

(2018) 02 BOM CK 0082
In the Bombay High Court
Case No : 3851 of 2016

Nita Bhagwan Ware

APPELLANT

Vs

The State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 24-02-2018

Acts Referred:

Citation : (2018) 02 BOM CK 0082

Hon'ble Judges : S.S.Shinde, S.M.Gavhane

Bench : Single Bench

Advocate : A.G.Chaudhari, ?S.Y.Mahajan

Judgement

1. Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2. This Petition is filed with the
following prayers:

B] By issuing appropriate writ, directions, order it may pleased be declared that deceased Bhagan Ware shall be considered as Full time Liberian from the date of his initial appointment i.e. 24/6/1996 in view of the fact that the strength of students was more that 1000 as stated in government resolution dated 28/6/1994.

C] By issuing appropriate writ, direction, order it may pleased be declare that the date on which the

decease Bhagwan Ashruba Ware was appointed i.e. 24/6/1996 shall be consider for notional pay fixation and for other retiral and pensionary benefits.

D] By issuing appropriate writ, direction, order the impugned communications dated 26/9/2014 and 4/6/2015 may kindly be quashed and set aside.

E] By issuing appropriate writ, direction, order, respondent authorities may kindly be directed to grant family pension to the petitioner by considering the initial date of the appointment i.e. 24/6/1996 of the deceased Bhagwan Ashruba Ware as a full time Liberian and to grant pensionary benefits accordingly.

3. Brief facts leading for filing the

Writ Petition are as under:

It is the case of the petitioner

that the husband of the petitioner, namely,

Bhagwan Ashruba Ware, came to be appointed on

24.06.1996 as a Part Time Librarian with

respondent no.4-school. His services came to

be confirmed on 22.06.1998. The services of

the husband of the petitioner came to be

confirmed as a Full Time Librarian with

respondent no.4-school on 14.03.2007.

Respondent no.3 has also approved upgradation

from Part Time Librarian to Full Time

Librarian with effect from 14.03.2007, vide

its approval letter dated 16.03.2007. It is

further the case of the petitioner that the

husband of the petitioner expired on

14.01.2011, while discharging his duties as

Librarian. The petitioner has also challenged

the order of withdrawal of the approval given

to the deceased husband of the petitioner in

the scale of trained graduate teacher by

filing Writ Petition No.7970/2011. The said

Writ Petition came to be allowed. The

Accounts Officer, Education Department, Zilla

Parishad, Beed, vide its order dated

23.07.2012, revised the pay scale of the

husband of the petitioner and made fixation of the husband of the petitioner in the pay scale of trained graduate. The office of respondent no.5 has also approved family pension in favour of the present petitioner.

4. It is further the case of the petitioner that the petitioner was receiving monthly family pension regularly from 07.09.2012 till January, 2014. The office of respondent no.5 has issued communication dated 19.02.2014 pointing out that the husband of the petitioner was appointed as Librarian on part-time basis with effect from 24.06.1996. As per the Secondary School Code, it has been clearly stated that only full time service is countable for pension/family pension. However, after excluding the part time service period, the actual service starts from 01.04.2006 which is after the stipulated date of 01.11.2005 from which pensionary benefits in terms of the Maharashtra Civil Services [Pension] Rules, 1982. Thus, in view of the Government Resolution dated 31.10.2005, the husband of the petitioner is not eligible for pensionary benefits. The above-referred communication was forwarded to respondent no.5 and present petitioner by respondent no.3, vide its letter dated 14.07.2014. The office of respondent no.5, vide its letter dated

26.09.2014 giving reference of earlier letter dated 19.02.2014, directed the Treasury Officer, Beed, to stop the family pension of the present petitioner. On the basis of above mentioned letters, respondent no.3 directed respondent no.4 school to initiate recovery as against the amount given to the petitioner under the family pension.

