

(2017) 12 BOM CK 0042
In the Bombay High Court
Case No : 906 of 2013

Shri Ashok Dattatraya Marathe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-12-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

[Maharashtra Civil Services \(Commutation of Pension\) Rules, 1984](#)
a>, [Rule 48](#) Rule 48(c)

Citation : (2017) 12 BOM CK 0042

Hon'ble Judges : S.C. Dharmadhikari, Bharati H.Dangre

Bench : DIVISION BENCH

Advocate : Hushing Praveen Kashinath, B.V. Samant

Judgement

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the petition is taken up for hearing and final disposal.

2. The petitioner, a superannuated employee of the State Government has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for counting his previous service rendered from 15/6/1967 to 31/7/1972 for the purposes of conferment of pensionary benefits and is aggrieved by the action of respondentState Government in reckoning his service rendered from 15/6/1974 till date of his superannuation i.e. 30/4/2003 totally to 28 years, 10 months and 16 days for the purpose of pension and it is the case of the petitioner, that if the previous service rendered by the petitioner is counted for pensionary benefits, his total pensionable service would be 35 years and 10 months which would ultimately make him eligible for "full pension" considering his "full qualifying service". The factual events in the present case are not in dispute and in brief we would delve upon the chronology of the events resulting into filing of the present writ petition:

The petitioner was appointed as full time Demonstrator in Zoology Department in

the Abasaheb Garware College, Karve Road, Pune i.e. respondent No.5 on 15/6/1967 on the basis of his qualification of B.Sc. (Zoology) prescribed by Pune University. The appointment of the petitioner was approved by the Competent Authority. While he was functioning on the said post, the educational qualification for the post of Demonstrator was enhanced to Post Graduate Degree. Pursuant to this development, Respondent No.5 continued appointment of the petitioner as Demonstrator. The petitioner by letter dated 1/8/1972 was informed that his services are continued as a Demonstrator but in a part time capacity with effect from 1/8/1972 to 14/6/1973 on the half scale of Rs.25050400.

The consent of the petitioner was sought for such an arrangement and it is an admitted fact that the petitioner accepted his appointment as part time Demonstrator. The appointment in the said capacity was continued for the year 197374.

3. The petitioner completed his M.Sc. Degree Course and thereupon by order dated 20/6/1974 the petitioner was appointed as temporary full time Demonstrator in Zoology in the college with effect from 15/6/1974 to 14/6/1975 on Rs. 340/per month in the pay scale of Rs.25015400 along with other benefits. The petitioner was thereafter upgraded as Lecturer by an order dated 7/10/1976 and he was made a permanent Lecturer in the year 197677. The petitioner applied for "Teacher Fellowship" in Pune University and he completed his M. Phil in "A" Grade in the year 1988 from Pune University. The petitioner continued to work as Lecturer in Respondent No.5 College till 30/4/2003 when he retired on attaining age of superannuation. The petitioner rendered unblemished service to respondent No.5 without any stigma attached to him. Prior to his superannuation, the petitioner preferred a representation to the Joint Director, Higher Education, Pune Division Pune, requesting him to condone the break in his service from 15/6/1967 to 31/7/1972 and the Deputy Director of Education Pune on 17/3/2003 recommended to the Director of Education that in view of change in Educational Qualification for the post of Demonstrator, the petitioner had persuaded his studies in M.Sc and he has rendered part time service as demonstrator from 1/8/1972 to 14/6/1974. The Deputy Director of Education Pune recommended to the Director of Education that at the relevant time the "Teacher Fellowship" was not available. However, a Circular issued by Pune University permitted the part time service to be condoned and reference was made to Circular No. GRP/PG11041106 dated 14/8/1976. The Deputy Director further recommended that the post of Demonstrator is now abolished. In this background, it was recommended that the service rendered by the petitioner from 15/6/1967 to 31/7/1972, if counted for the purposes of pension, the petitioner would be entitled for full qualifying pensionable service by condoning the break in service. The said recommendation was however turned down by the Director of Education Pune vide his communication dated 17/7/2003 by taking recourse to Government Resolution dated 15/5/1996 and informing that the part time service rendered by the petitioner cannot be counted for pensionable service in full time capacity. It was also further set out in the said communication

that power for condonation of break in service as a special case vests in State Government and since it has been the policy of the State Government not to condone the break in service for availing the benefit of more pension the request of the petitioner was turned down. On rejection of request made by the petitioner, on his superannuation, his pension was fixed on the basis of his services rendered from 15/6/1974 to 30/4/2003 i.e. full time service rendered by him excluding the service rendered from 15/6/1967 to 31/7/1972 and pay order was issued in favour of the petitioner on 30/4/2003 fixing his pension at Rs.7857/ per month commencing from 1/5/2003 and his retirement cum death gratuity of was released to the tune of Rs.2,50,000/and commuted value of his pension was also worked out.

