

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

WRIT PETITION NO.14007 OF 2017

Mrs. Rajani Rajan Dixit
(alias Rajani Tukaram Washimbekar)
Age 60 years, Occu: Retired,
R/o, B-195, Mantri Chandak Nagar,
Rupabhawani Road, Solapur-413002.Petitioner

versus

1. State of Maharashtra,
through the Chief Secretary
Government of Maharashtra Mumbai.
2. Director of Education (Secondary)
Central building, Pune-40000.
3. Dy. Director of Education (Secondary)
17, Dr. Ambedkar Road Pune
4. The Secretary,
Department of Education (Secondary),
Mantralaya, Mumbai-32.
5. The Education Officer (Secondary)
Zilla Parishad, Solapur.

6. Maratha Samaj Seva Mandal,
through its President,
C/o, Chhatrapati Shivaji Night
Junior College, Solapur.

7. The Principal,
Chhatrapati Shivaji Night
Junior College, Saraswati Chowk,
Solapur-413001.

8. Accountant General (A&E),
Near Churchgate, Railway Station,
Mumbai.

....Respondents

Mr. Khateeb Vakil, Advocate for the Petitioner.

Mr. P.P. Kakade, Addl. G.P. a/w Smt. Priyanka B. Chavan,
AGP for the Respondent-State.

Mr. A.S. Kalekar, Advocate for Respondent No.6.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

RESERVED ON : 30th JANUARY, 2025
PRONOUNCED ON : 13th MARCH, 2025

ORAL JUDGMENT (PER ASHWIN D. BHOBE, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. By filing this petition, under Article 226 of the Constitution of India, the Petitioner a retired teacher, seeks a direction to the Respondent No.1 to 6 to grant pension and other such benefits as gratuity, etc. and for a declaration that the letter dated 16.01.2025 issued by Respondent No.7, is null and void.

3. **Case of the Petitioner as set out in the petition:**

(a) On 04.06.1984, Petitioner was appointed as a part-time teacher in the Respondent No. 7 Chhatrapati Shivaji Night Junior College managed and run by the Respondent No.6.

(b) Petitioner was appointed as a full-time (Marathi) teacher. Appointment was temporary for a period for one year w.e.f. 15.06.1985 upto 30.04.1986.

(c) On 22.12.1985, Respondent No.3 rejected the approval of the Petitioner as a full-time teacher.

(d) On 10.06.1986, the services of the Petitioner were terminated.

(e) Petitioner approached the School Tribunal by filing appeal No.104 of 1986.

(f) Vide judgment and order dated 29.09.1986, the School Tribunal though allowed the appeal, by awarding compensation of Rs. 2,000/- to the Petitioner.

(g) Dissatisfied, the Petitioner filed Writ Petition No.3510 of 1987 before this Court.

(h) Writ Petition No.3510 of 1987 was allowed, in terms of the minutes of order filed, by directing the Respondent Nos.6 and 7 herein to reinstate the Petitioner. Order records that :- “Petitioner shall not be treated as temporary anymore and her salary arrears will be paid within two weeks”. Petitioner

resumed her duties w.e.f. 21.11.1988.

(i) On 21.11.1988, Respondent No.7 submitted proposal of the Petitioner for approval to the Respondent No.3. Respondent No.3 granted approval.

(j) By letter dated 31.03.1989, Respondent Nos.6 and 7 terminated the services of the Petitioner.

(k) Petitioner filed Contempt Petition No.135/1989 against the Respondent Nos.6 and 7 in this Court. By order dated 05.09.1989, the Petitioner was ordered to be reinstated in the Night Junior College, with backwages. Petitioner joined duties w.e.f. 11.09.1989.

(l) Petitioner along with other colleague filed Writ Petition No.5709 of 1991 before this Court seeking full-time time workload and pay-scale. By order dated 19.02.1992, Writ Petition No.5709 of 1991 was rejected.

(m) Petitioner filed an appeal No.61 of 1992 before the School Tribunal, Pune.

(n) By order dated 06.10.1993, learned School Tribunal Pune declared the Petitioner as full-time teacher w.e.f. from the date of her appointment i.e., from the Academic year 1985-86 with all benefits as a full-time teacher with continuity of service and consequential benefits.

(o) Respondent Nos.6 and 7 being aggrieved by the order dated 06.10.1993 filed Writ Petition No.3756 of 1994 before this Court.

(p) By order dated 28.11.2006, this Court allowed the petition by setting aside the order dated 06.10.1993 passed in appeal No. 61 of 1992.

