

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

WRIT PETITION NO. 3368 2022

Ashok Kakasaheb Chaugule
Age: 59; Occu.: Nil,
Residing at: Sawantwadi, Juna Bazar,
Bhind Kalawati Mandir, Near School No.2,
Tal. Sawantwadi, Dist.Sindhudurg-416510Petitioner

Versus

1. State of Maharashtra,
Through the Secretary,
Ministry of Education,
Mantralaya, Mumbai – 400 032.
2. The Account General
(Accounts & Entitlement),
2nd Floor, Pratiksha Bhavan,
New Marine Lines,
Maharshi Karve Road,
Churchgate, Mumbai – 400 020.
3. The Education Officer (Secondary),
Zilla Parishad, Sindhudurg,
Dist : Sindhudurg.
4. South Ratnagiri District Education
Society, Sawantwadi,
Through its Chairman/Secretary,
Tal. Sawantwadi, Dist. Ratnagiri.
5. The Principal,
Pancham Khemraj Mahavidyalaya
Sawantwadi, Tal. Sawantwadi,
Dist. Sindhudurg.
6. Shikshan Prasarak Mandal Sawantwadi,
Through its Chairman Secretary,
Having Office at Sawantwadi,

Tal. Sawantwadi, Dist. Sindhudurg.

7. The Principal,
Rani Parvatibai High School Sawantwadi,
Tal.Sawantwadi, Dist. Sindhudurg.Respondents

Ms. Manisha Devkar a/w Ms. Siddhi Patil, for the Petitioner.

Mr. B. V. Samant, Add. G. P. a/w Mr. P. J. Gavhane, AGP, for
Respondent Nos. 1 to 3 – State.

Ms. Rekha Musale, for Respondent Nos. 4 and 5.

Mr. Krishna A. Tarde i/b Prashant S. Hagare, for Respondent Nos. 6
and 7.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.
DATE : 27th March, 2025**

ORAL JUDGMENT (Per Ravindra V Ghuge, J)

1. This Petition was lodged on 29th June, 2019. It was on
a stamp number and registered in the year 2022.

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

3. Two issues have been raised in this Petition. Firstly, that
the 50% of the part-time employment of the Petitioner be added to

his tenure as a full time employee. The second aspect which naturally crops up is on account of the change effected by the Government Resolution dated 31st October, 2005 with reference to the defined Contributory Pension Scheme.

4. The Petitioner was working as a part-time Assistant Teacher with Respondent Nos. 4 and 5, from 27th August, 1986 until 28th February, 2007. At the same time, he was working as a part-time Assistant Teacher with Respondent Nos. 6 and 7, from 17th July, 1991 to 15th June, 2007. He was appointed as a full-time Teacher with Respondent Nos. 6 and 7, w.e.f. 15th June, 2007 and he superannuated on 31st May, 2018.

5. The learned Advocate for the Petitioner has canvassed that the Petitioner was working with Respondent Nos. 6 and 7, as a part-time Assistant Teacher from 17th July, 1991 till 15th June, 2007 and as a full-time Teacher from 15th June, 2007 to 31st May, 2018. Hence, his part-time service from July, 1991 to June 2007 be considered to the extent of 50% in order to be added to his full-time service from June, 2007 to May, 2018. He places reliance upon the

following judgments:

(a) Writ Petition No.2354 of 2012 (Jyoti Prakash Chougule vs. State of Maharashtra and Ors.) decided on 7th January, 2014.

(b) Writ Petition No. 8289 of 2013 (Shalini w/o Asaram Akkarbote vs. The State of Maharashtra and Ors.) decided on 29th April, 2014.

(c) Writ Petition Nos. 6805 and 5106 of 2014 (Anagha Ashok Bhombe vs. State of Maharashtra and Ors.) decided on 27th April, 2015.

(d) Writ Petition No. 5421 of 2017 (Smt. Darshana wd/o Adikrao Gaikwad vs. State of Maharashtra and Ors.) decided on 9th July, 2018.

6. The learned AGP has vehemently opposed this Petition and submits that neither any prayer put forth by the Petitioner can be considered, nor can it be said that the Petitioner is entitled for the Old Pension Scheme. He submits that the service of the Petitioner as a part-time Assistant Teacher, is of no consequence. He was not paid from the contingency fund. The exceptions to Rule 30 as

prescribed under Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 would be squarely applied to this case.

