



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11651 OF 2023

Dadasaheb Sada Kadam)
Age: 57 years., Occ. Service)
As Librarian with Swami Vivekanand)
Vidyalaya, Yesgaon Bk., Tal. Malegaon,)
Dist. Nashik)
R/o. S.No. 145/1A/1B/2/2,)
Plot No. 22, Vijay Nagar, Opp.)
Pooja Bar, Malegaon-camp,)
Tal. Malegaon, Dist. Nashik-423 105) **...Petitioner**

Vs.

1. State of Maharashtra through)
Principal Secretary, Finance Department)
State of Maharashtra, Mantralay,)
Mumbai – 32.)

2. The Secretary,)
School Education and Sports)
Department, Mantralaya, Mumbai-32)

3. The Dy. Director of Education,)
Nashik Region, Nashik)

4. The Education Officer [Secondary])
Zilla Parishad, Nashik, Dist. Nashik)

5. The Superintendent [Secondary])
Pay and Provident Fund Unit)
Nashik, Dist. Nashik)

6. Headmaster,)
Swami Vivekananda Vidyalaya)
R/o. Yesgaon BK,)
Tal. Malegaon, Dist. Nashik)

7. The President/Secretary)
Pujya Sane Guruji Education Society's)
Yesgaon (Budruk),)
Tal. Malegaon, Dist. Nashik) **...Respondents**

Mr. Jayendra Khairnar (through V.C.) with Ms. Gauri Kulkarni for Petitioner.
 Mrs. Nisha Mehra, AGP for State.
 Mr. Harsh Nishar for Respondent No.6.

CORAM: G. S. KULKARNI &
 AARTI SATHE, JJ.

RESERVED ON: 20 AUGUST 2026.
 PRONOUNCED ON: 11 SEPTEMBER 2026.

Judgment (Per G. S. Kulkarni, J.) :-

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. This petition under Article 226 of the Constitution of India seeks a declaration that the petitioner is entitled to the benefit of the Old Pension Scheme, as governed by the Maharashtra Civil Services (Pension) Rules, 1982, [for short, “**MCS (Pension) Rules**”] along with the benefit of the General Provident Fund (GPF), which are applicable to teaching and non-teaching employees appointed prior to 1 November 2005. The substantive prayers as made in the petition are required to be noted which read thus:-

“(a) Rule

(b) That this Hon'ble Court be pleased to declare that Petitioner is governed under the old pension scheme i.e. Maharashtra Civil Services [Pension] Rules, 1982 and General Provident Fund which are applicable to the Assistant Teachers and who are Non-Teaching employees, appointed prior to 1st November 2005.

(c) That this Hon'ble Court be pleased to issue writ of Mandamus and/or any other appropriate Writ, Order and/or direction, thereby directing Respondent Nos. 1 to 5 to continue to extend the benefits of old pension scheme to the Petitioner.”

3. The relevant facts are required to be noted:- On 12 June 1995, the petitioner was appointed as a part-time librarian for a period of one year. The said appointment was approved by the Education Officer (Secondary), Zilla Parishad, Nashik, by a communication dated 08 November 1995. Thereafter on 12 June 1998, the petitioner was made permanent on the post of part-time librarian, which was also approved by the Education Officer [Secondary], Zilla Parishad, Nashik.

4. It is the petitioner's case that the State Government had issued a Government Resolution (G.R.) dated 03 August 2006 by virtue of which the employees who fulfilled the terms and conditions mentioned in the G.R. were upgraded to the post of full time librarian. It is stated that the said G.R. was issued for upgradation of the post of 924 part time librarians in “non Government aided Secondary Schools” having student strength of more than 1000, where such employees should have served for more than five years, on the approved post of part-time librarian. Clause 4 of the said G.R. stipulates that such appointment would be a fresh appointment with a probationary period of two years, as the concerned employee would be appointed in the basic pay scale admissible for the post of librarian. The said clause also provided that the service rendered by such person as the part time librarian will not be eligible for “advance increment” in the new full-time post. Hence, the said clause did not provide anything in respect of the pensionable service. Further Clause 5 of the said G.R. stipulates that 924 posts of full-time librarians were being created by upgradation from the financial year 2006-07, by virtue of which the post of part-time librarians in regular service,

on approval by the competent authority, the salary as payable will be admissible as per the pay scale of the full time post from 01 April 2006. The said G.R. was not made applicable with retrospective effect and no arrears of salary were to be paid.

5. Clauses 4 and 5 of the said G.R. are required to be noted which read thus:-

“(Official Translation of a photocopy of Point Nos.4 and 5 of G.R. dated 03 August 2006)

4) Since the appointment to the aforesaid post is a fresh appointment subject to a probationary period of two (2) years, the candidate concerned shall be appointed at the minimum pay stage of the original pay scale admissible for the post of Librarian. However, the regular service rendered by the said candidate as a part-time Librarian shall not be taken into consideration for the grant of advance increments on the new full-time post.

