Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3266 OF 2023

Sanjay Baban Kute ...Petitioner
Versus
State of Maharashtra
thr. Government Pleader & Ors. ...Respondents

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Mr. Vednat Babar a/w Rahul Shivaji Kadam, for Petitioner.
Mr. A.R. Deolekar, AGP for Respondent - State.

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CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 6th OCTOBER 2026

P.C.

1. This is another case in which the Education Department of the State of Maharashtra has refused to treat half the period of Petitioner's part-time services along with the full-time services as Librarian, at the Respondent No.5 School run by the Respondent No.6 Management to be counted for the purpose of pensionable service, in refusing to approve his pension proposal under the Old Pension Scheme. It is disheartening to note that, despite this Court clearly laying down the law in this regard, in series of decisions and lastly in the matter of ***Dadasaheb Sada Kadam vs State of Maharashtra***[1], in which this Court has traced the position in law under the rules and the earlier judgments on this issue, including a decision of the full bench of this Court in the matter of ***Dilipkumar Bhagwan Deshmukh vs State of Maharashtra***[2], to hold that such part-time

1 Writ Petition No. 11651 of 2023

2 Writ Petition No. 8387 of 2013, decided on 26 August 2019

service would be required to be counted in the qualifying service, the Education Department has nevertheless refused to act as per the settled law.

2. The Petitioner, who retired as a full-time Librarian on 30th September 2022, seeks a writ of Mandamus directing the Respondents to forward and process his pension proposal and to grant him pension under the Old Pension Scheme, in terms of the Maharashtra Civil Services (Pension) Rules, 1982. His grievance is that the Respondents have applied the new DCP Scheme to him instead.

3. The prayers made in the petition are required to be noted, which read thus:

> "a. That this Hon'ble Court under its Civil Appellate Writ Jurisdiction under Article 226 of the Constitution of India, 1950, be pleased to issue a writ of Mandamus or any other writ, order or direction and thus thereby direct the Respondent No. 5 School- Management to forward the Proper Pension proposal of present Petitioner to the Respondent No.4 Education Officer who after scrutinizing the said pension proposal further forward it to Respondent No. 2 Accountant General and who after receipt of the pension proposal since the Petitioner is entitled for the Old Pension scheme may grant the Petitioner the Old Pension benefit as per the old scheme.
> b. That pending final disposal of this Writ Petition, Respondents may be directed that Petitioner may be given a provisional Pension Benefit.
> c. Interim / Ad- interim relief in terms of prayer Clause [A] & [B] be awarded in favor of the Petitioner.
> d. That the costs of this Writ petition be awarded in favour of Petitioner against Respondent, by this Hon'ble Court."

4. It is the Petitioner's case that he was initially appointed as a Part-Time Librarian on 12th June 1995 with Respondent No. 5 – Vidya Vikas Mandir Secondary and Higher Secondary School, Rajuri, Taluka Junnar, District Pune, which is a 100% grant-in-aid school. The then Education Officer approved the appointment on 12th December 1995. The Petitioner states that his appointment was thereafter granted year-wise and approved, as follows: on 5th June 1996 (approved on 13th November 1996), on 19th June 1997 (approved on 16th

December 1997), on 8th June 1998 (approved on 19th December 1998) and on 14th June 1999 (approved on 21st December 1999).

5. By an order dated 25th March 2006, the Petitioner was appointed as a full-time Librarian with effect from 1st April 2006, and the Education Officer approved the same on 7th October 2006. He retired on superannuation on 30th September 2022.

6. According to the Petitioner, he worked as a Part-Time Librarian from 12th June 1995 till 31st March 2006 for 10 years and 9 months, and as a full-time Librarian from 1st April 2006 till his retirement for 16 years and 6 months. It is his case that, if one-half of the part-time service is counted, it comes to 5 years and 4 months, and with the full-time service his total service is 21 years. A certificate dated 9th November 2022 issued by Respondent No. 5 School and his Service Book are annexed to the petition. It is his case that, after retirement, he learnt that the new DCP Scheme has been applied to him without his consent or any such option exercised by him; that on enquiries with Respondent No. 5 School and the Education Officer, he was informed that he is not entitled to the Old Pension Scheme and that whatever amount lies to his credit under the DCP Scheme would be paid to him; also Respondent No. 5 School has failed to forward his pension proposal to the Education Officer. Hence, the present petition.

