



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**WRIT PETITION 80 OF 2020**

1. Smt. Pratibha Prakash Almast,
2. Bhartiya Shikshan Sanstha, Nawargaon  
through its Secretary, Tah. Sindewahi,  
Dist. Chandrapur.
3. Bharat Vidyalaya Nawargaon,  
Through its Head Master, Tah. Sindewahi  
Dist. Chandrapur.

... **PETITIONERS**

**// VERSUS //**

1. The State of Maharashtra through its  
Secretary, Department of School Education  
and Sports, Mantralaya, Mumbai-32.
2. The Deputy Director of Education,  
Nagpur Division, Nagpur.
3. The Education Officer (Secondary),  
Zilla Parishad, Chandrapur.
4. The Accounts Officer in the office  
of the Accountant General (Accounts and  
Entitlements)-II, Post Box No. 114,  
Pension Wing, Old Building,  
Civil Lines, Nagpur.

... **RESPONDENTS**

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Shri Anand Parchure, Advocate for petitioner.  
Shri M. K. Pathan, AGP for respondents 1 to 4.  
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**CORAM :- ROHIT B. DEO &  
M. W. CHANDWANI, JJ.**

**DATED :- 22.06.2023**

**ORAL JUDGMENT (PER: ROHIT B. DEO, J.):-**

Heard.

2. **Rule.** Rule made returnable forthwith.

3. The petitioner 1 was initially appointed as a part-time Librarian on compassionate grounds on the establishment of Bharat Vidyalaya, which is managed by petitioner 2- Society, vide appointment order dated 30.08.1995 with effect from 01.09.1995.

4. The appointment of the petitioner 1 was on probation and was approved by respondent 3- Education Officer vide order dated 16.10.1996.

5. The petitioners submit that since the strength of the students was more than 1500, petitioner 3- School was entitled to one post of full-time Librarian. The said post was occupied by Mr. Meshram, who was working on the establishment of petitioner 3- School. Mr. Meshram superannuated in 2011-12. The petitioner 2 resolved on 29.06.2012 to transfer petitioner 1 from Palasgaon (Jat) to Navegaon on the post of full-time Librarian, which fell vacant in view of the superannuation of Mr. Meshram. Accordingly, the petitioner 1 was transferred as full-time Librarian on the establishment of

petitioner 3- School vide order dated 30.06.2012 and she joined duty on 02.07.2012. The transfer on promotion as full-time Librarian of the petitioner 1 was duly approved by respondent 3- Education Officer vide order dated 22.11.2012. The petitioner 1 worked as full-time Librarian till her superannuation on 31.03.2016.

6. Even before the superannuation of petitioner 1, petitioner 3 forwarded the pension proposal of petitioner 1 to respondent 3- Education Officer and respondent 4 – Accounts Officer on the establishment of Accountant General (Accounts and Entitlements)-II alongwith covering letter dated 09.10.2015. In response, respondent 4 issued communication dated 04.12.2015 requesting respondent 3 – Education Officer to resubmit the proposal after complying with certain deficiencies. Respondent 4 reiterated the request on 02.11.2018. The copy of the said request letter was also forwarded to petitioner 1. The petitioner avers that it was only after receiving the said communication dated 02.11.2018 that she learned that the pension proposal had certain deficiencies. Petitioner 1 requested petitioner 3 to do the needful. Petitioner 3 then issued communications dated 06.12.2018 and 19.12.2018 explaining and clarifying the doubts and the queries. The Education Officer forwarded the said explanation/clarification to respondent 4.

7. The petitioners submit that while petitioner 1 was reasonably expecting that the pension shall be sanctioned, vide communication dated 29.04.2019 issued by respondent 4, the pension is rejected and the proposal returned on the ground that the petitioner 1 did not complete the minimum qualifying service.

8. It is fairly not disputed by the learned Assistant Government Pleader, Mr. Pathan, that 10 years service is indeed the minimum qualifying service.

9. The petitioners submit that the rejection of pension proposal is on the premise that the service rendered by the petitioner 1 as part-time Librarian will have to be entirely ignored. The petitioners submit that 50% of the services rendered as part-time Librarian will have to be added to the service tenure as full-time Librarian. The petitioner 1 rendered 16 years and 10 months of service as part-time Librarian and 3 years and 9 months of service as full-time Librarian.