5) The said 924 full-time posts of Librarians are being created by up-gradation with effect from the financial year 2006-07. Upon the appointment of eligible part-time Librarians who are in regular service, possessing the prescribed qualifications, to the post of full-time Librarian and following due approval by the Competent Authority thereto, salary as per the pay scale applicable to the full-time post shall be admissible with effect from the date 1st April, 2006. Under no circumstances, the provisions of this Government Resolution shall be applicable with retrospective effect nor shall any arrears be payable.”

(emphasis supplied)

6. In pursuance of the aforesaid G.R. (dated 03 August 2006), the Education Officer (Secondary), Zilla Parishad, Nashik, issued an appointment order dated 07 March 2007 in favour of the petitioner, setting out the terms and conditions of the appointment under which the petitioner was being appointed as a full time librarian. Such appointment was duly accepted by the petitioner.

7. It is the petitioner's case that prior thereto, on 31 October 2005, the State Government issued a G.R. adopting the Defined Contribution Pension Scheme (“DCPS”) by replacing the old pension scheme to be made applicable to the Government servants, who were recruited on or after 1 November 2005. By such

G.R., a detailed procedure to be followed for allotment of Pension Account Number, recovery of contribution from the employees, for equal amount of Government contribution to be credited in the Government account by Zilla Parishad, etc. were set out.

8. The petitioner has contended that as per the G.R. dated 03 August 2006 (supra), under which the petitioner was appointed as full time librarian from 01 April 2006, which being the date of appointment as a Full Time librarian, the date of appointment fell after the cut off date of 01 November 2005, respondent nos.3 and 4 held the petitioner to be not entitled to be governed by Old Pension Scheme. It is in these circumstances, the petitioner on 02 September 2023 filed the present petition.

9. The petitioner's contention is that the said cut-off date of 1 November, 2005 as prescribed under the GR dated 31 October 2005 would not be applicable to the petitioner inasmuch as the petitioner was in service on the post of part-time librarian from 12 June 1995 on an aided post. It is his case that G.R. dated 03 August 2006 does not provide that the earlier service as rendered by the petitioner from 12 June 1995 till 31 March 2006 should be discarded and/or not to be taken into consideration, so as to hold the petitioner ineligible for the benefit of the Old Pension Scheme.

10. The petitioner, in such context, has contended that, in view of the provisions laid down in the G.R. dated 03 August 2006, particularly Clauses 4 and 5 thereof (supra), the communication dated 07 March 2007 could not have

been addressed by the Education Officer (Secondary), Zilla Parishad, Nashik, to deny the benefit of old pension scheme to the petitioner, hence the same is arbitrary and untenable. According to the petitioner, merely because the petitioner was approved as a full-time librarian with effect from 01 April 2006, i.e. after the cut-off date of 1 November 2005, respondent nos. 1 to 5 could not have adopted an approach to deny the benefit of old pension scheme to the petitioner.

11. The petitioner has contended that under Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, “**1981 Rules**”), full-time staff in recognized aided schools would be entitled to pensionary benefits. It is submitted that in several decisions of this Court, it has been held and affirmed that the service on a part-time aided post in relation to any appointment made prior to 01 November 2005 qualifies for pension under the Old Pension Scheme, whereas later recruits fall under DCPS.

12. The petitioner has contended that respondent no.6-Swami Vivekananda Vidyalaya was receiving 100% grant in aid prior to the appointment of the petitioner in the said school, as also the petitioner was appointed on a 100% aided post. The petitioner has contended that after a span of 28 years and 5 months of service, the petitioner on the date of filing of this petition would be retiring within three months. He has now retired in November 2023. Hence, the petitioner cannot be treated to be an employee who would not be eligible for pension under the Old Pension Scheme.

13. In supporting the petitioner's case that the petitioner becomes entitled for counting the part-time service on an aided post, as also the tenure of service on the full time post, which was also on an aided post, has placed reliance on the decision of the Full Bench in **Dilipkumar Bhagwan Deshmukh vs. State of Maharashtra**¹ in which the Full Bench in paragraph 34 has held that the service put in by an employee of a recognized private school, during the time when such school was not receiving grant-in-aid, would also count towards the qualifying service for pension, when such employee retires from a school, which at the time of his retirement was receiving grant. The petitioner has also placed reliance on the decision of this Court in **Purushottam Harishchandra Shirsekar & Anr. vs. The State of Maharashtra & Ors.**² as also on the decision in case of **Nilesh s/o. Namdev Gurav & Ors. vs. The State of Maharashtra & Ors.**³. It is thus, the petitioner's case that the petitioner has become entitled for grant of pension under the Old Pension Scheme, as the entire tenure of the service of the petitioner on the part time post till the petitioner was absorbed as a full time librarian under G.R. dated 03 August 2006 would be required to be taken into consideration as per Rules, in counting the qualifying service of the petitioner for the purpose of pension.

