
(2023) 04 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition (L) No. 28949 Of 2022

Anala Pandit

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 30
Central Civil Services (Pension) Rules, 1972 — Rule 13

Citation : (2023) 04 BOM CK 0024

Hon'ble Judges : G.S.Patel, J; Neela Gokhale, J

Bench : Division Bench

Advocate : Mihir Desai, Swaraj Jadhav, Milind More

Final Decision : Allowed

Judgement

Neela Gokhale, J

1. Rule. The contesting Respondents No.1 and 2 have filed an Affidavit in Reply. By consent, Rule made returnable forthwith.

2. At the end of her career, the Petitioner is forced by her own employer, the State Government, to run from pillar to post for what is rightfully hers. The government puts her through the wringer. It traps her in a maze of legal proceedings. And it does this to deny the Petitioner her legitimate retiral benefits. In acting as it does, the State Government blithely ignores precedent after binding precedent — to all of which the State is itself a party. We refuse to countenance this conduct.

3. The Petitioner is qualified as M.Sc. (Physics) with specialization in Electronics, M.Sc. Electrical Engineering from University of Louisville, Kentucky, USA. She has completed her Doctorate in 2014 also from the same University. The Mumbai University has recognized the qualifications of the Petitioner obtained from University of Louisville as equivalent to that of Mumbai University. The Respondents No.1 and 2 are Departments of Higher and Technical Education of

the State. The 3rd Respondent is the Mumbai University, and the 4th Respondent is the Institute of which the Petitioner was an employee till she superannuated. Prior to her regular appointment, the Petitioner was a visiting Faculty in the 4th Respondent Institute since August 1995 and continued teaching in the Institute on a contractual basis in October 1996.

4. Pursuant to an advertisement issued by the 4th Respondent Institute for the post of Lecturer in Computer Application, the Petitioner applied and was called to appear before a duly constituted Selection Committee. She was recommended for appointment to the post of Lecturer in the Department of Computer Technology and was in fact appointed by a letter dated 13th March 2000. Since the post on which the Petitioner was appointed was a reserved post, she was appointed on a year-to-year basis. This was not a contractual appointment but was on a regular basis.

5. Mr. Desai, learned Senior Advocate, appears for the Petitioner. He drew our attention to a series of previous litigations by and between the Petitioner and the Respondents on account of various omissions and commissions allegedly committed by the Respondents from time to time. First among the series was Writ Petition No. 1456 of 2003 filed in this Court. The Petitioner challenged the act of the 4th Respondent Institute in inviting applications to fill up the teaching posts which included the post on which the Petitioner was working. This Court as an interim measure was pleased to direct the 4th Respondent Institute to continue the Petitioner on the said post and not to replace her with any adhoc appointment. The Petitioner thus continued her services on the same post through the year 2000 to 2005.

6. In 2005, the 4th Respondent once again invited applications from open category candidates for the same post. On a Notice of Motion No. 20 of 2005 in the pending Writ Petition, this Court restrained the 4th Respondent Institute from proceeding with the interviews and further directed that the Petitioner will continue that post during the pendency of the Writ Petition. The Respondents No.1 and 2 had granted approval to the services of the Petitioner on her post by order dated 11th July 2005 subject to outcome of the Writ Petition.

7. The 4th Respondent invited applications from Open category candidates for the post of Assistant Professor in the subject of Computer Application. The Petitioner applied, was interviewed and recommended by the Selection Committee for appointment and was in fact appointed by letter dated 1st January 2008. Much to the chagrin of the Petitioner, the Respondents No.1 and 2 State rejected the proposal for grant of approval to her appointment as Assistant Professor on the ground that her post-graduate degree from the American University was not equivalent to the post-graduate degree of the Mumbai University. For the third time, this Court was called upon to intervene in the Writ Petition No.201 of 2017 filed by the Petitioner. This Court by an order dated 8th January 2018 disposed of the Writ Petition with directions to the Respondents No.1 and 2 to approve the services of the Petitioner with effect from 7th January

2008.

8. Eventually, this Court disposed of Writ Petition No. 1456 of 2003 relying upon its own judgment passed in a Writ Petition No. 966 of 2003 between another teacher, on similar facts. In that Petition this Court clearly held the qualifying service of an employee to be commenced from the date on which he/she was first appointed in service. Reliance was placed on a precedent in a matter of Pratima Dave v State of Maharashtra in Writ Petition No. 1317 of 2017 in which the Division Bench of this Court (BR Gavai, J, as he then was and BP Colabawala, J) had considered Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 ("MCS Rules") in the context of commencement of qualifying service. The Petitioner superannuated on 30th November 2021. Her services ended but there appeared to be no end in sight for her struggle for justice. The Respondents No.1 and 2 State Authorities took their own time to process her pension papers. Many representations later, followed by RTI applications, the 2nd Respondent finally opined that considering the legal position as decided by this Court in Writ Petition No. 966 of 2003, the service rendered by the Petitioner from the year 2003 ought to be considered as continuous. This opinion ought to have brought down the curtains on the saga.

9. Unfortunately, the left hand of the Respondents State failed to agree with its right hand. By its letter dated 22nd December 2021, the 1st Respondent communicated to the 2nd Respondent that the Petitioner's service from 3rd March 2003 till 7th January 2008 cannot be considered as 'continuous service' for the purpose of computing her pensionary and other retiral benefits. This is essentially the letter impugned by the Petitioner.