4. The grievance of the petitioner in the present petition is about non counting of his total service of 35 years and depriving him of pensionable pay which would have accrued to him if his service was counted from 15/6/1967. The petitioner agitated his grievance through various repeated representations and on one occasion even approached this Court by filing a writ petition which was decided by this Court on 5/12/2011 by issuing directions to the petitioner to make representation to the Deputy Secretary, Higher and Technical Education Department who was directed to consider the request after affording opportunity to the petitioner and by passing a speaking order within a period of six weeks from the date of said representation. In terms of the directions issued by this Court, the petitioner preferred a representation raising his grievance and also prayed for direction for arrears along with interest @ 18% from the date of his superannuation. The respondent State authorities after affording necessary opportunity to the petitioner, decided the representation by passing order on 6/7/2012. By the said order, it was informed to the petitioner that his representation has been rejected since there is no break in his service and, therefore, no question arises of condoning the same. In order to obtain redressal of his grievance, the petitioner has invoked the writ jurisdiction of this Court by filing the present writ petition.

5. This Court was pleased to issue notice on the said writ petition on 28/2/2013. In response to the writ petition, respondent No.1 to 3 through the Joint Director of Higher Education, Pune Region Pune has filed an affidavit before this Court on 5/8/2013. In the said affidavit, it is stated that the petitioner has attained age of superannuation on 30/4/2003 and from 15/6/1967 to 31/7/1972 i.e. 5 years, 1 month and 7 days as per Section 48 (c) of the Maharashtra Civil Services Rules, 1984 for grant of pensionary benefits. It is stated that the said request cannot be considered since the petitioner had rendered his service as part time Demonstrator from 1/8/1972 to 14/6/1974 i.e. period of 1 year, 10 months and 14 days and the service rendered by him on part time basis is not to be considered for retirement and pensionary benefits as per the existing rule and thus the previous service of 5 years, 1 month and 17 days is also not to be considered in retirement and pensionary benefits. The subsequent affidavit has also been placed on record. Along with affidavit, the respondents have also

placed on record the noting of the Department which reflects the reasoning as to why the grievance of the petitioner is not fit for consideration. Further, the respondents have also placed reliance on the Government Resolution dated 15/5/1996 clarifying the policy of the State Government on counting of part time service rendered between two full time services for the purposes of pensionary benefits.

6. We have heard Advocate Shri Praveen Hushing for the petitioner and Mr. Samant, AGP representing the State Authorities and with their able assistance, we have perused the writ petition and the documents, so also the affidavits and documents placed on record on behalf of the Respondents. It is not in dispute that the petitioner was recruited as Demonstrator and at that time he was possessing degree in B.Sc. (Zoology) and commensurate with his qualification he was appointed as temporary Full Time Demonstrator in the pay scale of Rs.1005150EB10200 with ancillary benefits. The appointment order issued to the petitioner on 31/5/1967 was for a period from 15/6/1967 to 14/6/1968 and was subsequently extended, in the capacity as temporary Demonstrator for the year 197071 in the pay scale of Rs.25015400. The petitioner was desirous of improving his qualification for the post of Demonstrator since the prescribed qualification for the post of Demonstrator being a Post Graduate Degree, the petitioner preferred to pursue his studies and his continuation in the existing post of Demonstrator was made conditional on him obtaining M.Sc. Degree. In these peculiar circumstances, the petitioner's services were continued as part time Demonstrator but he was shifted in the category of "part time demonstrator" for the year 197374. On his acquiring M.Sc. Degree, the services of the petitioner were again restored to temporary full time Demonstrator in Zoology with effect from 15/6/1974. The petitioner was further upgraded as Lecturer in the same college from where he retired on age of superannuation on 30/4/2003. The service career of the petitioner can be classified into three phases, first phase being from 15/6/1967 to 31/7/1972 when the petitioner was working as full time Demonstrator in Zoology Department of Respondent No.5 college - period 5 years, 1 month and 17 days. The second phase being from 1/8/1972 to 14/6/1974 i.e. period of 1 year, 10 months and 14 days when the petitioner rendered his service as part time demonstrator in respondent no.5 college since he was also prosecuting his studies for post graduation in M.Sc. The third phase being from 15/6/1974 to 30/4/2003 i.e. period of 28 years, ten months and six days when he rendered his services to respondent no.5 in the capacity as full time Lecturer and the period which qualified him for regular pension. The grievance of the petitioner is for counting the first two phase of his service in continuation of his third phase of service and to draw his pension by counting his total service of 35 years. In the alternative the petitioner has prayed that if the petitioner would have been continued in service from 1/7/1972 to 14/6/1974, i.e. period of 1 year, 10 months and 14 days cannot be counted being part time service, there is no reason why his service from 15/6/1967 to 31/7/1972 i.e. five years ten months and 17 days cannot be counted and