14. Mr. Khairnar, learned counsel for the petitioner, has made elaborate submissions on what has been noted by us hereinabove, including the reliance placed on the relevant rules as also the decisions as noted hereinabove.

1 Writ Petition No. 8387 of 2013, decided on 26 August 2019

2 Writ Petition No. 2538 of 2021, decided on 07 September 2021

3 Writ Petition No. 4748 of 2019, decided on 01 October 2021

15. On the other hand, Ms. Mehra, learned AGP, in opposing this petition, has placed reliance on the reply of Shri. Pravin Patil, District Education Officer (Secondary), Zilla Parishad, Nashik, to contend that initially the appointment of the petitioner was on 12 June 1995, which was on a part time post. It is contended that it is not in dispute that the petitioner had served as a part time librarian from the academic year 1995-96 to 2005-06 and it is only on 01 April 2006, the petitioner came to be appointed as a full-time librarian. It is submitted that considering such date of appointment, the new pension scheme-DCPS would become applicable to the petitioner, as applicable to those full-time employees who were appointed with effect from 01 November 2005 onwards. It is contended that the date of appointment of the petitioner as a full-time librarian falls after the cut-off date of 01 November 2005, hence the petitioner would not be entitled to be governed by the old pension scheme. For such reason, the petitioner's case that the petitioner's service tenure between the period 1995-96 to 2005-06 on the post of a part-time librarian, should be taken into consideration, and be counted towards the qualifying service for the purpose of pension as an entitlement to old pension scheme, is not a correct proposition. It is also contended that prior to cut off date of 1 November 2005, the petitioner was not a full-time employee and was a part-time employee and in the capacity as a part-time employee, he was not eligible for the pensionary benefits available to a full time employee. Also the State Government has not extended the benefits of old pension scheme to those employees who were appointed after 01 November 2005. Hence the case of the petitioner for pension needs to be considered as per

the terms and conditions of the G.R. dated 31 October 2005. Also that the petitioner's full-time appointment as a librarian was approved in the light of the provisions of the G.R. dated 03 August 2006 under which the petitioner's full-time appointment can be recognized only from 01 April 2006. In such context, emphasis is laid on condition no.5 of the approval letter dated 07 March 2007 issued to the petitioner. It is hence submitted that the petitioner is not entitled to seek the benefit of his part-time service having been appointed and approved as a full-time librarian with effect from 01 April 2006. Also the petitioner's appointment as full-time librarian is considered to be a fresh appointment and for such reason also, the benefit of his part-time service for pension purpose would not be available. This also for the reason that the said appointment of the petitioner as a full-time librarian was exempt from following the recruitment procedure as laid down in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 (for short, "**MEPS Act**"), as also it was not a promotion. It is hence submitted that, having taken the benefit of such full-time employment, the petitioner now cannot seek benefit of the old pension scheme. Referring to Rule 19 of the 1981 Rules, it is contended that only the full-time employees in aided schools are entitled to pensionary benefits. Accordingly, only those employees appointed on full-time basis on fixed honorarium per month prior to 01 November 2005 and in continuous appointment and subsequently appointed in regular pay scale are held eligible for the old pension scheme. In supporting these contentions, Ms. Mehra, has also placed reliance on the decision of the co-ordinate Bench of this Court in **Sunil Subhash Ekhande vs.**

State of Maharashtra & Ors.⁴ (Civil Writ Petition No. 11525 of 2018) to contend that the petitioner is not entitled to the benefit of the old pension scheme. She, thus, submits that the petition deserves to be dismissed.

16. Mr. Khairnar, learned Counsel for the petitioner, countering the submission of Ms. Mehra, would submit that such contentions are contrary to the decision of the Full Bench of this Court. It is also his submission that the reliance on behalf of the State on the decision of the Division Bench of this Court in **Sunil Subhash Ekhande vs. State of Maharashtra & Ors.**⁵ (supra) would not assist the State for many reasons. He submits that in the said case the petitioners although were initially appointed as part-time librarian in various institutions, sought a relief that from the dates of their initial appointments as part-time librarians, they should be held to be full-time librarians. They contended that although the claim was only notional, however, their appointment as full time librarians was required to be reckoned from the date of their initial appointment as part-time librarians. It is submitted that the Division Bench did not accept the said case, as it was held to be contrary to the provisions of the G.R. dated 03 August 2006. Mr. Khairnar has submitted that also the said decision is not a case where adjudication of purely a pension issue as per the Rules had fallen for adjudication of the Court. It is also submitted that the decision of the Full Bench in **Dilipkumar Bhagwan Deshmukh** (supra) has not been taken into consideration by the Division Bench which categorically holds that in regard to the non-teaching post in an aided institution, tenure of an employee on a part-time appointment would be required to be taken

