Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9909 OF 2025

1] Premnath Parshuram Jadhav,
Aged 48 Yrs,Occ. Service,
R/o Pimplas, Near Gram
Panchayat Office, Bhim Nagar,
Pimplas, Tal. Bhiwandi,
Dist. Thane – 421 311.

2] Aathgaon Shikshan Mandal,
Aathgaon, Tal. Bhiwandi,
Dist. Thane,
through its Chairman / Secretary. ...Petitioners

Versus

1] The State of Maharashtra
through the Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032.

2] The Deputy Director of Education,
Mumbai Region, Mumbai.

3] The Education Officer [Secondary],
Zilla Parishad, Thane.

4] The Superintendent,
Pay & Provident Fund Unit,
[Secondary], Dist. Thane,
Thane [W] – 400 601. ...Respondents

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Mr Vinayak R. Kumbhar a/w Rajendra B. Khaire i/by Aswhini Bandiwadekar, for the Petitioner.

Ms P.N. Diwan, AGP for Respondent - State.

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PRASAD RAJENDRASING RAJPUT

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Date: 2026.10.15 15:00:55 +0530

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

DATE: 12th OCTOBER 2026

P.C.

1. The Petitioners challenge the order dated 5th September 2023 passed by the Superintendent, Pay & Provident Fund Unit (Secondary), Thane, Respondent No. 4, whereby the proposal moved by the Headmaster for applying the Old Pension Scheme / Provident Fund Scheme to Petitioner No. 1 and for allotting him a G.P.F. Account Number has been rejected, and the Defined Contributory Pension Scheme (DCPS) has been allotted to him.

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

a. "Rule Nisi be issued and records and proceedings be called for.

b. By a suitable writ, order or direction, this Hon'ble Court may be pleased to quash and set aside the impugned order dated 5.9.2023 issued by the Respondent No. 4, and accordingly the Respondents may be directed to enrol the Petitioner No. 1 to the General Provident Fund Scheme of the State of Maharashtra and to allot / assign G.P.F. Account Number to the Petitioner No. 1, thereby enabling the Petitioners to deposit in the said account the monthly contribution every month.

c. By a suitable writ, order or direction, this Hon'ble Court may be pleased to hold and declare that the Petitioner No. 1 is entitled to the benefits of the old Pension Scheme as per the provisions of the Maharashtra Civil Services [Pension] Rules, 1982 r/w. Rule 19 of the Maharashtra Employees of Private Schools [Conditions of Service] Rules, 1981 as existed prior to 1.11.2005, and accordingly the Respondents be directed to extend the benefits thereof to the Petitioner No. 1 as a Full Time Assistant Teacher.

d. Pending the hearing and final disposal of this Writ Petition, the Respondent Nos. 3 and 4 may be directed to allot / assign the G.P.F. Account Number to the Petitioner No. 1 as a Full Time Assistant Teacher in the aided school of the Petitioner No. 2 Management, to enable the Petitioners to deposit in the said account the amount of monthly contribution every month.

e. Cost of this petition be provided for.

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

3. It is the Petitioners' case that Petitioner No. 1 was appointed by Petitioner No. 2-Management as a Part-Time Shikshan Sevak w.e.f. 1st

September 2003 on a sanctioned and vacant post receiving 100% grant-in-aid, and the appointment was approved by Respondent No. 3 by order dated 28th February 2005. He was upgraded to a full-time post w.e.f. 16th June 2008. The impugned order rejected the Headmaster's proposals dated 11th September 2019 and 8th June 2023 to allot him a G.P.F. Account Number, by reference to the G.R. dated 31st October 2005 introducing the DCPS.

4. Heard Mr Vinayak R. Kumbhar, learned counsel for the Petitioners. He submitted that Petitioner No. 1 was initially appointed on 1st September 2003, before 1st November 2005, to a post receiving 100% grant-in-aid, though part-time, and that the Old Pension Scheme therefore applies to him. Mr Kumbhar submitted that this Court has addressed the issue in a series of decisions including that in the matter of Purushottam Harischandra Shirsekar & Ors. v. State of Maharashtra & Ors., Ashok Kakasaheb Chougule v. State of Maharashtra & Ors.,[1] **and Smt. Sujata Suresh Awati v. State of Maharashtra & Ors.**[2].

5. The issue 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 the view that the benefit of part-time service in the manner understood by Rule 57

1 Writ Petition No. 3368 of 2022, decided on 27th March 2025
2 Writ Petition No. 4037 of 2025
3 Writ Petition No. 11651 of 2023

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 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."

6. Ms P. N. Diwan, learned AGP for the Respondent-State, would not dispute the aforesaid clear position in law as would be applicable to the Petitioner. We are thus of the opinion that the duration of the part-time service rendered by the Petitioner, will be required to be taken into consideration by the respective Education Authorities for computing the qualifying service for grant of pension, applying the law laid down by this Court in the above-men-

tioned judgment and grant the benefit of the Old Pension Scheme to the members of the Petitioner who become eligible for such grant.

7. In view of the aforesaid settled legal position, the impugned order dated 5th September 2023 issued by Respondent No. 4 is quashed and set aside. It is declared that Petitioner No. 1 is entitled to the benefits of the Old Pension Scheme as per the Maharashtra Civil Services (Pension) Rules, 1982 read with Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, as existed prior to 1st November 2005, as a Full-Time Assistant Teacher, and the Respondents shall extend the benefits thereof to him accordingly.

8. Respondent Nos. 3 and 4 shall enrol Petitioner No. 1 in the General Provident Fund Scheme of the State of Maharashtra and allot/assign the G.P.F. Account Number to him within four weeks from today, so that the monthly contribution can be deposited in the said account.

9. The Writ Petition is disposed of in the aforesaid terms. No costs.

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