
(2021) 10 BOM CK 0150
In the Bombay High Court
Case No : Writ Petition (ST.) No. 57 Of 2020

Urmila Ashok Kamble

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 27-10-2021

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Rules, 1981 — Rule 19
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 29, 30, 33, 34, 38, 44, 57, 67(2)

Citation : (2021) 10 BOM CK 0150

Hon'ble Judges : R.D. Dhanuka, J; Abhay Ahuja, J

Bench : Division Bench

Advocate : Y.B. Lengare, Wilson Robi, N.K. Rajpurohit

Final Decision : Allowed

Judgement

Abhay Ahuja, J

1. Learned counsel for Petitioner, on instructions, seeks leave to delete Respondents No.5 to 7. Learned counsel for the remaining Respondents has no objection. Leave is granted. Amendment to be carried out forthwith. Reverifcation is dispensed with.

2. Rule. With the consent of the counsel for the parties, rule made returnable forthwith and heard fnally.

3. In this Petition, Petitioner is seeking directions to the Education Officer (Secondary) to consider her services and grant approval to the post of the Full Time Librarian from the year 1994- 95 to 1st April, 2006 as per Government Resolution dated 28th June, 1994 and to make pay fiation, pension and time bound promotion by considering the service from academic year 1994-95.

4. Brief facts are that Petitioner herein completed Bachelor of Arts in 2010 and Bachelor of Library Science in 2011. Petitioner is from Scheduled Caste category.

Petitioner was appointed by order dated 10th September, 1993 and joined on 11th September, 1993 as Part Time Librarian, which was approved by the Respondent No.3-Education Officer on 12th December, 1994 in accordance with the proposal of the Management as Part Time Librarian. The Management, viz., Khalapur Taluka Shikshan Prasarak Mandal, upgraded the post of Petitioner into Full Time Post of Librarian, which is stated to have received approval by order dated 14th December, 2006 of the Respondent-Education Officer with effect from 1st April, 2006. The Sahyadri Vidhyalaya, it is submitted, is a fully aided school.

5. It is submitted that Petitioner worked in Sahyadri Vidhyalaya, Shilphata from September, 1993 to June, 2007 and there was sufficient strength of students of more than 1000; that from the initial appointment of Petitioner, the strength of the school was more than 1000 as per Exhibit 'E' to the Petition, which facts have not been disputed in the affidavit in reply of the Respondents nor by the learned AGP. It is also not disputed that as per the staff approval (Exhibit 'F' to the Petition), the post of Part Time Librarian was sanctioned from the academic year 1993-94 upto the year 2005-06.

6. It is Petitioner's case that though the strength of students was sufficient and the post of Petitioner was required to be upgraded as Full Time Librarian, from academic year 1994-95, the Respondent No.3 Education Officer has granted approval to the post of Petitioner only from 1st April, 2006. It is submitted that the approval ought to have been granted from academic year 1994-95 as the students' strength was more than 1000 as per Government Resolution dated 28th June, 1994. Learned Counsel submits that, therefore, Petitioner is entitled to the post of Full Time Librarian from the year 1994-95 as in accordance with Government Resolution dated 28th June, 1994, the post of Part Time Librarian can be upgraded as Full Time Librarian if the school satisfies the criteria of a total students' strength of a minimum 1000 or above.

7. It is submitted that the service conditions of the teaching and non-teaching employees working in private schools like Sahyadri Vidhyalaya are governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (the "MEPS Act, 1977") and Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (the "MEPS Rules, 1981"). Rule 19 of the said Rules provides that an employee working in an aided secondary school and retiring on or after 1st April, 1966 shall be eligible for pension at the rates and in accordance with the Rules as are sanctioned by the Government specifically to the employees of the private schools. Petitioner states that accordingly the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 (MCPS Rules, 1982) have been made applicable to the employees working in the private and aided secondary schools in the State of Maharashtra.

8. Since Petitioner came to be appointed as Librarian in the fully aided secondary school, Petitioner became entitled to be entitled the benefits of the MCPS Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and

the existing General Provident Fund Scheme and not the Defined Contributory Pension Scheme ("DCPS") issued by the Government Resolution dated 31st October, 2005.

