

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1603/2020

Rajendra Vishwanath Moon,
aged 53 Yrs., Occ. Service,
R/o Dhote Layout, Opp. Bus Stop,
Rajura, Tal. Rajura, Distt. Chandrapur. ... Petitioner

- Versus -

1. The State of Maharashtra,
through its Secretary, Department
of School Education and Sports,
Mantralaya, Mumbai-32.
2. The Director of Secondary and
Higher Education, State of Maharashtra,
Central Building, Pune-1.
3. The Deputy Director of Education,
Nagpur Division, Balbharti, Opp.
Dhantoli Park, Dhantoli, Nagpur.
4. Adarsha Shikshan Prasarak Mandal,
Rajura, through its Secretary, Shri
Avinash Jadhav, Ramnagar Colony,
Near Water Tank, Rajura,
Distt. Chandrapur.
5. Shri Shivaji Arts, Commerce and
Science College, Rajura, through its
Principal, Asifabad Road, Rajura,
District Chandrapur. ... Respondents

Mr. B.G. Kulkarni, Advocate for the Petitioner.
Mr. N.S. Rao, Assistant Government Pleader for the respondent
Nos.1 to 3.
Ms. Kirti Satpute, Advocate for the respondent Nos.4 and 5.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 13.12.2024.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner has filed this petition invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India challenging the arbitrary action on the part of the respondent Nos.1 to 3 in not granting the benefit of service from 22.7.1999 to 1.7.2007 rendered by the petitioner as a part-time approved junior college Teacher in the respondent No.5 college. He has also praying for the benefit of regular pension scheme as per the Maharashtra Civil Services (Pension) Rules, 1982 instead of Defined Contributory Pension (for short

“D.C.P.”) scheme by counting half of the services rendered as a part-time Teacher.

3. The petitioner holds a qualification of M.A. (Geography), M.A. (Political Science) and B.Ed. In view of the limited workload in regards to the Geography subject, the petitioner was appointed as a part-time Junior Teacher on year to year basis from the year 1999-2000 to 2003-2004. The said appointments were approved by the respondent No.3 from time to time. In view of the availability of regular workload for a part-time Teacher, the respondent No.4 had appointed the petitioner on regular basis as a part-time junior college Teacher for the year 2004-2005 onwards till further orders. The appointment was on ‘onward basis’. The workload for a full-time Teacher had become available in the respondent No.5 college from the year 2007-2008.

4. The petitioner came to be appointed as a full-time junior college Teacher in the respondent No.5 college from 2007

on 'onward basis'. From 2.7.2007 the petitioner is working as an approved full time Lecturer in the respondent No.5 junior college. The services rendered by the petitioner as an approved part-time Teacher are from 20.7.1999 to 1.7.2007 i.e. for 8 years and 11 days and, therefore, his services are required to be taken into account for the purpose of pension as per the old scheme. Therefore, according to the petitioner, he is entitled for being covered under the regular pension scheme as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and service of 4 years and 5.5 days (half of the service of part-time Teacher) would have to be taken into account as qualifying service for pensionary benefits.

5. The petitioner has retired on 30.6.2024. Hence, the qualifying service as a full time Teacher w.e.f. 2.7.2007 would be 17 years. Resultantly, by taking into account half of the part-time service rendered by the petitioner, his total qualifying service for pensionary benefits would be 21 years and 5.5 days, however, the

respondent Nos.1 to 3 have not taken into account his appointment till 1.7.2007 as a part-time Teacher and treated the petitioner to be covered under the D.C.P. scheme. Therefore, the petitioner has invoked the extraordinary writ jurisdiction of this Court.

6. The respondent No.3 has filed reply for and on behalf of the respondent Nos.1 to 3 and denied the claim of the petitioner for counting his part-time service for pensionary benefits under the old pension scheme. According to the respondent No.3, the appointment of the petitioner as a part-time junior college Teacher was on temporary basis for each academic session as the post on which the petitioner was working was not permanent in nature. For the academic session of 2005-2006 to 2006-2007 there was no approval and nothing is placed on the record about approval issued by the Education Department in the said academic years. The petitioner cannot claim his appointment on part-time basis as it was not of permanent in nature. Further,

there is a break in service from 2005-2006 to 2006-2007, therefore, the reliance placed by the petitioner on the judgment dated 9.7.2018 passed by this Court is not applicable to the petitioner. Thereafter, the State Government issued Defined Contributory Pension (D.C.P.) scheme vide Government Resolution dated 31.10.2005. After the break of two years, the petitioner was appointed w.e.f. 2.7.2007 which was approved by the respondent No.3 vide order dated 12.9.2007. Therefore, the D.C.P. scheme is applicable to the petitioner.

