



Judgment

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

WRIT PETITION No. 8656/2018.

Surekha wd/o Vinayak Kathardekar,
(Ratriade), Aged 60 years, resident of
'Datta Niwas', Deodi, Post Kurule,
Tahsil Chamorshi, District Gadchiroli. ...

PETITIONER.

VERSUS

1. Joint Director Higher Education,
Government Polytechnic College
Campus, Sadar, Nagpur.
2. Principal, Vrajlal Manilal Vasant Commerce
and Jaydeoshakar Manishankar
Thakar Arts and Jashbhai Jijibhai
Patel Science College, Wardhaman
Nagar, Nagpur.
3. Accountant General (A & E)-II
Maharashtra, Civil Lines,
Nagpur.

... **RESPONDENTS.**

Mr. R.V. Shiralkar, Advocate for the Petitioner.
Mr. M.A. Kadu, A.G.P. for Respondent Nos. 1 to 3.

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**CORAM : A.S. CHANDURKAR
& VINAY JOSHI, JJ.**

DATE : FEBRUARY 17, 2020.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Rule. Rule made returnable forthwith, heard finally by consent of learned Counsel appearing for respective parties.

2. This Writ Petition is filed under Article 226 of the Constitution of India seeking to quash the communication dated 03/04.09.2018, issued by respondent no.1, rejecting petitioners' entitlement for family pension on account of death of her deceased husband namely Vinayak Kathardekar. The petitioner is also seeking directions to respondent nos. 1 and 2 to consider part time service of her deceased husband on the post of Lecturer, converting one half of full time services rendered by the deceased Vinayak, for grant of pension and other pensionary benefits.

3. It is the case of petitioner that deceased Vinayak was appointed as part time lecturer with respondent no.2 College vide appointment order dated 09.09.1983. In pursuance of that deceased

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Vinayak has joined as part time lecturer on respondent no.2 College on 14.09.1983. Respondent no.2 College was affiliated to RTM Nagpur University and was receiving 100% grants from the State Exchequer. The services of deceased Vinayak were continued from year to year, and his appointment was approved from time to time as part time lecturer. In short, deceased Vinayak continued to serve as part time lecturer from 14.09.1983 to 14.08.2006.

4. Later on husband of petitioner was appointed as full time lecturer to teach subject History on 14.08.2006. The services of deceased Vinayak as full time lecturer were approved vide order dated 08.01.2007, and were continued thereafter. Unfortunately husband of petitioner namely Vinayak expired on 07.01.2011, while he was serving as full time lecturer. The grievance of petitioner is that, part time services of deceased Vinayak was not counted and converted into full time service, as a result, the said period of part time service from 14.09.1983 to 14.08.2006, has not been considered while counting qualifying service for grant of pension and post retirement benefits.

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5. The learned counsel appearing for the petitioner has invited our attention to various documents pertaining to petitioner's appointment as part time lecturer, time to time approval, appointment of deceased Vinayak as full time lecturer and his continuation in service till his death. It is not in dispute that the deceased Vinayak possessed requisite qualification for the post of Part time and Full time Lecturer for History subject. It is the case of petitioner that in view of the provisions contained in Rule 57, Note 1 of the Maharashtra Civil Services (Pension) Rules, 1982, in case of employees paid from contingency, who are subsequently brought on regular pensionable establishment by conversion of their post, one half of their previous service shall be allowed to count for pension. Learned counsel for the petitioner would submit that the said provision could have been made applicable in case of deceased Vinayak for grant of pensionary benefits.

6. Learned counsel for the petitioner in support of his stand has relied on the decision of this Court (Aurangabad Bench) in Writ Petition No.10221/2015 (Mukund Bapurao Dhadkar .vrs. The State of Maharashtra and others) decided on 11.02.2016. After demise of

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Vinayak, petitioner has made a representation to the Secretary, Technical and Higher Education, State of Maharashtra for counting part time service of deceased Vinayak from the year 1983 to 2006, as full time lecturer for grant of pension by submitting to Rule 57 Note 1 of the Pension Rules. However, the petitioner's case was not considered. The petitioner has also filed an appeal before the Grievance Committee of R.T.M. Nagpur University, which remained unattended. Ultimately, the petitioner had approached this Court vide Writ Petition No. 1355/2017 for redressal of her grievance. This Court vide order dated 29.11.2017, has directed respondent no.2 to prepare pension case of deceased employee Vinayak within stipulated period and forward the same to the office of the Joint Director, Higher Education. Thereafter, proposal for pensionary benefits was forwarded, however, vide impugned communication dated 03/04/.09.2018, petitioner's case for grant of Family pension was not considered.