7. He further raises an objection as regards the service of the Petitioner on part-time basis with two establishments. His contention is that the benefit of having worked with Respondent Nos. 4 and 5 from 27th August, 1986 to 28th August, 2007 as a part-time Assistant Teacher, is not to be given to him. There is an overlapping period of employment as a part-time Assistant Teacher when the Petitioner worked with Respondent Nos. 4 and 5 from July, 1991 till February, 2007 and with Respondent Nos. 6 and 7 from July, 1991 till February, 2007. The learned Advocate for the Petitioner submits that the Petitioner would not claim any benefit of the service rendered as a part-time Assistant Teacher with Respondent Nos. 4 and 5, from August, 1986 till February, 2007. He would rely on his part-time service as an Assistant Teacher with Respondent Nos. 6 and 7 from 17th July, 1991 until 15th June, 2007, when he became full-time Assistant Teacher.

8. The issue before us is, as to whether the part-time

service of the Petitioner with Respondent Nos. 6 and 7, can be added to the extent of 50% of the said service, to the full-time tenure of the Petitioner (which is of about 10 years, 11 months and 15 days).

9. We find that the Petitioner's contention is fortified by the law laid down by this Court in *Jyoti Prakash Chougule (supra)* wherein this Court recorded that as the Petitioner was a full-time Assistant Teacher when she retired, after putting in 8 years and 7 months service, the earlier period as a part-time Assistant Teacher, could be added to the extent of 50%, for considering whether the Petitioner was eligible for pension.

10. Similar is the view taken by this Court in *Shalini w/o Asaram Akkarbote (supra)*, wherein this Court recorded that the Petitioner was appointed as a part-time Librarian on 14th June, 1982 and she was granted continuation and permanency with an approval with effect from 1st August, 1997, when the post was converted into full-time service. Since she was granted full-time Librarian appointment and she superannuated as a permanent employee, this

Court added the part-time service to the extent of 50 % to her full-time tenure for calculating qualified service. Same is the view taken by this Court in the matter of *Anagha Ashok Bhombe (supra)*. Same is also the view taken by this Court in *Smt. Darshana wd/o Adikrao Gaikwad (supra)*.

11. Keeping in view the above aspect and the law crystallized by this Court in the above cited orders, we find that the Petitioner can be given the advantage to the extent of 50% of his tenure of part-time Assistant Teacher from 17th July, 1991 till 15th June, 2007. It is to the extent of around 8 years of service (50% of 16 years of the service as a part-time Assistant Teacher). This is to be added with the period of 10 years, 11 months and 15 days of permanent full-time service as an Assistant Teacher. In any case, the Petitioner was entitled for the pension. The issue would be that he would have entitled for 50% pension, by virtue of the full time employment alone.

12. We have considered the law laid down by this Court in ***Jayashree Narayan Mhaske vs. State of Maharashtra and Ors.***

(2005 (3) MLJ 5492), Shivappa Bhujangappa Bembale vs. State of Maharashtra and Anr. (2005 (3) Mh. L.J. 709 and Mukund Bapurao Dhadkar vs. State of Maharashtra and anr. (2016 (3) MLJ, 280)

13. It is beyond debate that when a person is granted regularization in employment, the same relates back to the date of his employment even as a temporary, if retirement benefits are to be computed. Considering the various reports cited before us, in identical fact situation, the employees who were on full-time posts at the time of their superannuation, were granted benefits of the earlier part-time service to the extent of 50%.

14. Considering the GR dated 31st October, 2005, clause (4) is indicative of the fact that the employee who was otherwise eligible for pension, should have been appointed in the service of a full aided establishment, prior to 1st November, 2005. The defined contributory pension scheme would be applicable to the candidates who have been appointed on or after 1st November, 2005. The facts before us have already been adverted to in the forgoing paragraphs

leaving no room for doubt and we have no hesitation in concluding that the Petitioner would be entitled for the Old Pension Scheme.

15. Hence, this **Petition is allowed**. The impugned Communication dated 22nd June, 2018 issued by Respondent No.2 refusing pension to the Petitioner, is quashed and set aside. We direct Respondent No.2 to consider the case of the Petitioner as being eligible for pension as per the Old Pension Scheme. Respondent No.2 shall pass a formal order approving the pension as per the Old Pension Scheme, within a period of 15 days from today.

16. Needless to state, the arrears of pension shall be calculated and by including the interest component statutorily prescribed for the delayed payment, which would also be a part of the arrears of a pension. Let the arrears along with interest be paid within a period of 45 days from today. Let the payment of regular pension commence on monthly basis after 45 days. For the said purpose, Respondent Nos. 6 and 7 would forward the proposal of the Petitioner for arrears of pension, interest and regular pension, within 21 days from today. Needless to state, the Petitioner would

be entitled for all service benefits available to a retired employee, in the light of the aforesaid conclusion.

17. **Rule is made absolute** in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)