Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16160 OF 2023

Jayashree Prakash Myakal ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

PRASAD RAJENDRASING RAJPUT

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Date: 2026.10.13 17:57:53 +0530

Mr Satyajeet A. Rajeshirke, for Petitioner.

Ms. N.M. Mehra, AGP for Respondent - State.

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

DATE: 6th OCTOBER 2026

P.C.

1. The Petitioner is aggrieved by an order dated 27th December 2022 passed by the Education Officer (Secondary), Zilla Parishad, Pune-Respondent No. 4, whereby the pension proposal of the Petitioner has been rejected. The Petitioner claims pension and other retirement benefits under the Old Pension cum Gratuity Scheme under the Maharashtra Civil Services (Pension) Rules, 1982.

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

   a. "This Hon'ble Court may issue writ of Certiorari or any other Writ of direction and thereby after considering legality validity and proprietary of the order dated 27/12/2022 issued by Respondent no 4 (EXHIBIT I) be pleased to quash and set aside the same.
   b. "This Hon. Court may be pleased to issue Writ of Mandamus or any other appropriate Writ or direction thereby directing the Respondents to grant and disburse Pension and other retirement benefits under old Pension cum gratuity scheme to the Petitioner by considering initial appointment of the Petitioner from 8/06/1998 and half of the service rendered as part time Librarian from 8/06/1998

to 19/10/2007 along with service rendered as Full time Librarian from 20/10/2007 to 31/08/2022."

c. "Pending hearing and final disposal of this Writ petition this Hon Court may be pleased to direct Respondent no3 to meantime grant provisional Pension to the Petitioner within two weeks as Full Time Librarian"

d. "Such other and further orders as this Honourable Court may deem fit and proper be passed."

3. It is the Petitioner's case that she was appointed on the post of Part-Time Librarian at Respondent No. 6 School – Rasta Peth's Education Society's Abasaheb Atre Day School and Junior College, which was receiving 100% grant-in-aid, by an order dated 8th June 1998 issued by Respondent No. 5 – Chairman, Saraswati Vidyalaya Union High School & Junior College, Pune, at a pay of Rs. 600/- per month with effect from 8th June 1998. The appointment was approved by Respondent No. 3 – Deputy Director by an order dated 17th October 1998. Due to the reduction in the strength of pupils at Respondent No. 6 School, the Petitioner became surplus. By an order dated 2nd December 2006 passed by Respondent No. 4 – Education Officer, she was declared surplus and absorbed in Respondent No. 7 – Headmaster, Saraswati Vidyalaya Union High School & Junior College, Pune, School, which was also receiving 100% grant-in-aid. She was relieved from Respondent No. 6 School on 4th December 2006, joined Respondent No. 7 School on 5th December 2006, and rendered part-time service till 19th October 2007. Thereafter, she was upgraded to the post of full-time Librarian with effect from 20th October 2007. This upgradation was approved by Respondent No. 4 by an order dated 2nd November 2007, in the regular pay scale, by considering half of the service rendered as a part-time Librarian. She continued in the said post till her retirement by superannuation on 31st August 2022.

4. According to the Petitioner, she completed total service of 24 years, 4 months and 3 days, out of which 9 years, 4 months and 23 days were as part-time Librarian and 14 years, 11 months and 11 days were as full-time Librarian. In her case, instead of extending the benefit of the Old Pension cum Gratuity Scheme from the time of her initial appointment, the Respondents deducted contributions under the New DCPS Scheme and later under the NPS.

5. After applications dated 29th September 2022 and 2nd November 2022 made by the Petitioner, Respondent No. 7 submitted the pension proposal dated 22nd November 2022 to Respondent No. 4. By the impugned order dated 27th December 2022, Respondent No. 4 rejected the pension proposal and called upon Respondent No. 7 to submit an explanation as to why the pension proposal of the Petitioner was submitted. By a letter dated 7th January 2023, the Petitioner requested Respondent No. 4 to submit the pension proposal to Respondent No. 2 – Accountant General, contending that Respondent No. 4 has no authority to reject the same. Hence, the present petition.

6. Heard Mr Satyajeet Rajeshirke, learned counsel appearing for the Petitioner, who contended that the Petitioner's initial appointment from 8th June 1998 was on a fully aided post receiving 100% grant-in-aid, which is prior to 1st November 2005, and that the impugned order dated 27th December 2022 is not legal and valid and is against the provisions of the Pension Rules. It is submitted that, as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982, the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981 and the various Government resolutions, the Petitioner is

entitled to count one-half of her part-time Librarian service for the purpose of pension, and that the Respondents ought to have made the Old Pension cum Gratuity Scheme applicable to her instead of the DCPS. It is further submitted that the issue is covered by the settled position of law reiterated by this Court in ***Sou. Rashmi Shriram Mone v. The State of Maharashtra***[1] and ***Purushottam Harishchandra Shirsekar & Ors.***[2], in which, according to the Petitioner, this Court considered part-time service for the pension proposal and directed the authorities to consider the claim in the light of the law laid down. On this basis, learned counsel prays that the impugned order be quashed and the reliefs sought in the petition be granted.

7. The issue as raised by the Petitioner in the present matter, is no longer *res-integra*. In **Dadasaheb Sada Kadam vs. State of Maharashtra and Ors.**[3], the Division Bench, 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 the several decisions in that regard has taken a 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

1 2017 [3] All M.R. 703

2 2022 (2) Mh.L.J.

3 Writ Petition No. 11651 of 2023

> 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 contrary to the provisions of the MCS (Pension) Rules as noted by us hereinabove 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."

8. The AGP on behalf of the State concedes to the aforesaid legal position. We are accordingly of the clear opinion that the case of the Petitioner shall be taken into consideration by the Education Authorities for grant of pension, applying the law laid down by this Court in the above-mentioned judgment and grant the benefit of the Old Pension Scheme to the Petitioner, who becomes eligible for such grant.

9. In view of the aforesaid settled legal position, the order dated 27th December 2022 issued by Respondent No. 4 is set aside. 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 for pensionary benefits. Respondent No. 7 is directed to submit the pension proposal afresh to Respondent No. 4-Education Officer (Secondary), Zilla Parishad, 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 four weeks thereafter. The Petitioner is thus directed to be paid pension as per the rules. If any amount has been deducted from the Petitioner's account under the new DCPS scheme, it shall be refunded to the Petitioner, if not already done so, within four weeks from the date of uploading the present Order.

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

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