7. Respondent no.1 Joint Director, Higher Education has filed its reply-affidavit dated 11.03.2019, whereby denied petitioner's claim for grant of pensionary benefits. Likewise,

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respondent no.3 Accountant General also denied the petitioners claim vide its reply-affidavit dated 07.07.2019. The claim of petitioner was denied on two grounds, that the part time services cannot be considered for grant of pensionary benefits and secondly, by virtue of implementation of new Defined Contributory Pension Scheme (DCPS), introduced by government resolution dated 31.10.2005, petitioner is not entitled for grant of pension.

8. So far as the facts are concerned, there is no dispute in between the parties. Respondent admitted that petitioner's husband was qualified for the post of lecturer. He had served as part time lecturer from 14.09.1983 to 14.08.2006, to which approval was granted from time to time. It is not in dispute that on 15.08.2006, petitioner was appointed as full time lecturer, and he continued as such till his death i.e. upto 07.01.2011. The limited controversy is about conversion of part time service of deceased Vinayak in the ratio of one half service rendered as part time lecturer for continuous service for grant of pensionary benefits. This Court at its Aurangabad Bench in case of Mukund Dhadkar (supra), had an occasion to consider the similar controversy. This Court relying on

its earlier decision in case of Shalini Asaram Akkarbote .vrs. State of Maharashtra and others (Writ Petition No.8289/2013 dated 29.04.2014), has observed that the part time services rendered by an employee shall have to be taken into consideration to the extent of one half period of said service in addition to the period of which the person has worked on full time post for the purpose of entitlement of pensionary benefits. The said decision would squarely apply to the case in hand.

9. The another stand of respondent is that by virtue of implementation of DCP scheme introduced vide government resolution dated 31.10.2015, the petitioner is not entitled for pensionary benefits since deceased Vinayak was appointed as full time lecturer on 15.08.2006 i.e. after introduction of DCP Scheme. We may note that when once the petitioner is entitled to count part time service of Vinayak for pensionary benefits, his entitlement would relate back to the date of part time appointment i.e. of the year 1983. Therefore, it cannot be said that due to subsequent implementation of DCP Scheme, petitioner is not entitled for pensionary benefits. The said scheme is applicable to employees

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who are appointed on or after 01.11.2005, but, husband of petitioner having been appointed in the year 1983, the scheme would not apply to him.

10. While resisting petitioner's claim, respondents have relied on the decision of Full Bench of this Court in case of **Bankerai Ambikarai Sharma .vrs. State of Maharashtra and others [2006 (6) Mh.L.J. 873]**. The facts of said case are quite distinct, as in said case, the then petitioner was working as part time lecturer in two different colleges. He was never appointed as full time lecturer, and therefore, it was ruled that such part time services with two different colleges cannot be considered as full time services. Herein the petitioner was admittedly appointed as full time lecturer in the year 2006, and therefore, being distinct fact said ratio would not apply to the case in hand.

11. Similarly, respondent further relied on the decision of this Court in Writ Petition No. 8131/2010 (Ms. Laxmi Anant Paranjpe .vrs. The State of Maharashtra and others) decided on 24.02.2011. In said case also the then petitioner was never appointed as full time teacher at any time, and therefore, being

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different facts, it is of no assistance to respondent.

12. On last moment, respondent tried to justify the action by relying on the government resolution dated 27.06.2013, which is about requirement of passing NET or CET examination. By any means, the said resolution would not apply to the case of petitioner, as her husband has already expired in the year 2011, while the resolution came into force in the year 2013.

13. In view of above facts, services rendered by deceased Vinayak as part time lecturer, half of the period of said service shall be taken into consideration for pension, along with the period for which he had worked as full time lecturer and accordingly the petitioner is held entitled for pensionary benefits.

14. In the light of above discussion, we set aside the impugned communication dated 03/04.09.2018, rejecting petitioners claim for grant of pensionary benefits. We hold that the petitioner is entitled to pensionary benefits in aforesaid terms alongwith arrears, and direct respondents to process the case of petitioner within a period of three months from the date of this order. In case of

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default, the petitioner would be entitled for interest @ 8% per annum from the date of default till full realization of the arrears.

15. Writ Petition is allowed. Rule is made absolute in the aforesaid terms with no order as to costs.

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