

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

WRIT PETITION NO. 1759 OF 2025

Aditi Mookherjee
Age : 53 years, Occu. : Service,
22 Pushpak Park
4 Shridhar Apartment
ITI Road, Aundh,
Pune 411007.

....Petitioner

Versus

1. Savitribai Phule Pune University
Department of Geology, Ganesh Khind,
Pune.
2. The Director of Education
(Commissionerate of Education,
Higher Education, Pune).

3. State of Maharashtra
-Respondents

Mr. Mandar Limaye a/w Mr. A. R. Gole, for the Petitioner.
Mr. M. M. Pabale, AGP for Respondent Nos. 2 & 3.
Mr. Rajendra Anbhule, for Respondent No. 1.

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.
DATE : 26th MARCH, 2026**

ORAL JUDGMENT (PER : RAVINDRA V. GHUGE, J.) :-

1. **Rule.** Rule made returnable forth with and heard finally by the consent of the parties.

2. The Petitioner-employee has put forth prayer Clauses (a)(i) to (a)(vi), as under :

- a. A Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, direction or order:
 - i) Directing the Respondents No.1 to 3 to grant continuity of service to the Petitioner with effect from 29/02/1996 with all consequential benefits;
 - ii) Directing the Respondents No. 1 to 3 to treat the services of the Petitioner with effect from 29/02/1996 till 03/04/2008 as qualifying service for pension.
 - iii) Directing the Respondents No.1 to 3 to allot Pension GPF No. to the Petitioner;
 - iv) Directing the Respondents No. 1 and 26 make the Old Pension Scheme available to the Petitioner by taking into from 29/02/1996 till 03/04/2008 and grant consequential benefits;
 - v) Directing the Respondents No. 1 to 3 to withdraw and cancel the clause 5 of the appointment letter dated 03/04/2008 in so far as and to the extent to which it applies "DCPS" Scheme to the case of Petitioner and quash and set aside the same.
 - vi) Directing the Respondents No. 1 to 3 to take into account the services of the Petitioner with effect from 29/02/1996

and the Petitioner is accordingly be declared as entitled to the Old Pension Scheme and consequential benefits in that regard be granted.

3. There is hardly any dispute as regards the dates and sequence of events. The Petitioner was appointed as a Lecturer in the Department of Geology by Respondent No. 1, University on 27.02.1996, on a post reserved for the DT (A), i.e., Denotified Tribes (A). The Petitioner continued without an advertisement for filling up the said reserved category post until 03.04.2008. There was a minor break in the service of the Petitioner, who was continuously engaged on the reserved category post on a temporary basis in each academic year. The break of 17 days was condoned by the University vide order dated 15.02.2010.

4. The Petitioner was appointed on probation by the University on 03.04.2008 and was confirmed in service in 2010. The grievance pertains to the applicability of the Defined Contributory Pension Scheme (DCPS) to the Petitioner, instead of the Old Pension Scheme (OPS).

5. We are not required to advert to all the submissions of

the learned Advocates for the respective sides, for the reason that all the parties before us are *ad idem* on the applicability of the Judgment delivered by this Court in ***Dr. Satyawati Sudhir Joshi vs. The State of Maharashtra & Ors.***, 2024 SCC Online Bombay 2253, which is stated to be based on an almost identical set of facts. So also, even assuming that the Petitioner was working temporarily from 1993 to 2006, the Petitioner would be eligible for receiving pensionary benefits.

6. In *Dr. Satyawati* (supra), this Court recorded in Paragraph Nos. 14 to 21 as under :

14. *The Petitioner on the other hand has relied on Rule Maharashtra Civil Services (Pension) Rules, 1982. Rule 33 reads thus: "A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57."*
15. *The second facet sought to be raised by Respondent Nos. 1 and 2 is that the Petitioner's appointment should be considered only in the open category on 20 June 2006, confirmed on 23 June 2008. Since the Petitioner's appointment could not be considered from 1993, the*

Petitioner will be governed by the new pension scheme and cannot have the benefit of old pension scheme for which the cutoff date was 1 November 2005.

16. *As far as the appointment of the Petitioner from 1993 to 2006 is concerned, the Petitioner was appointed against the post in the reserved category on several occasions from 1993. The Petitioner was appointed a Reader from 13 August 1993 to 30 June 1994 on the post reserved for nomadic tribes. Thereafter, she was appointed from 9 July 1994 to 29 June 1995 on the post reserved for nomadic tribes. Again from 3 November 1995 to 14 June 1996, 24 June 1996 to 14 June 1997, 23 June 1997 to 15 June 1998, Petitioner was appointed as a Lecturer on the post reserved for Scheduled Tribe. Thereafter, from 16 June 1998 to 15 June 1999, 16 June 1999 to 30 June 2002, and 30 June 2002 to 22 June 2006, Petitioner was in continuous service as a June 2006 till her retirement, Petitioner was in continuous service as a Lecturer on the post reserved for Scheduled Tribe. Thereafter, from 23 Reader in open category post.*
17. *By way of a Government Resolution dated 7 March 1986, the State Government issued clarifications regarding the pensions of teaching and non-teaching staff in non-agricultural universities. Under this Government Resolution, authority was vested with the University to condone the breaks that did not exceed two years and not more than six breaks. The total number of breaks in Petitioner's service is five, and the days were 51. Based on this Government Resolution, the Respondent - University vide communication dated 26 February 2010 informed the Petitioner that these 51 days break in service stood condoned. Then, by communication dated 28 April 2010, the Petitioner was called upon to deposit an amount of Rs. 1,26,120/- with Respondent No. 2 The Auditor, Department of Higher Education in respect of General Provident Fund. The Petitioner deposited the same. After the Petitioner retired from service on 30 April 2016, the Vice Chancellor wrote to Respondent No. 2 stating that Petitioner's breaks were condoned and her service was*

treated continuously from 1993 to 2006. Till no point in time was any communication sent to the Petitioner that the condonation of the break was improper or that the Petitioner would not be entitled to pension benefits.