5. Learned counsel appearing for the petitioner submits that the State of Maharashtra had constituted Chiplunkar Committee for recommending the staffing pattern of non-teaching employees in the schools based upon strength of the students. The staffing pattern prescribed in the Secondary School Code was found to be inappropriate and efficiency of administration was adversely affected. The said Committee had submitted its report to the State Government, and after the said report was accepted; the State Government had issued Government Resolution dated 28.06.1994. As per the Government Resolution dated 28.06.1994, the up-gradation of part time post to full time post was automatic once the strength of the students had become 1000 or above. Hence, it was obligatory for the respondents to grant status of full time Librarian to the husband of the petitioner from due date i.e. the date on which strength

of the students had become 1000 or above in the school, along with all consequential benefits, pay fixation from due date, arrears of salary, time bound promotions and pensionary benefits. It is submitted that from the date of initial appointment of the husband of the petitioner, the strength of the students was more than 1000. Respondent no.4 had issued certificate dated 13.08.2015, certifying that from the educational year 1996-97 till 2006-07 the strength of students was more than 1000. The State Government, thereafter, had issued Government Resolution dated 03.08.2006 relying upon the Government Resolution dated 28.06.1994. It was specifically admitted that the Government has already granted its approval for creation of 284 posts of full time Librarians in the Government Resolution dated 28.06.1994. In view of the Government Resolution dated 03.08.2006, the State Government had upgraded posts of part time Librarians of 924 schools to full time Librarians mentioned that it would be fresh appointment as Librarian. Similarly, it was also mentioned that the services rendered as part time Librarian would not be counted for pay fixation.

6. It is submitted that the conditions mentioned in the Government Resolution dated

03.08.2006 were subject matter of various Writ Petitions filed before the High Court. The Nagpur Bench of the Bombay High Court has allowed the Writ Petitions and thereby granted all benefits to the said employees by treating them to be entitled as full time Librarian from the initial date of appointment when strength of students had exceeded 1000 relying on the Government Resolution dated 28.06.1994. Similarly, one more Petition was filed challenging the same issue before this High Court and the same was allowed, relying on the order dated 28.01.2015 passed in Writ Petition No.6630/2013 [Kiran Keshavrao Girhe & others Vs. State of Maharashtra & others] along with connected Writ Petitions. It is submitted that the appointment of the husband of the petitioner has been made in the year 1996, according to the Maharashtra Employees of Private Schools Rules, the right has been created in favour of the husband of the petitioner to seek implementation of the policy decision based upon the recommendations of the Chiplunkar Committee. On the basis of the Government Resolution dated 28.06.1994, the post of the petitioner was automatically become full-time Librarian on the basis of the strength of the students was more than 1000 every year from the date

of initial appointment of the husband of the petitioner. The respondent authorities ought to have considered the fact that the impugned communication was issued on the basis of Government Resolution dated 03.08.2006, which is inconsistent with their earlier Government Resolution dated 28.06.1994. The condition of up-gradation of the post as fresh appointment is incorporated in the Government Resolution dated 03.08.2006 with a view to deprive the persons like the husband of the petitioner from getting pensionary benefits, was held to be unconstitutional in earlier Writ Petition filed before the High Court. It was further held that the condition mentioned in the Government Resolution dated 28.06.1996 would be the date for considering the effect of service as full time Librarian and for granting the service benefits to the persons i.e. husband of the petitioner. The Supreme Court, in the catena of judgments, has held that the pensionary benefits, which was given to the persons, cannot be withdrawn if those are not granted on the basis of misrepresentation or false information. The Supreme Court has also issued guidelines about recovery of pensionary benefits already given to the petitioners. Therefore, the impugned communications are illegal, unjust and hence same requires to be quashed and set

aside.

7. Pursuant to the notices issued to the respondents, respondent no.3 has filed affidavit-in-reply. It is stated in the said affidavit-in-reply that the husband of the petitioner is not entitled for family pension, as he rendered services as part-time Librarian from 24th June, 1996 to 31st March, 2006. The office of Accountant General is communicated that the family pension is applicable only to the full-time Librarian and not to the part-time Librarian, as per the Secondary School Code, 2003. It is submitted by the learned AGP that the petitioner became eligible for the benefit of the full-time Librarian in the year 2006, vide Government Resolution dated 8th November, 2005; the employees, who are recruited after 01.11.2005, are entitled for D.C.P.S. scheme. The husband of the petitioner was getting the benefits of full time Librarian from 01.04.2006 i.e. after the issuance of the Government Resolution dated 08.11.2005. Hence, the husband of the petitioner is not entitled for regular family pension.