10. We may note that while in the body of the petition, the averment is that the entire period of 16 years, 10 months of service as part-time Librarian will have to be added to the service rendered as full-time Librarian, during the course of hearing it is not disputed that

only 50% of the part-time employment will have to be considered towards qualifying service.

11. The submission is that if 50% of the part-time employment is considered, the petitioner 1 has rendered qualifying service of 12 years and 4 months and is entitled to pension.

12. The petitioners would submit that the entitlement of the pension will have to be considered on the touchstone of Rule 57, Note 1 read with Rules 30 and 31 of the Maharashtra Civil Services (Pension) Rules, 1982 (“Pension Rules” for short). The petitioners would submit that the issue is not *res integra* and several Co-ordinate Benches of this Court have spoken in unison and have held that 50% of the services rendered as part-time employee shall have to be considered while calculating the qualifying service.

13. Learned counsel for the petitioners, Mr. Parchure, would rely on the decision of the Co-ordinate Bench in *Writ Petition 2467/2021 (Mrs. Pratibha W/o. Suryakant Kale Vs. State of Maharashtra, decided on 03.10.2022)*, which is rendered after considering the earlier decisions. We may extract paragraph 15 of the said decision, which reads thus:-

“15. In the present case, petitioner No.1 – Pratibha Kale was appointed as Permanent Part Time Physical Instructor on 24.5.1999 i.e. 1.11.2005. The first decision in respect of the above issue is in the case of Jyoti Prakash Chougule Vs. State of Maharashtra reported at AIR Online 2018 Bom.532, wherein it is held that once the very same pension rules are applicable to teachers in terms of Rule 19 of the MEPS Rules, the said principle would apply in the facts of the said case. The same view is reiterated by the Division Bench of this Court in the Chitrarekha M.Naik vs. State of Maharashtra and ors, cited supra, wherein also in a catena of decisions this Court has held that 50% of the Part Time services rendered by Part Time Librarian is required to be counted for the purposes of pensionary benefits along with Full Time Services rendered by the employee. It is further held that the principles laid down by this Court in the case of Jyoti Prakash Chougule Vs. State of Maharashtra cited supra and Abaso Ganpati Aoute vs. State of Maharashtra & Ors. has would apply to the case. The Division Bench also referred the decision in the case of Darshana Gaikwad vs. State of Maharashtra cited supra wherein identical facts where the petitioner was appointed as Part Time Librarian and, thereafter, Full Time Librarian were considered. There is no reason for us also to deviate from the said decisions and take the contrary view.”

14. Mr. Parchure would then press in service the decision of the Co-ordinate Bench in Writ Petition 5421/2017 (Smt. Darshana Wd/o. Adikrao Gaikwad Vs. State of Maharashtra, decided on 09.07.2018), which articulates thus:-

7. After taking into consideration several decisions, including the aforesaid decision in the case of Shalini w/o. Asaram Akkarbote Vs. The State of Maharashtra and others, cited supra, it is held in para 11 as under:-

“11. In the facts of the present case also, indisputedly the petitioner herein has rendered services as part-time Librarian with respondent no. 4- School from 24.08.1982 to 30.07.1997 and from 01.08.1997 as full-time Librarian till the date of her superanuation i.e. 30.04.2004. Therefore, the services rendered by the petitioner as a part-time Librarian, half of the period of said services will have to be taken into consideration in addition to the period for which the petitioner has worked as full-time Librarian, and accordingly, the petitioner

*will have to be held entitled for the pensionary benefits.”*

*Thereafter, different Benches of this Court have reiterated the same view and the ultimate ratio is that 50% of the part-time services rendered is required to be counted for the purposes of determining the pensionable service along with the full-time service rendered by an employee.*

*8. In view of above, the petitioner is entitled to the reliefs claimed in the petition, for the reason that 50% of the service rendered by her husband from 1998 to 2009 is to be counted for the purpose of pension along with full-time service rendered from 1-2-2009 to 24-10-2016. Thus, the deceased-employee becomes entitled to pension in accordance with law.”*

15. Mr. Parchure would then rely on the decision of the Coordinate Bench in ***Writ Petition 3393/2022 (Prabhakar Namdeorao Metkar Vs. The Deputy Director of Education, decided on 27.01.2023)***, to which one of us (Rohit B. Deo, J) is a party. Paragraphs 9 to 11 of the said decision read thus:-