(q) Petitioner made several representations to the Authorities making a claim for pension and other benefits.

(r) Representation was made to Chairman Human Rights Commission, Mumbai. The said representation was rejected by the Chairman Human Rights Commission, Mumbai.

(s) The Petitioner is before this Court contending that she had worked on part-time and on permanent post, had completed the qualifying, continuous service making her entitled for benefit of pension under the Maharashtra Civil Services (Pension) Rules, 1982 and the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (“MEPS Act”) and Rules 1981 (“MEPS Rules”).

4. Respondents have entered appearance through their counsels and have opposed the petition.

5. Mr. Khateeb Vakeel, learned Advocate for the Petitioner, Mr. P.P. Kakade, learned Additional G.P. for the Respondent-State and Mr. A.S. Kalekar, learned Advocate for Respondent No.6 have advanced oral arguments as well as have tendered written notes of arguments.

Submissions:

6. Mr. Khateeb Vakil, learned Advocate for the Petitioner submits that the Petitioner has served more than 29 years on permanent, regular, clear vacant post as part-time

teacher in the Respondent Nos.6 and 7 aided Junior College. He submits that Petitioner's services are regulated by MEPS Act and MEPS Rules. By referring to the averments in the petition, he submits that the Petitioner has superannuated on 31.03.2014, the Petitioner has qualifying service and therefore, the Petitioner is entitled to pension and ancillary benefits. According to Mr. Vakeel, it would be just and legal to count the total service of 29 years put in by the Petitioner as a part-time permanent teacher clubbing it in two half which is 14.5 years as a full-time service period. He places reliance on the Government Resolution dated 17.05.2017, to contend that the Petitioner would be entitled to the benefits of pension, etc. He, therefore, prays that the petition be allowed. He places reliance on the following judgments:

(1) *Anagha Bhombe Vs. State of Maharashtra and Another*¹,

(2) *Umzan Dhage w/o. K. Vivek Dhage*²,

(3) *Jyoti Prakash Chougule Vs. State of Maharashtra and Another*³,

¹ WP/6805/2014

² 2012, (10) SCC 1

³ WP/2354/2012

(4) Shivappa S/o Bhujangappa Bemble Vs. State of Maharashtra⁴,

(5) Mukund Bapurao Dhadkar Vs. State of Maharashtra and Another⁵,

(6) Jayashree w/o. Narayan Maske Vs. State of Maharashtra and Others⁶

7. Mr. Kakade, learned Additional G.P. submits that the Petitioner has worked for 29 years as part-time teacher in a Night Junior College. He submits that provisions of Secondary School Code are applicable to the Colleges/Night School and by relying on Rule 54.3 of Secondary School Code, he submits that Night School should impart education for two and half hours or three hours. He submits that the Petitioner was working only for two and half hours. It is his contention that teachers appointed in such Night Schools/Colleges are considered as “part-time teachers” and cannot be considered as full-time teachers. By placing reliance on Rule 19 of the MEPS Rules, he submits that, to be entitled for pension, a teacher has to have

⁴ WP/2107/1995

⁵ WP/10221/2015

⁶ WP/6622/2004

qualifying service in 100% grant-in-aid school as full-time teacher. He submits that there is no provision in the MEPS Rules to calculate half of 29 years part-time service as 14.5 years as a full-time service. He points out to the order dated 28.11.2006 passed in Writ Petition No. 3756 of 1994, wherein this Court has held that teachers engaged in Night Junior College should not be treated as a full-time teacher and such teachers would not be entitled to a regular pay-scale under the MEPS Rules, 1981. He relies on Rule 67(1)(a)(4) of the Secondary School Code which mentions that teachers working in Night School will be considered as part-time teachers. Lastly, he relies on Clause 4 of the Government Resolution dated 30.06.2022 which reiterates that teachers working in Night School are considered as part-time teachers. For all the said reasons, he seeks dismissal of the petition.

8. Mr. A.S. Kaleker, learned Advocate for the Respondent No.6 submits that order dated 28.11.2006 passed in Writ Petition No.3756 of 1994 is binding on the Petitioner and the petitions warrants dismissal on this count alone. He

further submits that the Petitioner on 31.03.2014 had made a representation to the Respondent No.2 seeking pension and other monetary benefits. Respondent No.2 by his letter dated 16.01.2015 had informed the Respondent No.7 that there is no provision in the Maharashtra Civil Services (Pension) Rules, 1982 to grant pension to a part-time teacher. He therefore prays for dismissal of the petition.