4 2023 SCC OnLine Bom 1577

5 2023 SCC OnLine Bom 1577

into consideration for counting the qualifying service for the purpose of pension. It is also submitted that recently the Division Bench of this Court at Aurangabad in **Sunanda Sahatragun Ingale vs. State of Maharashtra & Ors.**⁶ has considered the decision of the Division Bench in **Sunil Subhash Ekhande** (supra) wherein the Division Bench has observed that in the said decision, there was a challenge to the G.R. dated 03 August 2006 on the ground that the same is illegal and contrary to the report of the Chiplunkar Committee in which the petitioners therein had sought a relief that they be considered as full time librarians from the day of their initial appointments as part time librarians. Further, it was also observed that in **Sunil Subhash Ekhande** (supra), the subject matter of the decision was not the applicability of Rule 30, Rule 57 Note 1 and Rule 110 of the MCS (Pension) Rules requiring that 50% of the Part Time service shall be taken into consideration for the purpose of determining the entitlement to the pension and hence, the decision in **Sunil Subhash Ekhande** (supra) would not be applicable.

17. Reply affidavit is filed on behalf of respondent no.6-Institute through Shri. Sanjay Pundlik Deore, who is the Headmaster of the school, to state that the proposal of the petitioner was required to be forwarded for the disbursement of pension and that the proposal accordingly shall be forwarded as may be directed by this Court.

Analysis

18. We have heard learned counsel for the parties. We have perused the record as also different decisions which are relied on behalf of the parties.

⁶ Writ Petition No. 10036 of 2010, decided on 07 April 2026

19. The question which falls for determination is whether the petitioner would become entitled for pension under the old pension scheme by taking into consideration the petitioner's part time employment as librarian during the period from 1995-96 to 2005-06.

20. At the outset, we note some of the admitted facts. It is not in dispute that the petitioner was initially appointed on 12 June 1995 as a part-time librarian on an aided post. The school was having more than 1000 students. His appointment on the part-time post was also approved by the Education Officer. It is also not in dispute that the petitioner continued on the part-time post from the date of his appointment i.e. academic year 1995-96 being a period of almost 10 years i.e. upto 2005-06, when by virtue of the G.R. dated 03 August 2006, the petitioner was absorbed/appointed as a full-time librarian on a fully aided post. Thus, the petitioner was working on the part-time post for almost 10 years and for a period of almost 20 years on the post of a full-time librarian, i.e., having discharged almost 30 years of service in a fully aided school.

21. The case of respondent Nos.3 and 4 is that the petitioner is not eligible for pension under the old pension scheme, but he would become eligible for the DCPS as introduced by Government Resolution dated 31 October, 2005. Considering such conspectus, we may at the very inception observe that the terms and conditions of service of an employee of a private school are governed by the MEPS Act and the Rules framed thereunder namely the MCS (Pension) Rules. Section 4 of the MEPS Act provides for 'terms and conditions of service of employees of private schools' which takes in its ambit post-retirement and other

benefits which read thus:-

“Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977

“Section 4. Terms and conditions of service of employees of private schools

(1) Subject to the provisions of this section, the State Government may make rules providing for the minimum qualifications for recruitment (including its procedure), duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of posts for members of the backward classes:

Provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and post-retirement benefits and other monetary benefits of an employee in the employment of an existing private school on the appointed date shall be varied to the disadvantage of such employee by any such rules.

(2) Every employee of a private school shall be governed by such code of conduct as may be prescribed. On the violation of any provision of such code of conduct the employee shall be liable to disciplinary action after conducting an enquiry in such manner as may be prescribed.

(3) If the scales of pay and allowances, post-retirement and other benefits of the employees of any private school are less favourable than those provided by the rules made under sub-section (1), the Director shall direct in writing the Management of such school to bring the same up to the level provided by the said rules, within such period or extended period as may be specified by him.

(4) Failure to comply with any direction given by the Director in pursuance of sub-section (3) may result in the recognition of the school concerned being withdrawn, provided that the recognition shall not be withdrawn unless the Management of the school concerned has been given a reasonable opportunity of being heard.

(5) No employee working in a private school shall work in any coaching class. If any employee, in contravention of this provision, works in any coaching class, his services shall be liable to be terminated by the Management, provided that no such order of termination shall be issued unless the employee concerned has been given a reasonable opportunity of being heard.

(6) No employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank by the Management, except in accordance with the provisions of this Act and the rules made in that behalf.”

(emphasis supplied)

22. Insofar as the entitlement to pension is concerned, the same is provided for under Rule 19 of the MEPS Rules 1981, which reads thus:-

“Rule 19. Pension

An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after the 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above mentioned respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools.”

23. Thus, on a conjoint reading of Section 4 read with Rule 19, an employee of an aided school whether secondary or primary, who was working on a full-time basis and retiring on or after the cut-off date as specified in the said Rule would become entitled to pension in accordance with the rules as sanctioned by Government specifically to the employees of private schools. The grant of pension would stand governed by the MCS (Pension) Rules.

