



Judgment

wp3511.21

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

WRIT PETITION No. 3511 OF 2021.

Kalpana d/o Surendra Khare,
Aged about 60 years, Occupation
Retired, resident of Nandanwan
Nagar, Lonwahi, Post Sindewahi,
District Chandrapur.
Pin Code 441 222.

... **PETITIONER.**

VERSUS

1.State of Maharashtra,
through its Secretary, School
Education and Sports Department,
Mantralaya, Mumbai – 32.

2.Education Officer [Secondary],
Zilla Parishad, Chandrapur.

3.Accountant General (A & E-II)
Maharashtra Civil Lines, Nagpur.

4.Sarvoday Vidyalay and Junior
College, through its Head Master,
Sindewahi, District Chandrapur,
Chandrapur, Maharashtra.

... **RESPONDENTS.**

Mr.A.R. Deshpande, Advocate for the Petitioner.
Mr.N.R. Patil, A.G.P. for Respondent Nos.1 to 3.
None for Respondent No.4 – Served.

Rgd.

**CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.**

DATE : JUNE 24, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and with consent of the learned Counsel present for the parties, the matter is taken up for final disposal.

2. The petitioner has impugned herein a communication dated 03.12.2019, by which the respondent no.3 Accountant General has declined to grant pensionary benefits of old pension scheme to her. Rather it has been informed that the petitioner was appointed as full time librarian on 01.04.2006 i.e. after the datum line 01.11.2005, and therefore, she is entitled for new pension scheme.

3. It is submitted that by following due process of law, the petitioner was appointed as part time librarian on 11.08.1993 with the respondent no.4 Sarvodaya Vidyalaya. At the time when the

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petitioner was so appointed, the required strength for full time librarian was of 1500 students. On that count, the petitioner was appointed as part time librarian. In the meantime, as per the recommendations of Chiplunkar Committee, which were constituted by the State for deciding the staffing pattern in school, was accepted by the State. The said Committee recommend that for strength of students above 1001 there shall be one post of full time librarian. These recommendations were accepted and implemented by the State by issuing government resolution dated 28.06.1994. It is submitted that since the petitioner was upgraded as full time librarian in terms of government resolution of the year 1994, she is entitled for the benefits flowing therefrom as per the date of the government resolution, as on that date the strength of students was above 1001.

4. By virtue of the order of this Court, the Education Officer has ascertained the position of students on the date of government resolution and filed a specific reply-affidavit that on that date the strength of students was more than 1000.

Rgd.

5. The learned Counsel for the petitioner has relied on two decisions of this Court in case of **Kiran Keshavrao Girhe and others .vrs. State of Maharashtra** (Writ Petition No.6630/2013 and others dated 28.01.2015) and **Nita Bhagwan Ware .vrs. State of Maharashtra** (Writ Petition No.3851/2016 dated 24.02.2018-**Aurangabad Bench**), wherein while dealing with the same issue, this Court has held that the librarian is eligible for up-gradation, provided the strength of students shall be adequate on the date of the government resolution i.e. 28.06.1994. The reply-affidavit filed by the Education Officer conceded this position, and therefore, the controversy stands resolved.

6. In view of above, writ petition is allowed. The impugned communication dated 03.12.2019, is hereby quashed and set aside. We declare that the petitioner is entitled for up-gradation from the date of government resolution dated 28.06.1994 and accordingly she is entitled for benefits as per old pension scheme. The respondent no.2 is accordingly directed to forward the case of petitioner for pensionary benefits as per the old pension scheme. We make it clear

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that the benefits of arrears would be available only for the purpose of notional pay fixation, assured carrier progression scheme [if available] and pensionary benefits, as per Rules. The Education Officer to complete the said exercise within a period of three months from the date of this order.

We also make it clear that the government resolution dated 13.04.2023 relied by the respondent would not apply in the case of petitioner, since the strength of students is adjudicated on the deadline and that the petitioner stood retired prior to issuance of the said government resolution.

7. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE

Rgd.