10. The General Provident Fund Scheme ("GPFS") was in force till 2005, referred to as the Old Pension Policy in common parlance. The Petitioner's account was opened under GPFS from the year 2003. The New Pension Policy, known as the Defined Contributory Pension Scheme, 2005 ("DCPS") came into force with effect from 1st November 2005. Strangely, during this entire period the Joint Director, Regional Office of the 1st Respondent continued to deduct the Petitioner's contribution towards Provident Fund and deposit the same in her old General Provident Fund Scheme account.

11. The Respondents No.1 and 2 now admit that this was a mistake committed by the Joint Director and did not by implication apply the Old Pension Policy to the Petitioner. It is the stand of the Respondents No.1 and 2 State that this old account of the Petitioner was closed after she was superannuated and the entire cumulated amount including interest therein to the tune of Rs. 21,50,484/- was paid the Petitioner from the said account.

12. Thus the only dispute that requires consideration in the present Petition is whether the Petitioner would be governed by the Old Pension Policy or the New DCPS 2005 and from which date her qualifying service should be computed.

13. Respondents No.1 and 2 State filed its Affidavit in Reply dated 17th February

2023. Sadly, the Respondents were stuck in the rut of raising objections of qualification, equivalence of degrees, etc, all of which had already been decided by this Court in the series of earlier proceedings. This clearly indicates the casual, careless and indiscipline approach of the Respondents No.1 and 2 State to parrot arguments which had already been negated by this Court in previous proceedings to which both the Petitioner and the Respondents No.1 and 2 State were parties. This is totally unacceptable, indefensible and even unfair to this Court. Nonetheless, in the interest of justice, by an order dated 27th February 2023 we permitted Mr More, learned AGP for the Respondents No.1 and 2 State to file a better Affidavit.

14. An Additional Affidavit in Reply dated 15th March 2023 was filed. The Respondents No.1 and 2 State now contend that in its order dated 22nd January 2018 granting approval to the Petitioner's service, the State has categorically stated that the New DCPS will apply to the Petitioner since her service from 2003 is not being treated as continuous service. However, conversely, the Respondents No.1 and 2 State concede that the Petitioner's contribution towards GPFS continued to be deducted and deposited in her old GPFS account even after new DCPS come into force and the account was closed after her superannuation on 21st November 2021. Mr More also informs us that the balance in the GPF account was paid to the Petitioner prior to closure of her old GPF account. Thus, in a nutshell, the State's stand is that the Petitioner's service will be considered from 1st January 2008 and not 13th March 2000. Consequently, she is entitled to pensionary benefit under the New DCPS scheme only and cannot be given benefit under the Old Pension Scheme which has been now discontinued.

15. It is quite evident that the date of commencement of qualifying service shall determine the applicability of the Pension Scheme, Old or the New DCPS. As applied to the facts of the present case, the question is whether service spent against a reserved category post on temporary basis can be counted for the purpose of pension. This issue is no more res integra. This Court in the matter of Pratima Dave has unequivocally held that as per Rule

30 of the MCS Rules, if at the time of retirement, a person held a permanent post substantively in Government Service, the qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. The Petitioner admittedly was appointed as a Degree College Lecturer with effect from 13th March 2000, albeit against a reserved category post. She was finally appointed against the Open category post only on 1st January 2008. Undeniable thus, is the fact that her service has been continuous and without any break since the year 2000. Hence, the qualifying service of the Petitioner must be computed from the year 2000, i.e., from the date of her appointment at the first instance and not in the year 2008 when she was appointed on the Open category post.

16. In the matter of Dr Dinesh Pandurang Kudav v University of Mumbai and Ors

in Writ Petition No. 1812 of 2017, this Court has held that once it is established that the Petitioner was appointed on a vacant post out of the posts sanctioned by the State Government and was paid salary and other benefits out of salary grant paid by the State Government, the State cannot dispute its liability to pay pension to the Petitioner. It has further been held that the qualifying service must be treated as continuous from the initial date of appointment.

17. In a recent decision in the matter of Director General, Doordarshan Prasarbharati Corporation of India and Anr v Smt Magi H Desai, 2023 SCC OnLine SC 336 the Supreme Court has held that the qualifying service of the Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or in a temporary capacity. The Supreme Court, referring to Rule 13 of the Central Civil Services Pension Rules of 1972 ("CCS Pension Rules") has further held that the service rendered on substantive post even as officiating or temporary service, shall be treated as qualifying service if it is not contractual. Rule 13 of the CCS Pension Rules is *pari materia* with Rule 30 of the MCS Rules.

18. In view of the discussion above, we have no hesitation in holding the service of the Petitioner to be continuous through 13th March 2000 to 30th November 2021, i.e, till the superannuation of the Petitioner. Consequently, the Old Pension Scheme dated 21st July 1983 will apply to the Petitioner. In the result, the impugned letter dated 22nd December 2021 is quashed and set aside. The Respondents No.1 and 2 State are directed to apply the Old Pension Scheme to the Petitioner and calculate her retirement benefits by applying the said Scheme to her holding her continuous service from 13th March 2000. The Respondents No.1 and 2 State claim to have paid an amount of Rs.21,50,484/- from the GPFS account of the Petitioner. This claim has not been denied by the Petitioner. The Respondents No.1 and 2 State are thus, directed to release the balance of retiral benefits to the Petitioner after deducting the amount of Rs.21,50,484/- which has already been paid to her.

19. The Writ Petition is thus allowed. Rule is made absolute in terms of prayer clauses (a) (b) and (c). There will be no order as to costs.