24. Rule 30 of the MCS (Pension) Rules provides for ‘commencement of qualifying service, Rule 31 provides for ‘conditions subject to which service qualifies’, Rule 33 provides for ‘service rendered under Government followed without interruption by confirmation, counts in full as service qualifying for pension’, Rule 38 provides for ‘counting of service on contract’, Rule 57 provides for ‘non-pensionable service’ and Rule 110 provides for ‘amount of pension’. For the purposes of the present proceedings, Rules 30, 31, 33, 38, 57, 100 and 110 are relevant which read thus:-

“Maharashtra Civil Services (Pension) Rules, 1982

“Rule 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 scales as admissible to a permanent Government servant.]

Exception. The rules regarding grant of terminal benefits to temporary Government servants 1 [except those mentioned in the second proviso] who retire without being confirmed in any post in Government service are embodied in Appendix II.

Note 1. If a Government servant is holding a temporary post when the permanent post on which he holds a lien is abolished in the circumstances described in Rule 81, or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service.

Note 2.-In the case of employees of former Indian States who have been absorbed in Government service previous pensionable service rendered by them under the same State should it immediately followed by Government service be taken into account for purposes of pension on his final retirement from Government service, Pensionable service rendered under different States should be taken into account for purposes of pension provided that the employees were transferred or sent on deputation from one State to another under a written agreement between the Governments of the States concerned.

The term "immediately" appearing in Note 2 above includes a break in service if it does not exceed six months, between the date on which the service was terminated and the date of his re-employment in service.

The question whether the previous service in Indian States is pensionable or not should be determined in accordance with these rules as if those rules were applicable to that service.

Rule 31. Conditions subject to which service qualifies. (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "service" means service under Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by Government.

(3) In the case of a Government servant belonging to the Central Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the Central Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.

Rule 33. Service rendered under Government followed without interruption by confirmation counts in full as service qualifying for pension.- A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57.

Note. The benefit of above rule should also be extended to Government servants who have rendered service in temporary post in the former Civil Supplies Department including those re-employed after the break, provided they agree to refund the terminal gratuity, if any, received by them on their retrenchment from the former Civil Supplies Department (In order to avoid hardship, the gratuity may be refunded in monthly instalments not exceeding rupees twenty). Competent authorities are authorised to condone where necessary, breaks not exceeding 3 years. In cases where break exists, the terminal gratuity referred to above should be refunded within three months from the date of the order of the competent authority condoning the break and the right to count the service under the above rule does not accrue until the gratuity is wholly refunded. The condonation should be postponed until the Ex-Civil Supplies Department personnel actually pass the examination, if any, required for confirmation and are actually confirmed. The benefit of condonation of break should be allowed only in those cases in which breaks have occurred on account of discharge from service for want of post and not on any other ground, e.g., voluntary resignation etc. and in computing the period of break, the terminal leave availed of by the persons concerned, should also be taken into account. The leave salary is not, however, refundable.

.....

Rule 38. Counting of service on contract. (1) A person who is initially engaged by Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either :-

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service; or

(b) to agree to refund to Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count

in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the appointing authority under intimation to the Audit Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the appointing authority within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract.

.....

Rule 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.

Note 1. -In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.

Note 2. -In the case of persons who were holding the posts of attendants prior to 1st April, 1966, one-half of their previous continuous service as attendants, shall be allowed to count for pension.

Rule 100 - Compulsory Retirement Pension. (1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at the rate not less than two-third and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of the power of review) awarding a pension less than the full compensation pension admissible under these rules, the Maharashtra Public Service Commission shall be consulted before such order is passed.

Explanation. In this sub-rule, the expression "Pension" includes gratuity.

(3) A pension granted under sub-rule (1) shall not be less than the minimum pension as fixed by 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[(2)(a) In 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 twenty years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of Rs.67,000 plus admissible grade pay.

(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 twenty years but after completing qualifying service of ten years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of Rs. 67,000 plus admissible grade pay and in no case the amount of pension shall not be less than Rupees One Thousand Nine Hundred and Thirteen per month.]

(3) In calculating the length of qualifying service, fraction of a year equal to 3[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 rupee and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee."

(emphasis supplied)

25. A cumulative reading of the aforesaid rules would indicate that such rules have taken into consideration every possible situation in regard to the counting of qualifying services, which even includes an employee holding a temporary Government servant post rendered without interruption by confirmation, counting of service on contract etc. Also in regard to the employees who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service is allowed to be counted for pension as provided under Note 1 to Rule 57 of the MCS (Pension) Rules.