9. The DCPS for new recruits in the State Government was introduced vide Government Resolution dated 31st October, 2005 for servants recruited on or after 1st November, 2005 in State Government services. Paragraph 3 of the said Government Resolution defines the salient features of the New Pension Scheme which came into force with effect from 1st November, 2005 is mandatory for all the Government servants who recruited on or after 1st November, 2005 in the State Government services. Further, Paragraph 4, as mentioned above, provides that the new Defined Contributory Pension Scheme is applicable to the Government servants who are recruited on or after 1st November, 2005 by the State Government. The Government has, further directed the said decision shall, mutatis mutandis, apply to the employees, who are recruited on or after 1st November, 2005, in the services of recognised and aided Educational Institutions, Non Agricultural Universities and affiliated Non Government Colleges and Agricultural Universities etc. to whom the existing Pension Scheme and GPF Scheme is applicable. It is also laid down that the above decision shall apply also to the employees, who are recruited on or after 1st November, 2005 in the services of Zilla Parishads.

10. As a corollary, for government servants, recruited prior to that date, the provisions of the existing/old Pension Scheme, i.e., MCPS Rules, 1982 and the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the existing General Provident Fund Scheme (GPF) would be applicable.

11. It is submitted that therefore since Petitioner has been appointed prior to the Government Resolution of 31st October, 2005, the Old Pension Scheme would become applicable.

12. It is further submitted that as per the Government Resolution dated 8th June, 1995, the "Time Bound Promotion Scheme" was introduced by the Government of Maharashtra, through the General Administration Department and the same was made applicable to the Zilla Parishad employees also. Thereafter, again by Government Resolution dated 30th April, 1998, the same was made applicable to the non-teaching staff working in the private schools.

13. By Government Resolution dated 1st April, 2010 the "Career Assurance Scheme" was made applicable. The said Scheme was also made applicable to the 'isolated' posts by Government Resolution dated 5th July, 2010. The Librarian post, it is submitted, is an isolated post and the benefit of the said Scheme is required to be given to the concerned employee two times in his entire career/tenure.

14. Petitioner submits that she is entitled for the "Time Bound Promotion" and "Career Assurance Scheme" as per Government Resolution dated 8th June, 1995 and Government Resolution dated 30th April, 1998, since, Petitioner has

rendered unblemished service with effect from 11th September, 1993. She has completed twelve years service during the period from 11th September, 1993 to 11th September, 2005. Respondent No.1 has made applicable the 7th Pay Commission to the non-teaching staff and by Government Resolution dated 2nd March, 2019. Respondent No.1 has also adopted the new policy for the Time Bound Promotion/ Career Assurance Scheme after completing 10 years, 20 years and 30 years with retrospective effect. Therefore, Petitioner is entitled for the benefit after completing 10 years, 20 years and 30 years as per the said policy.

15. It is also submitted that Petitioner was paid the salary from the "State Contingency Fund" and therefore, the services rendered by Petitioner on the post of Librarian is required to be considered for the pensionary and promotion benefit. The initial entry in service is to be considered for all benefits is a rational taking into consideration the provisions of Rule 29, Rule 30, Rule 33, Rule 34, Rule 38, Rule 44, Rule 57, more particularly Note No.1 and 2, Rule 67 of the MCPS Rules, 1982. The previous services are required to be considered for the pension and pensionary benefit and accordingly, the pension and pensionary benefit be extended to Petitioner.

16. Learned counsel for Petitioner submits that similarly placed persons approached the Bench at Aurangabad by way of Writ Petition No.4037 of 2012 with Civil Application No.10802 of 2013 in Writ Petition No.4037 of 2012 and this Court relying upon the judgment of the Division Bench of this Court in case of Kiran Keshavrao Girhe and Ors. Vs. State of Maharashtra through its Secretary, Department of School Education & Ors. in Writ Petition No.6630 of 2013 with companion Writ Petitions at Nagpur Bench held that the issue is covered and that the Petitioners therein are entitled to grant of up-gradation to the post of Full Time Librarian from the academic year 1997-98. Petitioners therein, it is submitted, gave up claim of arrears of salary and the other consequential benefits which would be available to Petitioner notionally upto 2006. It is submitted that similar view is taken by the Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No.1272 of 2015 and that the said view of the Hon'ble High Court is followed by this Hon'ble Court in Writ Petition No.7126 of 2017 as well as in Writ Petitions No.9792 of 2016 and 13818 of 2017.

