note 1 of Rule 57, his previous service is to be counted to the extent of 10 years as this period worked as part time Peon is about 20 years and in regular post he worked for three years. Thus, the total period of service of present petitioner comes to near about 13 years, however, the Zilla Parishad has completely ignored this aspect.
6. The only crux in the present matter as the Zilla Parishad authorities has rejected the claim of present petitioner relying on Note 2, however, considering the factual aspect from the present case as it is seen that the initial appointment order of the present petitioner as part time Peon is 24-7-1970; he continued as part time Peon till 10-7-

1990 and thereafter by order dated 6-7-1990 the petitioner was taken on regular cadre in the pay scale of Rs.750-12-870-DR-14-940 by the Chief Executive Officer, Zilla Parishad. The order passed by the Chief Executive Officer, Zilla Parishad is also on record and the very wording of the said order safely makes it clear that the persons who are working as part time and salary being paid from contingency, those persons are being taken on regular cadre in class-4 and being fixed in the pay scale of Rs. 750-12-870-DR-14-940. After going through the order dated 7-7-1990 it can be said that it is the fresh order giving regular employment to the petitioner, however, as he was already worked as part time Peon and being paid from contingency the services being regularised in the pay scale in class-4 servant. We have gone through the Note 1 and Note 2 of Rule 57 and we find that the Zilla Parishad has wrongly applied Note 2 in the present matter while rejecting the claim of the petitioner to grant pension, as in fact in the present case, Note 1 of Rule 57 is applicable. Therefore, we find that the claim as set up by the present petitioner that he is entitled for pensionary benefits, is definitely justified.

7. Mr. Dhage, Advocate, has made reference in respect of order passed in Writ Petition No.3472/1996 and in a same situation this Court in the said writ petition, has given direction to the respondents to consider the case of petitioner for pensionary benefits within a period of three months and also directed for payment of arrears. We have gone through the said order wherein a reliance is placed on Note 1 of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. Considering the factual aspects in the present case we also find that in the present case Note 1 of Rule 57 is applicable.”

9. It is, thus, apparent that this Court relied on Rule 30 and 31 of the Maharashtra Civil Services (Pension) Rules, 1982 and concluded that half of the part-time service of the Petitioner can be reckoned while calculating the total service put in by the Petitioner for the purposes of satisfying the period of qualifying service for receiving pensionary benefits.

10. The Petitioner has also relied upon the verdict of this Court delivered at Nagpur, dated 9th July, 2018 in Writ Petition No.5421 of 2017 (*Smt Darshana wd/o Adikrao Gaikwad Vs. The State of Maharashtra and Ors.*) and the judgment dated 11th March, 2020 delivered in Writ Petition No.3719 of 2019 (*Smt. Prema Narsinha Herkal Vs. The State of Maharashtra & Ors.*).

11. It cannot be ignored that the office of the Accountant General was a party to Writ Petition No.8832 of 2015, filed by the present Petitioner, wherein this Court concluded that half of the part-time service of the Petitioner can be reckoned for the purpose of calculating the qualifying service for pension. Having drawn a conclusion that the Petitioner would be entitled for

pensionary benefits after adding up half of his part-time service, this Court directed the Deputy Director of Education to consider the case and submit the proposal to Respondent No.5, which is the Office of the Accountant General. The Accountant General was directed to decide the proposal within two months in the light of the order of this Court, dated 22nd July, 2016.

12. The learned counsel representing the Office of the Accountant General, has vehemently opposed this Petition by relying upon the affidavit-in-reply filed by Shri Raju Ramnani, Senior Accounts Officer in the Office of Principal Accountant General (A&E)-I, Maharashtra State, Mumbai, dated 4th February, 2022. A host of factors have been canvassed in the pleadings. A stand is virtually taken that the Petitioner is not entitled for pensionary benefits, although it is an admitted position that the office of the Accountant General had not filed a Review Petition with reference to the order dated 22nd July, 2016 passed by this Court concluding that the Petitioner was entitled for pensionary benefits. Neither was a proceeding taken to the Hon'ble Supreme Court as against the said order. In these

circumstances, we are circumspect as regards the stand taken by the affiant in the affidavit-in-reply that the Petitioner would not be entitled for the pensionary benefits.

13. The Deputy Director of Education sent a communication dated 21st April 2020 to the office of the Accountant General, tendering a list of 28 documents. The learned AGP has pointed out the communication dated 31st May, 2021 addressed by the Deputy Director, Education, Kolhapur Division, Kolhapur to the office of the Accountant General.

14. This issue has been put to rest before us in the light of the statement of the learned counsel for the Accountant General, made on instructions, that within five days, the Petitioner would be granted the approval for releasing the pensionary benefits. We are, therefore, rendering a quietus to this issue.

15. The learned Advocate for the Petitioner has,

therefore, raised an issue of grant of interest on the delayed payment of pension /arrears of pension and the gratuity amount. He draws our attention to the Rules 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 (for short “M.C.S. (Pension) Rules”). For the sake of brevity, sub-rules (1), (2) and (3) of Rule 129-A and Rule 129-B of the M.C.S. (Pension) Rules, are reproduced hereunder :-

“129-A. Interest on delayed payment of gratuity.

(1) If the payment of gratuity has been authorised after three months from the date when its payment become due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the following rate on the amount of gratuity in respect of the period beyond three months shall be paid :-

- | | |
|---------------------------------------|----------------|
| (i) beyond 3 months and upto one year | 7% per annum. |
| (ii) beyond one year | 10% per annum. |

Provided that no interest shall be payable if the delay in payment of gratuity was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter:

Provided further that no interest shall be payable in the case in which a provisional gratuity is sanctioned.