26. In our opinion, applying the aforesaid rules, necessarily the part-time service of the petitioner rendered from the year 1995 till 31 March 2006 (i.e. till his upgradation to the full-time post of librarian) was required to be reckoned for the purpose of considering his qualifying service for pension. Thus, notionally such service of 11 years (i.e. from 12 June 1995 till 31 March 2006) will be required to be counted/considered on applicability of Rule 57 of the MCS (Pension) Rules, read with Note 1 by taking into consideration half of such service i.e. period of approximately 5 years 4 months would be required to be notionally accepted and counted towards the petitioner's pensionable service and not from 01 April 2006 as contended by respondent nos. 3 and 4. Accordingly, the period of about more than 5 years 4 months anterior to 31 March 2006 was required to be considered to calculate the qualifying service of the petitioner for grant of pension. This would bring about a situation that the petitioner had become eligible/qualified for pension from or about November 2000, which was certainly prior to the cut off date 1 November, 2005.

27. If this be so, to say that the petitioner's qualifying service would be required to be taken into consideration from 01 April 2006 i.e. the date he was absorbed on the post of full-time librarian, would in fact become contrary to the provisions of the MCS (Pension) Rules as noted by us hereinabove and particularly of Rule 57, Note 1. Thus, in our clear opinion, the petitioner had become entitled for pension under the old pension scheme from the period in or about November 2000.

28. Our aforesaid conclusion would also stand supported by several decisions rendered by the Court, which we discuss hereinbelow.

29. More than two decades back, the Division Bench of this Court in **Shivappa s/o. Bhujangappa Bembale vs. State of Maharashtra**⁷ was considering the case of the petitioner therein, who was initially appointed on 24 July 1970 as part-time Peon who continued as such till 10 July 1990. By an order of the Chief Executive Officer dated 06 July 1990, he was taken on the regular cadre. As the said petitioner had already worked as a part-time Peon and thereafter regularized in the regular pay scale of Class-IV servant, the question which arose for consideration before the Court was whether it was lawful for the Zilla Parishad to reject the claim of the petitioner for grant of pension. The Division Bench considered the applicability of Rules 30, 57 and 110 of the MCS (Pension) Rules and held that the petitioner was entitled for grant of pension as his part-time services would be required to be taken into consideration by applicability of Rule 57 read with Note 1 thereunder. The relevant observations of the Court are required to be noted which read thus:-

“9. The only crux in the present matter as the Zilla Parishad authorities has rejected the claim of present petitioner relying on Note 2, however, considering the factual aspect from the present case as it is seen that the initial appointment order of the present petitioner as part time Peon is 24-7-1970; he continued as part time Peon till 10-7-1990 and thereafter by order dated 6-7-1990 the petitioner was taken on regular cadre in the pay scale of Rs. 750-12-870-DR-14-940 by the Chief Executive Officer, Zilla Parishad. The order passed by the Chief Executive Officer, Zilla Parishad is also on record and the very wording of the said order safely makes it clear that the persons who are working as part time and salary being paid from contingency, those persons are being taken on regular cadre in class-4 and being fixed in the pay scale of Rs. 750-12-870-DR-14-940. **After going through the order dated 7-7 -1990 it can be said that it is the fresh order giving regular employment to the petitioner, however, as he was already**

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worked as part time Peon and being paid from contingency the services being regularised in the pay scale in class-4 servant. We have gone through the Note 1 and Note 2 of Rule 57 and we find that the Zilla Parishad has wrongly applied Note 2 in the present matter while rejecting the claim of the petitioner to grant pension, as in fact in the present case, Note 1 of Rule 57 is applicable. Therefore, we find that the claim as set up by the present petitioner that he is entitled for pensionary benefits, is definitely justified.”

(emphasis supplied)

30. In **Mukund s/o Bapurao Dhadkar vs. State of Maharashtra & Ors.**⁸, the Court was concerned with the case of the petitioner therein, which was quite similar to the facts in hand. Mukund, the petitioner therein, had rendered services as part time librarian with respondent no.5-school from 16 August 1977 to 31 July 1991 and thereafter from 01 August 1991 to 31 July 2008 as full time librarian till the date of his superannuation i.e. 31 July 2008. The Court considering the applicability of Rule 57 Note 1 held that 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 a full-time librarian, and accordingly, the petitioner was held entitled for the pensionary benefits. In reaching to such conclusion, the Court referred to the earlier decision in case of **Shalini Asaram Akkarbote vs. State of Maharashtra**⁹. The following observations as made by the Court are required to be noted which read thus:-

“8. The fact that the petitioner was appointed as part time Librarian, and thereafter, as full time Librarian for the afore-mentioned period is not disputed by the respondents. Therefore, it is abundantly clear that, the petitioner was appointed as part time Librarian and thereafter as full time Librarian. It further appears that, while granting pensionary benefits to the petitioner, the respondents have not considered the service rendered by the petitioner as part time Librarian from the year 1977 till 1991. The

⁸ 2016 SCC OnLine Bom 98

⁹ Writ Petition No. 8289 of 2013, decided on 29 April 2014

Bombay High Court Bench at Aurangabad in the case of Shalini Asaram Akkarbote [cited supra] had occasion to consider the similar controversy. In para 9 to 11 of the said Judgment, High Court held thus:

“9. This Court in the case of Shivappa Bhujangappa Bembale, supra, while interpreting Rule 57 and also other relevant Rules of Maharashtra Civil Services [Pension] Rules, 1982, in paragraph nos.6 to 8 held thus:

*6. The only crux in the present matter as the Zilla Parishad authorities has rejected the claim of present petitioner relying on Note 2, however, considering the factual aspect from the present case as it is seen that the initial appointment order of the present petitioner as part time peon is 24.7.1970; he continued as part time peon till 10.7.1990 and thereafter by order dated 6-7-1990 the petitioner was taken on regular cadre in the pay scale of Rs.750-12-870-DR-14-940 by the Chief Executive Officer, Zilla Parishad. The order passed by the Chief Executive Officer, Zilla Parishad is also on record and the very wording of the said order safely makes it clear that the persons who are working as part time and salary being paid from contingency, those persons are being taken on regular cadre in Class-4 and being fixed in the pay scale of Rs.750-12-870-DR-14-940. After going through the order dated 7-7-1990 it can be said that it is the fresh order giving regular employment to the petitioner, **however, as he was already worked as part time peon and being paid from contingency the services being regularised in the pay scale in Class-4 servant. We have gone through the Note 1 and Note 2 of Rule 57 and we find that the Zilla Parishad has wrongly applied Note 2 in the present matter while rejecting the claim of the petitioner to grant pension, as in fact in the present case, Note 1 of Rule 57 is applicable. Therefore, we find that the claim as set up by the present petitioner that he is entitled for pensionary benefits, is definitely justified.**”*

“7. Mr. Dhage, Advocate, has made reference in respect of order passed in Writ Petition No. 3472/1996 and in a same situation this Court in the said writ petition, has given direction to the respondents to consider the case of petitioner for pensionary benefits within a period of three months and also directed for payment of arrears. We have gone through the said order wherein a reliance is placed on Note 1 of Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982. Considering the factual aspects in the present case we also find that in the present case Note 1 of Rule 57 is applicable.”

“8. We, thus, accordingly direct the respondent No.2 Zilla Parishad to consider the case of present petitioner for giving terminal benefits in view of the above rule and to decide the same within three months from today and the necessary arrears which the petitioner is entitled be accordingly paid.”

10. Upon careful perusal of paragraph nos.6 to 8 from the said judgment, supra, the High Court in no uncertain words held that the part-time service on regular cadre as a peon is required to be taken into

consideration for the purposes of granting pensionary benefits by taking half of the said period into account coupled with the period for which the employee has worked on full time post. In the facts of that case, the petitioner therein was appointed as a part time peon in the School from 24.07.1970 till 10.07.1990, and thereafter, on regular cadre as a peon till his retirement on 30.04.1993. In the facts of that case, the High Court considered the total length of service as a part-time peon, which was 20 years, and for the purpose of counting the said period for pensionary benefits has counted half of the period i.e. 10 years, and held that the petitioner therein has spent total period of 13 years in service for the entitlement to pensionary benefits.

11. In case of Jayshree Narayan Mhaske, supra, High Court in paragraph nos.7 and 8, held thus:-

“7. Petitioners husband was appointed as a part-time servant vide order dated 1st April, 1971 on a fixed pay of Rs.30/- per month. This order does not speak that the amount of Rs.30/- which was being paid to him, was a honorarium, but same is described as his fixed pay. The order further speaks that his services are purely temporary, and liable for termination without notice. So, he was a part-time temporary Government servant. There is no dispute that subsequently, he was brought on regular establishment. Respondents did not produce on record the order by which he was brought on regular establishment. However, they have produced relevant entry from the service-book, which states that he has been promoted from part-time employee to peon, by order dated 23rd June, 1983 in the regular pay scale stated above. No document is produced on record to show that payment was made to him out of contingent funds. The entry in the service-book makes mention that he was promoted. Note No.1 deals the cases of employees who were brought on regular pensionable establishment by conversion of their posts. Here in the present case, the petitioners husband is shown to have been promoted and posted as a peon. So, from this order, inference can be drawn that he was in regular employment on substantive post. There was no break in his services since his appointment on 1st April, 1971. Even if it is accepted that as a part-time employee, he was paid out of contingent funds, the fact remains that he was brought on regular establishment in 1983 by way of promotion. So, his case is covered by Note No.1 of Rule 57 of the Pension Rules and the services rendered by him before he was brought on regular establishment needs to be counted while computing his qualifying service.”