*“9. Since the petitioner’s grievance is about pensionary benefits on completing qualifying service provided under the School Code, the Rule 70.4 of the Secondary School Code as well as Rules 30, 57 and 110 of the Pension Rules therefore, it would be just and proper to reproduce the said provisions of law, which read as under:-*

**Rule 70.4 of the Secondary School Code:-**

*“70.1. . . . .*

*70.4. Part-time employees and those working in Night High Schools are not eligible either to the Provident Fund Scheme or to Pension Scheme.”*

**Rules 30, 57 and 110 of the Pension Rules:-**

*“30. Commencement of qualifying service.*

*Subject to the provisions of these rules, 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:*

*Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency-*

*Provided further that, in cases where a temporary Government servant retires on Superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of Superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scale as admissible to a permanent Government servant.*

*Exception- The rules regarding grant of terminal benefits to temporary Government servant except those mentioned in the second proviso who retire being confirmed in any post in Government service are embodied in Appendix II.*

\* \* \* \* \*

**57. Non-pensionable service.**

*As exceptions to Rule 30, the following are not in pensionable service:-*

*(a) Government servants who are paid for work done for Government but whose whole time is not retained for the public service,*

*(b) Government servants who are not in receipt of pay but are remunerated by Honoraria,*

*(c) Government servants who are paid from contingencies,*

*(d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable,*

*(e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.*

\* \* \* \* \*



**110. Amount of pension.**

(1) *In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's pay for every completed six monthly period of qualifying service.*

(2) (a) *In the case of Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty percent of the "Pensionable Pay", subject to a maximum of Rs.4,000 per month.*

(b) *In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of thirty-three years but after completing qualifying service of 10 years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than rupees three hundred and seventy five per mensem.*

(3) *In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one-half year and reckoned as qualifying service.*

(4) *The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee"*

10. *In the case of **Smt. Kalpana Jagatrao Dahiwale (supra)**, the Co-ordinate Bench of this Court has considered the judgment in the cases of **Jyoti Prakash Chougule Vs. State of Maharashtra (Writ Petition 2354/2012, decided on 07.01.2014)** and **Shivappa S/o. Bhujangappa Bembale Vs. State of Maharashtra [2005 (3) Mh.L.J. 709]** and held that the said Pension Rules are applicable to the teachers in terms of Rule 19 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981 and 50% of part-time service rendered by the teacher is to be taken into consideration alongwith service rendered by the teacher being full-time teacher for grant of pensionary benefits. Similarly, the facts in the case of **Smt. Darshana Wd/o. Adikrao Gaikwad Vs. State of Maharashtra (Writ Petition 5421/2017, decided on***

*09.07.2018) and the facts of present case are identical, the petitioner was appointed as part-time librarian initially and thereafter, full-time librarian. Under such circumstance, it has been held that 50% of part-time service rendered by the part-time librarian is required to be counted for the purpose of pensionary service along with full time services rendered by the employee.*

*11. Similarly, in the case in hand, the petitioner rendered 21 years 3 months service as part-time Instructor/Accountant and 2 years 9 months being full-time teacher. In our considered view and in view of settled law, 50% of the part-time service rendered by the petitioner will have to be considered for the purpose of calculating the qualifying service and so considered the petitioner has rendered more than 13 years of qualifying service and is entitled to pensionary benefits.”*

16. Mr. Parchure further relied on the decisions of the Coordinate Bench in *Writ Petition 2354/2012 (Jyoti Prakash Chougule Vs. State of Maharashtra, decided on 07.01.2014)* and *Writ Petition 5458/2017 (Chitrarekha M. Naik Vs. State of Maharashtra, decided on 08.10.2021)*.

17. Considering the law laid down in the decisions supra, it will have to be held that 50% of the part-time employment rendered by the petitioner 1 shall have to be considered for the purpose of calculating the qualifying service.

18. The stand of respondent 4, as is reflected in paras 7 and 8 of the affidavit in response dated 15.05.2020, however is that since the petitioner 1 was appointed as full-time Librarian on 30.06.2012, i.e. after the issuance of the Government Resolution dated 31.10.2005

which introduced the Defined Contribution Pension Scheme, which replaced the then Pension Scheme, the petitioner 1 is not entitled to pension.