9. From the rival contentions the question that falls for consideration is whether the Petitioner, a part-time teacher in the Respondent No. 7 -Junior Night College of the Respondent No.6 institution would be entitled for pension and other pensionary benefits?

Analysis

10. Fact of the Petitioner having served in the Respondent No.7 Night Junior College for 29 years is not in dispute. The controversy in the petition revolves around the status of the Petitioner in the context of her entitlement to pension and pensionary benefits.

11. The contention of the Petitioner is that the Petitioner having put in 29 years of continuous service,

would be entitled to pensionary benefits. The Petitioner has neither produced any document nor do the records indicate appointment of the Petitioner as a full-time teacher.

12. Rule 19 of the MEPS Rules pertain to pension of an aided Secondary School/Junior College. It would be apposite to reproduce Rule 19 of MEPS Rules:

“19. Pension

An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after the 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above mentioned respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools.”

13. Requirement of Rule 19 of the MEPS Act to qualify for being entitled for pension is the need of such employee “*working on full time basis*”.

14. Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 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.”

15. Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982, is an exception to Rule 30 of Maharashtra Civil Services (Pension) Rules, 1982. Clause (a) of the said Rule specifically excludes part-time employees from pensionable service. Thus, the part-time service rendered by the Petitioner would not become qualifying

service of pension, within the meaning of Rule 30 of Maharashtra Civil Services (Pension) Rules, 1982.

16. In view of the above, we don't agree with the contention of the Petitioner to treat the service of 29 years rendered by the Petitioner as a part-time teacher into half to become 14.5 years as full time.

17. Mr. Kakade, learned Additional G.P. has placed reliance on the provisions of Secondary School Code. Applicability of the Code to Junior Colleges is not in dispute. Rule 54.3 of the said Secondary School Code prescribes the school hours of Night School. Rule 67(1)(a)(4) of the Secondary School Code provides for Rules and conditions of service. Rule 54.1., 54.2., 54.3., Rule 67.1. and 70.4 are reproduced herein below:

“School Hours

54.1. Schools shall ordinarily meet for six hours and impart education for about five hours every day for five days in the week with due provision for a long and a short recess. On one day in the week, schools shall meet for two to three hours with due provision for recess. Schools shall, however, have 26 to 27 clock hours in a week for imparting education

N.B.-(i) If schools so desire, they may spread these teaching hours over six days or restrict them to five days in a work.

(ii) For Anglo-Indian Schools see Appendix TWENTY-

FIVE (7).”

“54.2. During hot summer months schools may meet in the morning for less than six hours but shall provide instruction for not less than four hours a day.”

“54.3. The Night High Schools should meet for 2 hours or for 3 hours per day, as the individual school decides, for six days in a week. Provision for a short recess may be made beyond this time.”

“Application of Rules of Condition of Service

67.1. (a) *Unless otherwise specifically mentioned, the service condition rules including the rules governing the termination of employment given in this section apply to both full-time and part-time teachers and the non-teaching staff employed in non-Government schools except that:*

(i) *the requirement of professional qualifications will not hold good in the case of the non-teaching staff who will be treated as permanent for all purposes on completion of two years' satisfactory service. However, the clerical staff shall have to undergo an in-service training course, if any, provided by the Department in order to be eligible for confirmation;*

(ii) *the lower grade staff will be treated as 'permanent for all purposes on completion of two years' satisfactory service;*

(iii) *the non-teaching staff will not be held eligible for any kind of vacation provided for the teaching staff, as they belong to non-vacation department.*

(iv) the service rendered in Nigh High Schools by the teaching and non-teaching employees will be regarded as Part-Time service and dealt with accordingly.”

70.4. Part-time employees and those working in Night High Schools are not eligible either to the Provident Fund Scheme or to Pension Scheme."

18. Perusal of the above Rules of the Secondary School Code indicates that the service rendered by employees in Night High School by the teaching and non-teaching employees would be regarded as part-time employees and dealt with accordingly.