17. It is further submitted that this Court has consistently held that the Petitioner shall be entitled to half of the part time service rendered by Petitioner as teaching or non-teaching staff in the educational institution together with full time service rendered in such educational institution. The initial date of appointment of Petitioner i.e. appointment as the part time employee in the educational institution shall be taken into account for the purpose of calculation of pension and pensionary benefits. In so doing this Court has held that in the event that the Petitioners' appointment as employee on part time basis is prior to 1st November, 2005, they will be entitled to the old pension scheme. The Full Bench decision of this Court in Deshmukh Dilipkumar Bhagwan & Ors. Vs. State of Maharashtra, through Chief Secretary, General Administration Department &

Ors. (Writ Petition No.8387 of 2013 decided on 26.08.2019), has held that the employment in 100% aided educational institution, whether part time or full time, prior to 1 st November, 2005, shall be taken into account and the old pension scheme would be made applicable. He has submitted that Petitioner has been appointed on part time basis prior to 1st November, 2005 in fully aided educational institution. It is, therefore, submitted that the decisions of this Court referred to above, cover the issue arising in the present Petition.

18. In sum and substance, it is submitted that the Part Time Librarian is to be upgraded from the date of the increased strength of the students of more than 1000 and consider the said services and extend the benefits of Old Pension scheme, GPF, promotion, pay fixation, etc.

19. So far as promotional benefits of 12 years/24 years as per Government Resolution dated 30th April, 1998, 1st April, 2010, 5th July, 2010 and (Revised after 10, 20, 30 years) as per Government Resolution dated 2nd March, 2019, it is submitted that Petitioner's services as Part Time Librarian and Full Time Librarian be considered and be extended the benefits thereof.

20. In view of the aforesaid facts and circumstances, it is therefore prayed that the Petition filed by the Petitioner be allowed.

21. On the other hand, learned AGP opposes the Petition and relies upon the affidavit in reply dated 1st March, 2021. Learned AGP does not dispute the basic facts but submits that as the appointment of Petitioner was on post of Part Time Librarian, Petitioner worked for Part Time from her initial joining, i.e., 11th September, 1993 to 31st March, 2006 and as such the Petition is covered by the Government Resolution dated 3rd August, 2006. It is submitted that the revised pay fixation in the case of Petitioner as a Full Time Librarian has been approved by Petitioner with effect from 1st April, 2006 by letter dated 14th December, 2006 (Exhibit 'D' to the Petition) is in accordance with Paragraph 6 of the said Government Resolution dated 3rd August, 2006 that no Full Time Librarian posts are created in schools that have more than 1000 students.

22. It is further submitted by learned AGP that as Petitioner is holding the post of Full Time Librarian from 1st April, 2006, i.e., after 1st November, 2005, the Government Resolution of Finance Department dated 31st October, 2005 is applicable to Petitioner with respect to pensionary benefits, i.e., the DCP Scheme would be applicable and not the old Pension Scheme as claimed by Petitioner.

23. It is submitted by learned AGP that therefore from the initial date of joining of Petitioner, viz., 11th September, 1993, Petitioner remains Part Time Librarian upto 31st March, 2006 and has worked on that post which is sanctioned as per staff approval, no benefits of Full Time Librarian are admissible to Petitioner before 1st April, 2006. It is submitted that as Petitioner has worked as Part Time Librarian upto 31st March, 2006 and upgraded to the post of Full time Librarian only from 1st April, 2006, no benefits or pension, time-bound promotion are eligible from academic year 1994-95. It is submitted that therefore Petition be

dismissed.

24. We have heard Mr.Y.B. Lengare, learned counsel for Petitioner and Mr.N.K. Rajpurohit, AGP for Respondents-State and with their able assistance, we have perused the papers and proceedings in the matter.

25. Petitioner has also filed rejoinder rebutting the submissions by learned AGP and reiterating the averments in the Petition, which we have perused.

26. The primary issue that arises for our consideration is the date of applicability of Government Resolution dated 3rd August, 2006 to the case of Petitioner whether it is to be from 1st April, 2006 as per Clause 1 of the Government Resolution or the date of initial appointment of Petitioner as Part Time Librarian when the school undisputedly had already satisfied the criteria of increased students' strength of a minimum of 1000 students or more.

27. In our view, this issue is no longer res integra in view of a catena of decisions of this Court. The earliest one can be traced to the case of Vatsala Nana Desai Vs. The Head Master, Shri M.G. Shah Vidyamandir and Junior College, Kolhapur & Ors. dated 9th February, 2012 and 24th February, 2012 in Writ Petition No.2281 of 2013 referred to and relied upon in Writ Petitions No.6630 of 2013, 6631 of 2013 and 6481 of 2013 passed by the Nagpur Bench of this Court on 28th January, 2015, where after considering the Government Resolution dated 28th June, 1994, the said post of Part Time Librarian was upgraded to Full Time Librarian from the initial date of appointment as Part Time Librarian with all benefits accruing to the said employees by treating them as entitled to as Full Time Librarian from the initial date of appointment.