7. In support of his argument, the petitioner has placed reliance on several judgments passed by this Court. These judgments are passed by placing reliance on Shivappa S/o Bhujangappa Bembale V/s. State of Maharashtra and another reported in **2005 (3) Mh.L.J. 709** but the said judgment is not applicable to the present petition. Therefore, all the judgments passed on the basis of the decision Shivappa S/o Bhujangappa Bembale (supra) are not applicable to the present petition. Bunch

of petitions were filed at Principal Seat seeking declaration that old pension scheme i.e. the Maharashtra Civil Services (Pension) Rules, 1984 and General Provident Fund are applicable to the part-time Assistant Teachers and non-teaching employee who are appointed prior to 1.12.2005. The judgment passed by the Principal Seat at Bombay dated 1.10.2021 in the aforesaid matter is challenged before the Hon'ble Apex Court and S.L.P. Diary No.9059/2023 is pending before it. Therefore, a prayer is made to dismiss the petition.

8. The respondent Nos.4 and 5 have filed their reply and admitted that as per the staffing pattern of the year 2004-2005 and 2006-2007 three part-time posts of junior college were sanctioned by the respondent No.3. In view of the availability of regular workload for a part-time Teacher, the respondent No.4 had issued appointment order dated 20.6.2004 in favour of the petitioner as a regular part-time junior college Teacher. The said appointment was approved by the respondent

No.3 vide approval order dated 30.12.2004. It is specifically mentioned that it is until further orders. As it is granted until further orders, the respondent Nos.4 and 5 did not issue appointment order till 2007 in favour of the petitioner. The petitioner continued to work on the same post from 2004 to 2007 as a part-time junior college Teacher. The petitioner was also given salary for the said period. He continued to work on the said post till he was appointed as a full-time Teacher.

9. So far as the facts are concerned, there is no dispute that the petitioner worked with the respondent initially as a part-time Teacher and thereafter from 2007 he was working as a full-time Teacher. As per the conditions, the petitioner has completed M.A. in Political Science within a stipulated period. Though the respondent No.3 has refused to consider length of part-time service of the petitioner for pension purpose and has claimed that there was a break in the service, on perusal of the reply of the respondent Nos.4 and 5 it is apparent that said respondents have not issued appointment order on year to year

basis to the petitioner. The respondent Nos.4 and 5 have admitted that the petitioner was working as a part-time Teacher till 2007.

10. The limited controversy in this case is about the conversion of part-time service of the petitioner into continuous / full time service for grant of pensionary benefits and its permissibility in law.

11. This Court at its Aurangabad Bench in the case of Mukund Bapurao Dhadkar V/s. The State of Maharashtra and others in Writ Petition No.10221/2015 delivered on 11.2.2016 had an occasion to consider a similar controversy, where in by relying on its earlier decision in case of Shalini Asaram Akkarbote V/s. State of Maharashtra and others in Writ Petition No.8289/2013 dated 28.2.2014 has observed that part-time service rendered by an employee shall have to be taken into account to the extent of half of the service in addition to the period on which the person has worked on full time basis for the

purpose of entitlement of pensionary benefits. The said decision would squarely apply to the case in hand.

12. Another stand of the respondent No.3 is that by virtue of implementation of the D.C.P. scheme introduced vide Government Resolution dated 31.10.2005 the petitioner is not entitled for pensionary benefits since the petitioner was appointed as a full-time Lecturer in the year 2007 i.e. after the introduction of the D.C.P. scheme. We may note that, in view of findings recorded herein above by holding that petitioner is entitled for part-time service to be considered for pensionary benefits, his entitlement would relegate back to the date of part-time appointment i.e. of the year 1999. Therefore, it cannot be said that due to subsequent implementation of the D.C.P. scheme the petitioner is not entitled for pensionary benefits. The said scheme is applicable to the employees who are appointed after 1.11.2005. In case of petitioner he was appointed in the year 1999, therefore, the D.C.P. scheme would not apply to him.

13. In view of the above observations, one half services rendered by the petitioner as a part-time Teacher, shall be taken into consideration for the purpose of award of pension along with the period for which he had worked as a full-time Lecturer. Accordingly, the petitioner can be said to be entitled for pensionary benefits.

14. In light of above discussion, we allow the petition by directing the respondent Nos.1 to 3 to count half of the service rendered by the petitioner from 20.7.1999 to 1.7.2007 as a part-time junior college Teacher as qualifying service for the purpose of retirement and pensionary benefits as per the old pension scheme.

Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Tambaskar.