19. This Court in the Writ Petition No.3756 of 1994 filed by Respondent Nos.6 and 7 herein against the Petitioner, has given a quietus to the issue of part-time teachers working in Night School or Night Junior College. Paragraph Nos.3 and 4 of the said order reads as follows:

“3. Apparently, the School Tribunal has not considered the provisions of clause 54.3 of the Secondary School Code while dealing with the matter. Clause 54.3 of the said Code provides that night high school should meet for two and a half hours or three hours per day as the individual school decides, for six days in a week. Provision for a short recess may be

made beyond this time. Clause 8 of Chapter -= I of the said Code comprises of definitions of the words used in the said Code and it defines the term “Night High School” to be a Secondary School which admits pupils of 12 years of age and above and which teaches the Secondary school courses for half the daily working hours of school, to pupils who are unable by their daily avocations, to attend day schools. The term “School” has been defined to mean Secondary School or Higher Secondary School (Junior College) or Higher Secondary Multipurpose School (Junior College) or a Vocational High School or any other institution imparting through approved graded courses general education, which may be either wholly academic or partly academic and partly Vocational, suitable for pupils in the age of adolescence.

4. Obviously, therefore, the provisions of the Code are applicable to the Night Junior Colleges which impart education for about two and a half hours duration. It is not in dispute that the institute imparts education for two and a half hours duration. That apart, the Division Bench of this Court in Maratha Samaj Seva Mandal Solapur and another V., Madukar Sadashiv Vyawahare and others (supra) has clearly held that if the Night School or Night Junior College is required to conduct classes only for two and half hours duration, the teachers engaged in such school or college should not be treated to be as full time teachers and would not be entitled for regular pay scale under MEPS Rules, 1981. The law in this regard being well settled and provisions of law which applies to the institute in question clearly provides that the period or duration for imparting the education being only two and half hours per day, as rightly submitted by the advocate for the petitioner, the respondent could not have been declared as Full Time Teacher in relation to her appointment in the institution of the petitioner wherein the education was imparted in the Night Junior College.”

20. The decision of this Court in Writ Petition No.3756 of 1994 is binding on the Petitioner. The said decision has attained finality, which is evident from the statement made by the Petitioner in paragraph no.16 of the petition memo wherein the Petitioner is on record to state that the said decision was not taken before the Hon'ble Supreme Court.

21. Useful reference can be made to the decision of this Court in the case of *Vijaysingh Ramsingh Patil Vs. The State of Maharashtra*⁷, which was considering a case of entitlement of benefit of pension scheme/provident fund scheme, to part-time Librarians who continued to work on the post of part-time Librarian till their retirement. Relying on Rule 70.1 of the Secondary School Code, 2015, Rule 19 of MEPS Rules and the exclusion in Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982, this Court in para 19, 22 and 23 observed as under:-

“19. Rule 57 is an exception to Rule 30. Under clause (a) of Rule 57 part-time employees are specifically excluded from pensionable service.

⁷ AIR OnLine 2022 Bom 146

Therefore, part time services rendered by the petitioners would not become qualifying service for pension within the meaning of Rule 30.

22. This Court thus, has been consistent in holding that part-time employees are not entitled to pension.

23. Mere placement in pay scales / pay bands by the State Government would not bring the part-time librarians within the ambit of the Pension Scheme or Provident Fund Scheme. There is specific exclusion of part-time employees from both the schemes by virtue of the provisions of Rule 70.4 of the Code of 2015 and Rule 57 of the Rules of 1982. These specific provisions denying the benefit of pension scheme to part-time employees cannot be overlooked by relying on factors such as applicability of pay scales / pay bands or grant of approval to the appointment as part-time librarian or long service of the petitioners on the post of part-time librarian. The benefit, which has been specifically denied by the rules, cannot be bestowed upon the petitioners by way of a judicial decision.”

22. All the decisions relied by the Petitioner are in respect of employees/teachers who were working as full-time teachers, who were given benefit of regular pay-scale. The initial service rendered by such teacher as part-time teachers were clubbed or added for the purpose of calculating qualifying service for pension. We have held that the Petitioner was a part-time teacher in Night Junior College, as

such the decisions would not be applicable to the case of the Petitioner and the same are distinguishable on facts. Petitioner retired from service as on 31.03.2014, the Government Resolution dated 17.05.2017 relied by the Petitioner and the Government Resolution dated 30.06.2022 relied by the learned Additional G.P., being subsequent would not be attracted to the case of the Petitioner.

23. In the light of the above, position of law emerging before us, the Petitioner a part time teacher who continued to work on the post of part time teacher in the Junior Night College is not entitled to the benefit of Pension. **This Petition is therefore dismissed.**

24. Rule is discharged with no order as to costs.

(ASHWIN D. BHOBE, J.) (RAVINDRA V. GHUGE, J.)