28. This Court in Writ Petition No.7126 of 2017 and other connected Petitions, while considering similar Petitions, has summarised the two Government Resolutions as under :-

"11. Vide the Government Resolution dated 28th June, 1994, the Government of Maharashtra effected changes in the existing policy of the Government for applying benchmark in the matter of the creation of post towards the workload by constituting a committee headed by the former Director of Education Mr.V.V. Chiplunkar (commonly known as 'Chiplunkar Committee'). Based on the recommendations, the Government provided for creation of one Part Time post of Librarian against the strength of 1000 to 1500 students. The said policy was reconsidered by the State Government at the request made by the Association of Part Time Librarians, which resulted in the formation of a new policy as reflected in the Government Resolution dated 3rd August, 2006.

12. Accordingly, the State Government granted permission of conversion of existing 924 posts of Part Time Librarian to Full Time Librarian, based on the following conditions :-

(a) The strength of the students for the last three years before 1st April, 2006 should be 1000;

(b) The appointment of Part Time Librarian should be in accordance with the Recruitment Rules;

(c) The Part Time Librarian should complete five years of his tenure; and

(d) For calculating the strength of students, only the grant in aid sections will be taken into consideration.

(e) The appointment of such Part Time Librarian should be approved by the Education Officer.

13. Such schools who were satisfying the aforesaid conditions and who were 924 in numbers were permitted to convert their existing posts of Part Time to Full Time Librarian, however, such conversion was made subject to the following conditions :-

(a) That the appointment to the post of Full Time Librarian will be a fresh appointment and not by promotion.

(b) Initially the appointment will be on probation for a period of two years.

(c) Tenure of services as a Part Time Librarian will not be considered for granting pay scale.

(d) The appointment will be on the lowest pay grade in the category of librarian.

(e) Pay to the post of Full Time Librarian will be entitled from 1st April, 2006.

(f) Creation of post will be subject to the further policy of the Government."

29. In Writ Petition No.1272 of 2015, the Nagpur Bench of this Court while considering similar issues, allowed the Petition. The said decision concluded that, (i) the State Government Resolution dated 28th June, 1994 prescribes the strength of 1000 to 1500 students for sanction of the post of Full Time Librarian, which means that the Part Time Librarian can be upgraded as Full Time Librarian if the total strength of students is minimum 1000 or more and (ii) once the post is upgraded because of availability of more than 1000 students right from 1994, Petitioner is to be given Full Time status from the date when the strength of school is atleast 1000 or more or on the date of their initial appointment as a Part Time Librarian, whichever is later.

30. In view of the above discussion, we are of the considered view that the issue arising in this Petition has squarely been covered by the decisions relied upon by the learned Counsel for the Petitioner referred to above.

31. Further, the Full bench of this Court in Deshmukh Dilipkumar Bhagwan (supra) has in answering the issue which also arises herein held that for employees of educational institutions who are appointed prior to 1st November, 2005 in fully aided posts, the old pension scheme shall be made applicable to such employees of the said educational institutions.

32. What also emerges from the above referred decisions is that only notional increments would be released in favour of Petitioner from the initial date and on account of such notional release, no arrears shall be payable. The notional exercise shall be valid only for the purposes of pay fixation, time bound promotion and pensionary benefits as per Rules.

33. The aforesaid discussion brings us to the following conclusions.

34. To avail of the benefits, the institution should have been a 100% aided educational institution on or before the date of the initial appointment of Petitioners.

35. By Government Resolution dated 28th June, 1994, if the strength of students is more than 1000, the Part Time Librarian can be up-graded as a Full Time. In the case at hand, it is not in dispute that Petitioner has been initially appointed as Part Time Librarian from 11th September, 1993 in a fully aided school where the students strength has been more than 1000 from academic year 1994-95. Therefore, Petitioner is entitled to be up-graded as a Full Time Librarian from the academic year 1994-95 to 2006-07 and that the initial date of appointment of Petitioner, i.e., appointment as a Part Time employee in the educational institution shall be taken into account for the purpose of calculation of pension and pensionary benefits.

36. It would also not be out of place here to mention that in view of the decision of this Court in the case of Jyoti Prakash Chougule Vs. State of Maharashtra & Ors. in Writ Petition No.2354 of 2012, Petitioner shall be entitled to half of the Part Time Service rendered by Petitioner in the educational institution together with Full Time Service rendered in such educational institution for the purposes of qualifying service as well as pensionary benefits.