18. *It can be seen from the record that from 1993 onwards, the Respondent University kept appointing the Petitioner in the post against the reserved category. At no point was the appointment either refused or discontinued, or the state government raised any objection. Until the Petitioner was appointed in the open category post in 2006, the Petitioner had already worked for almost 13 years, and even the breaks were condoned.*
19. *The learned AGP sought to contend that Respondent University could not have de-reserved the post, and there is a procedure prescribed for de-reserving the post. The argument of the learned AGP is not a ground taken in the reply. It was contended that the General Administration Department has issued a Government Resolution dated 5 December 1994 wherein it is mentioned that if the post is to be de-reserved, certain conditions must be followed. Despite publishing an advertisement for 6 years in the SC-ST category, the Respondent -University continued the Petitioner belonging to the open category, which is not per the Government Resolution. Based on this and the Government Resolution dated 31 October 2005, Introducing a Defined Contributory Pension Scheme, it was contended that the earlier service of the Petitioner prior to 1 November 2005 cannot be considered. The Petitioner will have to be considered as having been appointed on 23 June 2006 In the regular category. The learned AGP also sought to advance the argument that the amendment carried out to Rule-33 would not apply to the case of the Petitioner; and the Respondent -University could not have exercised the power under the Government Resolution dated 7 March 1986 after giving amendment of the Rule.*
20. *The argument raised by the learned AGP partly based on reply and the defence orally would lead to highly*

inequitable circumstances. The Petitioner has admittedly served for more than 23 years. At no point in time did either the Respondent University or the State Government raise any objection and has continued the Petitioner from 1993 till the Petitioner retired after 3 decades of service in the year 2010 and it is after rendering continuous service of 23 years (with technical breaks condoned) that the Petitioner in her advanced age is rendered without any pensionary benefits.

21. *The Respondent - University supports the stand of the Petitioner. The power exercised by the Respondent University under the Government Resolution dated 7 March 1986 has not been objected to. The Respondent - University has informed the Petitioner as far back as 26 February 2010 that a 51-day break in service was condoned. The Petitioner was asked to deposit Rs. 1,26,120/- with the Auditor, which the Petitioner had deposited. The Petitioner's appointments prior to 2006 were all in clear vacancies. In the re-joinder, the Petitioner has asserted and it has not been controverted that from 13 August 1993 till 22 June 2006, the Petitioner even received the salary which was subjected to revision as per 5th and 6th Pay Commission.*

7. After recording the submissions of the parties and advertng to Rule 33 of the 1982 Pension Rules in the foregoing paragraphs, this Court finally concluded in paragraph Nos. 25 and 26 as under :

25. *Therefore, appropriate course of action would be to direct the Respondent University to submit a proposal for de-reservation in respect of the Petitioner's appointment from 1993 to 2006 and the State Government would take a decision thereupon. When the formal order of de-reservation is passed, breaks having been condoned, the*

Petitioner's services from 1993 till 2006 will have to be counted for the old pension scheme and to be paid to the Petitioner. After the formal proposal is so submitted by the Respondent University, the State will keep in mind the entire factual perspectives, the observations in this decision, the object of payment of pensionary benefits to the employees and pass necessary orders on the proposal for de-reservation.

26. *Accordingly, it is declared that the Petitioner is entitled to pensionary benefits considering the Petitioner's service from 1993. Before the pension papers are processed, a formal proposal be submitted by Respondent No. 2 University to Respondent No. 4 Director for de-reservation within three weeks, and Respondent No. 1-State will accordingly issue necessary orders thereupon after keeping in mind the observations made in the judgment and take steps to disburse the pensionary benefits to the Petitioner within 8 weeks.*

8. In view of the peculiar facts recorded above in this case, and placing such facts and the law in juxtaposition with the facts and the law applicable in *Dr. Satyawati* (supra), and keeping in view the contentions of the parties that this Judgment would apply to the case of the present Petitioner, **this Petition is disposed off** in terms of the directions set out in paragraph Nos. 25 and 26 reproduced above.

9. The parties shall act in accordance with the said directions within the timeline mentioned therein.

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

11. We clarify that, since in the present case the Petitioner, Aditi Mookherjee, is still in employment and is yet to superannuate, the directions and conclusions set out in *Dr. Satyawati* (supra) shall be applicable to the present case to the extent of processing the papers for arriving at a conclusion that the present Petitioner would be governed by the OPS.

12. In the event the Petitioner has already contributed towards the DCPS, the State Government shall withdraw its share, along with the accrued interest, to the extent of its contribution, from the DCPS. Insofar as the Petitioner's share and the accrued interest thereon is concerned, we are informed that these amounts are normally deposited in the GPF of such employees. Without making any observations, we record that the State Authorities may take an appropriate decision in this regard in accordance with their policies.

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)