Shivgan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12308 OF 2022

Smt. Vidya Anand Ramteke
Aged adult, Occ. Service,
R/o. Behind Block No. A/448,
Sane Guruji Nagar, Aiyappa Road,
Ulhasnagar-4, Dist. Thane-421 004. ...Petitioner

Versus

1. The State Of Maharashtra
Through the Secretary,
School Education Department

2. The Education Officer,
(Secondary), Zilla Parishad,
Thane.

3. The Superintendent,
Pay and Provident Fund Unit,
(Secondary), Thane.

4. National Shikshan Sanstha
(previously named Oriental
Educational Trust),
Ulhasnagar, Dist. Thane,
through its Chairman, Secretary.

5. National High School,
Ulhasnagar, Dist. Thane,
through its Head Master. ...Respondents

Mr. Vinayak R. Kumbhar a/w Rajendra B. Khaire, Aniket S. Phapale i/by Ashwini N. Bandiwadekar, for Petitioner.

Mr. Aditya R. Deolekar, AGP for Respondent - State.

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

DATE: 13th OCTOBER 2026

P.C.

1. This petition under Article 226 of the Constitution of India seeks a declaration that the Petitioner is entitled to the benefit of the Old Pension Scheme, as governed by the Maharashtra Civil Services (Pension) Rules, 1982 ('**MCS (Pension) Rules**') along with the benefit of the General Provident Fund ('**GPF**'), which apply to teaching and non-teaching employees appointed before 01st November 2005. The prayers as made in the petition are required to be noted, which read thus:-

> "a] Rule Nisi issued and records and be proceedings be called for.
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> b] By a suitable writ, order or direction, this Hon'ble Court may be pleased to hold and declare that since the Petitioner was appointed as Part Time Librarian on 100% aided post sanctioned to the Respondent No. 5 School w.e.f. 14.6.1995, that the Petitioner is governed by the old pension scheme under the provisions of the Maharashtra Civil Services [Pension) Rules, 1982, alongwith Scheme of General Provident Fund the State of Maharashtra, and accordingly the Respondent Nos. 2 and 3 may be directed to apply the said old pension scheme / P.F. scheme to the Petitioner, by restarting the Petitioner's P.F. Account bearing No. 17186.
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> c] By a suitable writ, order or direction, this Hon'ble Court may be pleased to direct the Respondent Nos. 2 and 3 and to permit the Respondent No. 5 to deduct from the Petitioner's monthly salary the amount of contribution towards P.F. Account No. 17186, alongwith the amount which has been wrongly credited into new pension account [DCPS] bearing No. 047101001825RVAF6501S.
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> d] Pending the hearing and final disposal of this petition, the Petitioner Nos. 2, 3 and 5 may be restrained from deducting the amount from the Petitioner's monthly salary for being credited into the new pension account [DCPS] bearing No. 047101001825RVAF6501S.
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> e] Pending the hearing and final disposal of this petition, the Petitioner Nos. 2, 3 and 5 may be directed to deduct from the Petitioner's monthly salary the amount of contribution towards P.F. under the old pension scheme, and

thereafter the said amount may be directed to be credited in the P.F. Account of the Petitioner bearing No. 17186.

f] Costs of this Petition be provided for.

g] Any other order in the interest of justice and kindness be passed as and when necessary"

2. It is the Petitioner's case that she was appointed on the sanctioned and aided post as a part-time Librarian in Respondent No. 5-School w.e.f. 14th June 1995, and Respondent No. 2-Education Officer approved her appointment *vide* order dated 04th March 1996. Her post was later upgraded to a full-time post, and she was appointed as a full-time Librarian on 01st April 2006. By order dated 27th April 2009, Respondent No. 2-Education Officer approved the same.

3. Since the Petitioner was already enrolled on the Provident Fund Scheme, the contribution was continued to be deducted from her monthly salary for the post of full-time Librarian till 2012-2013. Thereafter, without any intimation or notice, deductions to the P.F. account were stopped, and she was shown to be included in the New Pension Scheme. According to Respondent No. 2, Education Officer, and Respondent No. 3, Superintendent, Pay and Provident Fund Unit (Secondary), the Petitioner only started working as a full-time Librarian w.e.f. 01st April 2006, i.e., after the cut-off dated *viz.* 01st November 2005, as provided in the Defined Contributory Pension Scheme, and hence, she was governed by the New Pension Scheme.

4. The issue in the present matter is no longer *res-integra*. In ***Dadasaheb Sada Kadam vs. State of Maharashtra and Ors.*** (Writ Petition No. 11651 of 2023), the Division Bench, considering the MCS (Pension) Rules, Rule 19 of the Maharashtra

Employees of Private Schools (Conditions of Service) Rules, 1981 and the several decisions in that regard, took the view that the benefit of part-time service in the manner understood by Rule 57 of the MCS (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 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."

5. The learned AGP on behalf of the State would not dispute the aforesaid legal position. We are thus of the opinion that the respective Education Authorities will need to consider the Petitioner's case for grant of pension under the Old Pension

Scheme, applying the law laid down by this Court in the above-mentioned judgment.

6. In view of the aforesaid settled legal position, we direct that the services rendered by the Petitioner as a part-time Librarian shall be taken into consideration as applicable in law, along with the entire service rendered as a full-time Librarian, for the purpose of qualifying service for pensionary benefits. Respondent Nos.4 and 5, the Management and the School, respectively, are directed to submit the pension proposal to Respondent No.2-Education Officer within a period of three weeks from today, if not already submitted, 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.

7. Accordingly, the Petitioner is eligible for all the consequential benefits including Provident Fund in terms of applicability of the Old Pension Scheme, and the Respondents concerned are directed to take necessary steps in that regard.

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

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

SHAMBHAVI NILESH SHIVGAN
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