7. Heard Mr Vedant Babar, learned Counsel for the Petitioner and Mr Aditya Deolekar, learned AGP representing the State. We have also gone through the record of the proceedings.

8. As aforesaid, the issue in the present matter is no longer *res-integra*. This Court, in ***Dadasaheb Sada Kadam vs State of Maharashtra and Ors.,***[3] considering the Maharashtra Civil Services (Pension) Rules, 1982 (**"MCS (Pension) Rules"**), Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and several decisions in that regard, took the view that the benefit of part-time service in the manner understood by Rule 57 of the Maharashtra Civil Services (Pension) Rules is required to be granted. The relevant observations in that regard are required to be noted, which read thus:

> "25. A cumulative reading of the aforesaid rules would indicate that such rules have taken into consideration every possible situation in regard to the counting of qualifying services, which even includes an employee holding a temporary Government servant post rendered without interruption by confirmation, counting of service on contract etc. Also, in regard to the employees who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service is allowed to be counted for pension as provided under Note 1 to Rule 57 of the MCS (Pension) Rules.
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> 26. In our opinion, applying the aforesaid rules, necessarily the part-time service of the petitioner rendered from the year 1995 till 31 March 2006 (i.e. till his upgradation to the full-time post of librarian) was required to be reckoned for the purpose of considering his qualifying service for pension. Thus, notionally such service of 11 years (i.e. from 12 June 1995 till 31 March 2006) will be required to be counted/considered on applicability of Rule 57 of the MCS (Pension) Rules, read with Note 1 by taking into consideration half of such service i.e. period of approximately 5 years 4 months would be required to be notionally accepted and counted towards the petitioner's pensionable service and not from 01 April 2006 as contended by respondent nos. 3 and 4. Accordingly, the period of about more than 5 years 4 months anterior to 31 March 2006 was required to be considered to calculate the qualifying service of the petitioner for grant of pension. This would bring about a situation that the petitioner had become eligible/qualified for pension from or about November 2000, which was certainly prior to the cutoff date 1 November 2005.
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> 27. If this be so, to say that the petitioner's qualifying service would be required to be taken into consideration from 01 April 2006 i.e. the date he was absorbed on the post of full-time librarian, would in fact become con-

3 Writ Petition No. 11651 of 2023, decided on 11 September 2026

> trary to the provisions of the MCS (Pension) Rules as noted by us herein-above and particularly of Rule 57, Note 1. Thus, in our clear opinion, the petitioner had become entitled for pension under the old pension scheme from the period in or about November 2000."

9. The AGP on behalf of the State fairly concedes to the aforesaid legal position as applicable to the facts of the present case. We are of the opinion that accordingly the case of the Petitioner will be required to be taken into consideration by the Education Authorities for grant of pension, applying the aforesaid principles of law and grant the benefit of the Old Pension Scheme to the Petitioner, who in law has become eligible for such grant.

10. In view of the aforesaid settled legal position, half the service rendered by the Petitioner as a part-time Librarian shall be taken into consideration, along with the entire service rendered as a full-time Librarian, for the purpose of counting the qualifying service of the Petitioner towards the pensionary benefits. Respondent No. 5 is directed to forward the pension proposal of the Petitioner to Respondent No. 4-Education Officer (Secondary), Pune, within a period of three weeks from today, and the concerned authorities are directed to decide the same and take further steps to disburse the pension to the Petitioner under the Old Pension Scheme within a period of two weeks thereafter. The Petitioner is thus directed to be paid pension as per the rules as also the arrears of the pension be paid along with interest at the rate of 8% per annum.

11. Disposed of in the aforesaid terms. No costs.

(DR. NEELA GOKHALE, J) **(G. S. KULKARNI, J.)**

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