37. Petitioner has been recruited as Librarian much prior to 1st November, 2005 and, therefore, the provisions of the Defined Contributory Pension Scheme as framed under the aforesaid Government Resolution dated 31st October, 2005 shall not be applicable. That apart, the School in which Petitioner was working at the relevant time, was a fully aided school. Hence, the provisions of Defined Contributory Pension Scheme framed under the aforesaid Government Resolution dated 31st October, 2005 cannot be made applicable to Petitioner. The appointment of Petitioner was as per the Old Pension Scheme and, therefore, she is entitled for Old Pension Scheme.

38. From the Government Resolution dated 1st January, 2019, tendered across the bar by learned Counsel for Petitioner, we note that the Career Assurance Scheme of the Government of India has also been made applicable to State Government employees. Petitioner's request for the "Career Assurance Scheme" as per the aforesaid Government Resolutions deserves consideration.

39. With respect to the time-bound promotion/Career Assurance Scheme, this Court by order dated 4th October, 2018 in Writ Petition No.334 of 2018 in the

case of Shri Suresh Bhanudas Shinde and Anr. Vs. State of Maharashtra and connected Writ Petitions has held that in view of a number of decisions passed by this Court in similar matters that the second benefit after 24 years of service be granted to all non-teaching staff, who are similarly situated as Petitioners, viz., who have been given the first benefit, i.e., the benefit after putting in 12 years of service. However, with respect to the time-bound promotional scheme to non-teaching staff on completion of 24 years of regular service, we note that by order dated 10th February, 2021 in Review Petition (St) No.3452 of 2019 in Writ Petition No.5629 of 2018 and connected Petitions, this Court after prima facie accepting the submissions made by the learned Advocate General that the said judgments were in respect of one time benefit of Time Bound Promotion Scheme after completion of 12 years in service not having application with respect to the employees, who were claiming second benefit on completion of 24 years, stayed the orders in Review. Learned counsel for Petitioner therefore, on instructions, submits that with respect to the prayers pertaining to the time-bound promotional scheme in this Petition, he is limiting the Petitioner's claim in this Petition only to the first benefit after completion of 12 years of service.

40. Having regard to the above discussion and applying the principles settled by this Court, we are inclined to issue the following directions to be acted upon in line with the above discussion :-

(i) The concerned Respondents are directed to grant notional pay fixation, time-bound promotion/ Career Assurance Scheme and other retirement and pensionary benefits to the Petitioner upon considering her full time appointment on the post of Librarian from the date of her initial appointment, having regard to the fact that the strength of the students on such date was 1000 or more.

(ii) The date on which the strength of the students has crossed 1000 shall be considered for grant of notional pay fixation, for grant of time-bound promotion/ Career Assurance Scheme and other retirement and pensionary benefits which in any case cannot be before the Government Resolution dated 28th June, 1994.

(iii) Respondent No.3 is directed to consider Petitioners' services and grant approval to Petitioners to the post of Full Time Librarians with effect from the date of the Government Resolution dated 28th June, 1994 and make pay fixation, pension, and time bound promotion by considering the said Government Resolution and the date as 28th June, 1994.

(iv) The concerned Respondent is also directed to allot the provident fund account to Petitioner in the post of "Librarian" and deduct the contribution of Petitioner as per the old pension scheme.

(v) The Headmaster, Sahyadri Vidhyalaya, Shilphata is directed to submit the pension papers of Petitioner within a period of four weeks from the date of communication of this order and Respondent No.3 is directed to consider the proposal in accordance with the MCPS Rules, 1982, the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the existing General

Provident Fund Scheme (GPF) and not in accordance with the Defined Contributory Pension Scheme (DCPS) and Respondent No.3 is directed to release/ credit the arrears of salary/retiral/pensionary benefits in favour of Petitioner within four weeks thereafter.

(vi) The Head Master of Sahyadri Vidhyalaya, Shilphata is directed to send Petitioner's proposal to Respondent No.3 for extending the benefits of the "Time Bound/Career Assurance Scheme" for first benefit on completion of 12 years within two weeks of the communication of this order and Respondent No.3 to consider the same within a further period of two weeks.

(vii) Rule is made absolute in the above terms. Petition is accordingly allowed. There shall be no order as to costs.

(viii) Parties to act on an authenticated copy of this order.