(2) On an application made by the pensioner the

concerned Administrative Department in Mantralaya shall consider the request for payment of interest and where the Department is satisfied that the delay in the payment of gratuity was caused on account of administrative lapse, that Department shall make a recommendation to the Finance Department for the payment of interest.

- (3) *If the recommendation of the Department made under sub-rule (2) is accepted by the Finance Department, the Department concerned shall issue Government sanction for the payment of interest.*

129-B. Interest on delayed payment of Pension.

- (1) *If the payment of pension has been authorised after six months from the date when its payment became due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the rate of 10 per cent per annum in respect of the period beyond six months shall be paid on the amount of pension:*

Provided that, no interest shall be payable if the delay in payment of pension was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter:

Provided further that, no interest shall be payable for the period for which a provisional pension is sanctioned. In case of Government Servant to whom provisional pension is sanctioned an interest as provided shall be paid after a period of six months from the cessation of provisional pension till the final pension is authorised.

- (2) *On an application made by the pensioner the concerned Administrative Department in Mantralaya shall consider the request for payment of interest and where the Department is satisfied that the delay in the payment of pension was caused on account of administrative lapse, that Department shall make a recommendation to the Finance Department for the payment of interest.*
- (3) *If the recommendation of the Department made under sub-rule (2) is accepted by the Finance Department, the Department concerned shall issue Government sanction for the payment of interest.*
- (4) *In all cases where the payment of interest has been authorised with the concurrence of the Finance Department, the Department concerned shall fix the responsibility and take disciplinary action against the Government servant or servants concerned who are found responsible for the delay in the payment of pension and recover the amount of interest required to be paid from the Government servant, or servants concerned, including the concerned officer, who are found responsible for the delay in the payment of pension.*
- (5) *If as a result of Government's decision taken subsequent to the retirement of a Government servant, the amount of pension already paid on his retirement is enhanced on account of-*
 - (a) *grant of pay higher than the pay on which pension, already paid, was determined; or*
 - (b) *liberalisation in the provisions of these rules*

from a date prior to the date of retirement of the Government servant concerned, no interest on the arrears of pension shall be paid.”

16. The facts emerging from the record speak loud and clear. This Court delivered a verdict on 22nd July, 2016 on the facts of the Petitioner's case recording a finding that the Petitioner deserved to be considered for grant of pension as the Respondents did not consider his part-time service as a Shikshan Sevak, which had to be reckoned with while calculating qualifying service. Pursuant to the said order, the State Government was directed to forward the papers to Respondent No.5, who in turn, was directed to take an appropriate decision regarding grant of pensionary benefits to the Petitioner, within a period of two months. More than 7 years have passed by after the timeline granted by this Court concluded on 22nd September, 2016.

17. The learned Senior Counsel for the Petitioner draws our attention to the impugned order dated 25th September, 2020, passed by the Senior Accounts Officer from the office of the Accountant General at Mumbai, drawing the attention of the

Deputy Director of Education, Kolhapur to the aspect of whether the Petitioner can be held to be entitled for the old pension scheme in the light of the facts of his case. A specific query was raised by the Office of the Accountant General before the Deputy Director, Education seeking assistance as regards the employment of the Petitioner on part-time basis until 19th June, 2006 and the full-time service commencing from 20th June, 2006 when the Institution was 100% grant-in-aid.

18. The said communication dated 25th July, 2020 by the Office of the Advocate General, was obviously issued after receiving the communication from the Deputy Director of Education, Kolhapur dated 21st April 2020, wherein a list of 28 documents were supplied to the office of the Accountant General. In response to the said communication dated 25th September, 2020, that the office of the Deputy Director of Education, Kolhapur had addressed the Accountant General vide the communication dated 31st May, 2021 concluding that the Petitioner was entitled for the pensionary benefits as per the Old Pension Scheme, since his qualifying service was 11 years and 10 days.

19. Considering the above, we are not required to deal with the aspect as to which office and which officer would be liable for the delay, since this issue is best left to the decision of the State Government in the light of Rule 129A and Rule 129B. It would be appropriate for us to direct the Competent Authority of the State Government to deal with the aspect of delayed payment, arrive at a conclusion of fixing the responsibility on concerned officers and initiate remedial action, keeping in view Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 read with Rules 129A and 129B of the M.C.S. (Pension) Rules.

20. In view of the above, **this Writ Petition is allowed.** Recording the statement made by the counsel for the Office of the Accountant General, on instructions, let the order of grant of pension be passed in the case of the Petitioner by 21st October 2024.

(a) The arrears of pension along with interest shall be calculated and the same shall be paid to the Petitioner, within a

period of 60 days.

(b) Needless to state, the gratuity amount, along with interest @ 12% per annum, in the light of the Notification of the Government of India dated 5th October, 1999 would also be paid within the period of 60 days.

(c) Payment of regular pension shall commence with effect from the regular pay day of November, 2024.

(d) Needless to state, notwithstanding the steps to be taken in the light of Rule 129A and Rule 129B, the payment of interest on the delayed payments of gratuity and pensionary benefits shall not be withheld only for the reason that the State is carrying out the investigation for fixing the responsibility.

21. Rule is made absolute in the above terms.

(M.M. SATHAYE, J.) (RAVINDRA V. GHUGE, J.)