attached to the third phase of service. The Government has placed reliance on Resolution dated 15/5/1996. The Government was conscious of difficulties faced while applying the pension scheme to the employees working in various Non Agriculture Universities and affiliated colleges in full time capacity to whom the pension scheme was made applicable from 1/10/1982. The State Government was not oblivious to the fact that in such Universities and affiliated colleges, the strength of lecturers is dependent on the work load available and whenever the full work load is available a post of full time lecturer gets approval. However, on account of some contingency if there is decline in number of students, sections/ classes, such full time post call for conversion to part time post of lecturer and whenever the desired strength is attained, they are again entitled for conversion in full time capacity. The State Government noted that in such contingency where the period of full time service is intervened by period of part time service, it is not counted for the purposes of pension. Resultantly, the Lecturer cannot be deprived of benefits of pension scheme and the State Government was therefore working out of modalities so that such lecturer is not put to inconvenience. In this backdrop, the Government issued Resolution on 15/5/96, thereby permitting the part time service intervening between two full time services to be counted for the purposes of pension subject to two conditions namely the contingency of part time service is created on account of reduction in number of class/sections and the part time service period would not be as qualifying service for the purposes of pension. It is the stand of the State Government that in the second phase of the service of the petitioner i.e. from 1/8/1972 to 14/6/1974 the petitioner worked as part time Demonstrator and duration of service rendered by him is 1 year 10 months and 14 days. The State Government heavily relies on the Resolution mentioned above to contend that the petitioner does not fulfill the conditions conferred in the Government Resolution dated 15/5/1996. It is the stand of the State Government that the part time service rendered by a Lecturer between two full time tenures can be counted for pension but it is conditional that the part time service is required to be rendered on account of fall in number of classes / divisions. The another stipulation in the Government Resolution is that part time service period is not eligible to be counted as qualifying service for the purpose of pension. By applying two stipulations in the Government Resolution, the State Government do not consider the petitioner to be entitled for consideration of his previous service of five years, one month and 18 days to be adjucted to his pensionable pay service rendered from 15/6/1974 to 30/4/2003. Perusal of the Government note which has been placed on record along with the affidavit on behalf of the State Government sets out that for the purposes of pensionary benefits, the service rendered by teaching/nonteaching staff of NonGovernment Aided College in the Full Time capacity on the approved post is to be considered and the service rendered as part time employee is not to be counted for the purposes of pensionary benefits. The note further sets out that the service rendered by the petitioner from 1/8/1972 to 14/6/1974 is not break in service but it is a part time service and in order to count the service rendered preceding the part time service and attaching it to subsequent full time service,

two stipulations are required to be complied with. However, as far as the petitioner is concerned, the petitioner was working on the post of demonstrator and was required to obtain a M.Sc. Degree and while prosecuting his studies for the said course he was allowed by the college in which he was to work on part time basis and thus the nature of service had undergone a conversion from full time to part time and the said period cannot be construed as break in service. The note also further mentions that if in order to obtain a degree in M. Sc., he would have been required to step out of his service, it would have been amounted to a break in service. However, in the case of the petitioner and as he has rendered part time service which is not entitled to be counted as pensionable service. We do not find reasoning adopted by the respondent to be either perverse or arbitrary. The petitioner was rather obliged by the respondent No.5 college when he decided to prosecute his degree in M.Sc., which was an essential qualification for the post of Demonstrator on which the petitioner was working and the college appointed him as a part time demonstrator so as to enable him to prosecute his studies. On completion of M.Sc. Curriculum he was again appointed as a full time Demonstrator with effect from 15/6/74. The petitioner could have been removed from the post of Demonstrator in the absence of holding the requisite qualification but the petitioner has been saved of such extreme situation by retaining him in service as part time Demonstrator with the existing qualification which he possessed subject to the undertaking that he would acquire the desired qualification prescribed for the post of Demonstrator. In any event, the petitioner has not been put to any loss as he rendered his services till the age of superannuation i.e. 30/4/2003 and he has rendered pensionable service of 28 years 10 months and 6 days and his pension has been fixed on the basis of said period of service. The petitioner also obtained other benefits including increments through out his service tenure and barring slight reduction in the portion of amount of pension to which he would have been eligible if it would have been a full qualifying service of 35 years, no loss has been caused to the petitioner. It is not the case that the petitioner has been deprived of his pensionary benefits because his past service has not been counted. The petitioner has retired on superannuation in the year 2003 and since then is regularly availing the pension based on the service rendered by him as a full time lecturer in respondent no.5 college.

7. In such circumstances, we do not feel that any grave injustice has been caused to the petitioner and since it is the policy of the State which does not make him entitled to consider his part time service for the purposes of pensionary benefits thereby depriving him of such service being added to the qualifying service which he has rendered. That does not infringe his legal right and therefore we decline to interfere with the impugned order. We are not in a position to redress grievance of the petitioner in exercise of our extraordinary jurisdiction. The writ petition is dismissed. No order as to costs.

8. In view of dismissal of writ petition, civil application does not survive and same is also dismissed being infructuous.