19. Similar stand is considered by the Co-ordinate Bench in ***Writ Petition 3696/2021 (Renuka Chandrabhan Umredkar Vs. State of Maharashtra, decided on 07.09.2021)*** and suffice it would if we extract paragraph 15 of the said decision, which reads thus:-

*“15. Division Bench of this Court (Coram : Shri R.D. Dhanuka and R.I. Chagla, JJ.) in the case of **Smt.Kalpana Jagatrao Dahiwale (supra)** after adverting to the judgment of this Court in the case of **Jyoti Prakash Chougule (supra)** and in the case of **Abaso Ganpati Aoute Vs.State of Maharashtra & Ors.** in Writ Petition No.8832 of 2015 delivered on 22<sup>nd</sup> July 2016 has held that the petitioner in that matter having completed more than 10 years 3 months as part time Librarian and completed more than 9 years and 11 months as full time Librarian, 50% of the services rendered as part time will have to be considered for the purpose of computation of pensionable services. In that matter also, the petitioner was appointed as part time Librarian on 26<sup>th</sup> December 1995 and was appointed as full time Librarian on 1<sup>st</sup> April 2006 by up-gradation of part time post as full time post. The petitioner therein was appointed on full time post after the Government Resolution dated 31<sup>st</sup> October 2005 came to be issued. The judgments of this Court in the cases of **Shri Purushottam Harishchandra Shirsekar (supra)** and **Smt.Kalpana Jagatrao Dahiwale (supra)** apply to the facts of this case.”*

20. In view of the authoritative decision in ***Renuka Umredkar*** (supra), the stand of the State Government that petitioner 1 is not entitled to pension since, her full-time appointment is after the relevant date, will have to be rejected. We shall be failing in our duty if we do not consider the judgment dated 10.12.2019 in ***Writ Petition 6971/2018 (Smt. Sheela W/o. Kisan Sirsat Vs. State of Maharashtra)***

to which one of us (Rohit B. Deo, J.) was a party, which is pressed in service on behalf of the State Government and is annexed to the affidavit in response.

21. In *Sheela Sirsat* (supra), after reproducing Rule 57(a) of the Pension Rules, the Co-ordinate Bench observed that since the petitioner was appointed as full-time Librarian, the services rendered by her as part-time Librarian cannot be considered for the purpose of qualifying service.

22. It cannot be gainsaid, that what is held by the Co-ordinate Bench in *Sheela Sirsat* (supra) is inconsistent with and contrary to the catena of the decisions rendered and which we have noted supra. We did give anxious consideration to the need of referring the issue to the Larger Bench. However, on a deeper examination, we find that it would not be necessary to make a reference, and we may briefly spell out our thinking process.

23. Plain reading of the decision in *Sheela Sirsat* (supra), which is rendered on 10.12.2019, reveals that the said decision proceeds on the premise that part-time employment, and even portion thereof, cannot be counted for the purpose of qualifying service, in view of the provisions of Rule 57 of the Pension Rules. The attention

of the Division Bench was neither invited to Note 1 to Rule 57 nor was the attention of the Division Bench invited to catena of the decisions which are rendered after considering the statutory provision holding the field.

24. The well entrenched position of law is that it is not the conclusion manifested in the judgment which is precedent, it is only the principle which is laid down in the judgment after considering the applicable statutory provisions and the submissions which may have been advanced, which has a precedential value as would bind the Co-ordinate Bench. With due respect to the Co-ordinate Bench, which rendered the decision in *Sheela Sirsat* (supra), we nurture no doubt that the said decision is not a precedent. In the teeth of authoritative pronouncement of the Co-ordinate Benches, there is no reason for us to mull a reference.

25. In view of the discussion supra, we allow the petition and make Rule absolute in terms of prayer clauses 1, 2 and 3, which reads thus:-

*“i) To quash and set aside the order dated 29.04.2019 (Annexure XII) passed by the Respondent No. 4 i.e. The Accounts Officer in the Office of the Accountant General (Accounts and Entitlements)-II;*

*ii) To hold and declare that the petitioner no. 1 is entitled to receive pension and other retirement benefits by virtue of considering her half of the part time service along with the full time service as Librarian;*

*iii) Direct the Respondent No. 4 i.e. The Accounts Officer in the Office of the Accountant General (Accounts and Entitlements)-II, to grant pension and other retirement benefits to the petitioner no. 1 by considering half of the part time service along with the full time service of the petitioner no. 1 as Librarian;"*

(M. W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

*RR Jaiswal*