8. We have given careful consideration to the submissions of the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein and

annexures thereto, and also the affidavit-in-reply filed on behalf of respondent no.3. It appears that the husband of the petitioner, namely, Bhagwan Ashruba Ware, was initially appointed as part-time Librarian on 24th June, 1996, and thereafter, his services were confirmed on 22nd June, 1998. It further appears that thereafter he rendered services continuously, and then he was appointed as full-time Librarian with respondent no.4 school on 14th March, 2007. Respondent no.3 has also approved up-gradation from part-time Librarian to full-time Librarian with effect from 14th March, 2007, vide its approval letter dated 16th March, 2007. The husband of the petitioner died while in employment on 14th January, 2011. The petitioner also started receiving pensionary benefits, however, those benefits were stopped subsequently. The petitioner has placed on record certificate dated 13th August, 2015, issued by the Head Master of the Sham Vidyalaya, Dahiphal Wadmauli, Taluka Kaij, District Beed. The said certificate reads thus: "VERNACULAR MATTER OMITTED"

9. In the affidavit-in-reply filed on behalf of respondent no.3, there is no denial to the strength of the students shown in every year from the year 1996-97. The husband of the petitioner was only part-time

Librarian, serving in the said school.

Perusal of the said certificate would make it abundantly clear that the strength of the students from the year 1996 till 2007 is more than 1000 every year. The Division Bench of the Bombay High Court Bench at Nagpur [Coram: B.P.Dharmadhikari & A.S.Chandurkar, JJ.] in Writ Petition No.6630/2013 [Kiran Keshavrao Girhe & others Vs. State of Maharashtra & others] had occasioned to interpret the Government Resolution dated 28th June, 1994, issued by School Education Department and considering the prayer of the petitioners therein seeking relief of up-gradation of the post of part-time Librarian to full-time Librarian, the Court held that in terms of the aforesaid Government Resolution, on number of students exceeding 1000, post of Part Time Librarian is upgraded to the post of Full Time Librarian. In the facts of that case, the Court held that though the petitioners therein have been upgraded on the post of Full Time Librarian with effect from 1st April, 2006, they are entitled for similar treatment as has been granted by order dated 9th February, 2012, in respect of the similarly situated employees. Therefore, the Petition was allowed, however, it appears that in the said case the petitioners therein have given up the claim of arrears of salary.

It is made clear that the benefits of granting approval to the post of Full-Time Librarian from the initial date of appointment would be available only for the purpose of notional pay fixation, time bound promotion and pensionary benefits in accordance with the Rules. Accordingly, it was ordered that the petitioners therein are entitled to grant of upgradation to the post of Full Time Librarian with effect from their initial date of appointment.

10. Yet in another case in the case of Ravindra Nana Patil Vs. The State of Maharsahtra and others in Writ Petition No.7779 of 2012, decided on 9th March, 2015, the Division Bench of the Bombay High Court Bench at Aurangabad [Coram: S.V.Gangapurwala and V.L.Achliya, JJ.], dealing with the similar facts situation, ordered as under:

I. The Petitioner shall be considered as a Full Time Librarian from the date of his initial appointment i.e. 1st March, 1998, in view of the fact that the strength of the students was more than one thousand. The said date shall be considered for notional pay fixation so also for time bound promotion and other retiral and pensionary benefits. However, the Petitioner would not be entitled for the difference of salary from 1998 till 2006.

11. As already observed, in the present case also, from the date of the appointment of the petitioner, the strength of the students is continuously more than 1000 every year, and therefore, the husband of the petitioner shall be considered as Full-Time

Librarian from the date of initial appointment i.e. 24th June, 1996, in view of the fact that the strength of the students was more than 1000. The said date shall be considered for notional pay fixation so also for time bound promotion and other retiral and pensionary benefits. However, the husband of the petitioner would not be entitled for the difference of salary from 1996 till 2006.

12. Accordingly, Writ Petition is allowed in terms of prayer clauses-B, C, D and E and the same stands disposed of.