

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11052 OF 2018

Mrs. Vaishali Padmakar Sahastrabuddhe ... Petitioner.
V/s.

State of Maharashtra & Ors. ... Respondents.

Ms. Aparneshwari Natarajan i/b. Adv. Amit Kumar Tiwari h/f. Dinesh
Tiwari & Associates for the Petitioner.

Mrs. R. A. Salunkhe, AGP for the Respondent-State

CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.

DATED : 19 MARCH, 2024

P.C.:

1. Rule. Learned AGP waives service for the Respondent Nos. 1 to 3. Notice of final disposal was issued on 5 March 2020. The Respondent Nos. 4 and 5 (Management and High School) are duly served, for whom nobody appeared. Rule made returnable forthwith. Taken up for final disposal by consent.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner who is a retired librarian, is seeking directions for grant of pensionary benefits. The Petitioner is also challenging a communication dated 31 May 2016 by which the pension proposal of the Petitioner is returned, thereby rejecting the same.

3. Heard learned Counsel for the Petitioner. She submitted that the Respondent-Management had duly submitted Petitioner's pension proposal dated 28 April 2016 to the Respondent No. 3-Education Officer, however, the same is rejected/returned on the only ground that part time service rendered by the Petitioner cannot be included and the full time service period has to be minimum 10 years, which is not completed by the Petitioner.

4. It is the case of the Petitioner that she had worked with the Respondent-Management in multiple schools for 23 years, 11 months and 6 days as a part time teacher and then as a full time Librarian for 3 years, 4 months and 14 days. Relying on the judgments of *Jyoti Prakash Chougule Vs. State of Maharashtra*¹ & *Mone Rashmi Shriram Vs. State of Maharashtra*², it is submitted that half of the Petitioner's part time service period has to be counted in addition to a full time service and if that is so counted, the Petitioner has worked for more than qualifying service period of 10 years. Petitioner has retired on 30 June 2014. It is submitted that on 20 July 2017, the Petitioner received impugned rejection/return letter dated 31 May 2016, after which she has not only represented her case to the authorities in September 2017 but has sent reminder letters also, but in vain.

5. Learned AGP was unable to distinguish the case of the Petitioner from the above judgments relied upon in the Petitioner.

¹ WP No. 2354 of 2012 Order dated 7 January 2014

² WP No. 13220 of 2016 Order dated 4 May 2017

6. The Respondent-Management despite due service, has remained absent and it is seen from the annexures that the Respondent-Management has, in fact, sent the pension proposal of the Petitioner. Neither the education authorities nor the management has factually disputed the part-time and full-time service period rendered by the Petitioner, as specifically asserted in paragraph 3(b) of the Petition with tabular details. None of the Respondents have filed reply.

7. In case of *Jyoti Prakash Chougule (supra)*, the Division Bench of this Court after considering the judgment of this Court in *Shivappa s/o. Bhujangappa Bembale vs. State of Maharashtra and Anr.*³ and on considering applicable pension rules, has held that half of the part time service period should be added to full time service period for arriving at qualifying service period for pensionary benefits. This judgment is subsequently followed in case of *Sou Mone Rashmi Shriram (supra)* and the same view is taken. We agree with the said view and find it applicable to the facts of the present case.

8. The service period during which the Petitioner has actually worked, as stated above is not contested. We, therefore, accept that the Petitioner has worked for more than 23 years on part-time basis and for more than 3 years on full time basis. If half of the part time work is considered, it comes to more than 11 years and if full time period of 3 years is added to it, then it becomes clear that the Petitioner has rendered more than 10 years of service and it is sufficient to entitle the Petitioner to pension, in

³ 2005 (3) Mh.L.J. 709

view of law laid down as narrated above.

9. Considering the aforesaid situation, we find that this is a fit case to exercise our extra ordinary writ jurisdiction in favour of the Petitioner.

10. We accordingly dispose of this Petition by passing the following order:

(A) The impugned communication dated 31 May 2016 by the Respondent No. 3 is quashed and set aside. The Petitioner's pension proposal is restored to the file.

(B) The Respondent No. 2 [Accountant General State of Maharashtra, Mumbai -1] and Respondent No. 3 [Education Officer (Secondary) Superintendent - Salary and Provident Fund Schemes Educational Department, Zilla Parishad, Thane] are directed to process and clear the pension proposal of the Petitioner within 4 weeks from today, keeping in mind what is stated in paragraph 8 above.

(C) The Respondent Nos. 2 & 3 are further directed to ensure that payment of the pension to the Petitioner commences within 4 weeks thereafter including payment of arrears of pension as on date.

(D) The outstanding / unpaid pension amount shall carry interest @ 6% per annum from 1 July 2014 (date of Petitioner's retirement) till the actual payment.

(E) The Rule is made absolute in above terms. No order as to the costs.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)