There appears no specific provision under the Pension Rules which deals the cases of part-time employees. Present petitioners husband was appointed in 1971 as a part-time Class-IV worker and he was promoted and brought on regular establishment by order dated 28-6-1993. In view of this order of promotion, it can be inferred that he was holding a substantive post. If his case is viewed by this angle in view of Rule 20 as he was brought to a post for which these Pension Rules apply, his service shall be subject to Pension Rules. His past service rendered as part-time employee on substantive post needs to be taken into

consideration in view of Note [1] of Rule 57 of the Pension Rules. The respondents admitted that he was on regular establishment from 28-6-1983 to 20-11-1990 and had completed total service of seven years, four months and twenty two days. Subsequently, he was retired compulsorily in 1993 and his absence was also regularised and two weeks period was ordered to be treated as leave and remaining period should be treated as an unauthorised absence. He has rendered about twelve years of service as part-time employee on substantive post. One half of such service needs to be taken into consideration in view of Note [1] of Rule 57 of Pension Rules for the purpose of determination of qualifying service. By addition of such service with regular service, the total service will be more than thirteen years. So, deceased employee was entitled to receive pension as his qualifying service would have been more than ten years."

"8. In view of the above facts and relevant Rules, it is clear that deceased was entitled to retiring pension under Rule 100 of the Pension Rules, which covers the cases of grant of retirement pension to Government servants who have been compulsorily retired. As the deceased husband of the petitioner was entitled to the pension, the petitioner is entitled to receive family pension. So, the decision of the authorities that the deceased was not entitled to the retiring pension and the petitioner also is not entitled to family pension, is not justified and needs to be set aside by giving directions to the respondents to grant family pension to the petitioner considering the service rendered by her deceased husband from 1st April, 1971 onwards till he was brought on regular establishment by order dated 23rd June, 1983." Upon conjoint reading of paragraph nos.7 and 8 above, in the facts of that case, the petitioner therein did rendered services as a part-time employee on fixed pay of Rs.30/- per month from 01.04.1971 and he was taken on regular establishment as a peon on 23.06.1983, and he was asked to compulsorily retire on 19.05.1993. While considering the facts of that case, the High Court held that the petitioner therein was appointed as a part-time servant vide order dated 01.04.1971 on fix pay of Rs.30/- per month and he was continued on the said post till he was taken in regular pay scale by order dated 23.06.1983. The Court in paragraph no.7, supra, observed that even if it is accepted that as a part-time employee, he was paid out of contingent funds, the fact remains that he was brought on regular establishment in 1983 by way of promotion. So, his case is covered by Note No.1 of Rule 57 of the Pension Rules and the services rendered by him before he was brought on regular establishment needs to be counted while computing his qualifying service."

9] In the facts of the present case also, indisputably the petitioner herein has rendered services as part-time Librarian with respondent no.5-School from 16.08.1977 to 31.07.1991 as part time Librarian and from 01.08.1991 to 31.07.2008 as full-time Librarian till the date of his superannuation i.e. 31.07.2008. 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."

(emphasis supplied)

31. A Full Bench of this Court in its decision on a batch of petitions in **Deshmukh Dilipkumar Bhagwan & Ors.** (supra) was dealing with a case wherein the petitioners were teachers and non-teaching staff regularly appointed in various recognized aided schools in the State of Maharashtra. The respective schools were receiving 100% grant-in-aid from the State Government. All the employees were appointed prior to 01 November 2005. However, at the time of their appointments, the schools were not receiving 100% grant-in-aid and admitted position was that all the schools started receiving 100% grant-in-aid only after 01 November 2005. The significance of the cut off date of 01 November 2005 was to the effect that the Government of Maharashtra had introduced the DCPS with effect from 01 November 2005 for the State Government employees as well as for the staff of private aided schools and colleges replacing the existing pension scheme. The claim of the petitioners was that as they were recruited prior to 01 November 2005, hence they would be governed by the old pension scheme irrespective of the fact that the schools in which they were appointed, started receiving 100% government grant after 01 November 2005. On the other hand, Government contended that an employee of a private school recruited prior to 01 November 2005 was governed by the DCPS, if the school in which he was appointed, started receiving 100% grant-in-aid only after 01 November 2005. The Full Bench examined the provisions of the MEPS Act and the rules and more particularly Rule 19 of the 1981 Rules and the MCS (Pension) Rules framed under Article 309 of the Constitution of India. In such context, the Court framed questions for consideration of the Larger Bench *inter alia* whether only those

schools and colleges of education which are receiving 100% aid can be termed as aided institutions or whether schools and colleges of education receiving less than 100% aid can also be termed as aided institution? Also a question was framed whether the employees who were appointed prior to 1 November 2005 in the aided recognized primary, secondary and higher secondary schools as well as colleges of education, which were receiving less than 100% grant-in-aid as on 01 November 2005 were entitled to the benefits of the Old Pension Scheme under the MCS (Pension) Rules and the Commutation of Pension Rules or whether they will be governed by the New Pension Scheme/DCPS under the GR of 2005? A specific question was also framed whether the employees who were appointed prior to 01 November 2005 in aided recognized primary, secondary and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 01 November 2005, but which became 100% aided before the date on which the GR of 2010 came into force, were entitled to the benefit of Old Pension Scheme under the MCS (Pension) Rules and the Commutation of Pension Rules or whether they would be governed by the New Pension Scheme/DCPS under the GR of 2005?

32. The Full Bench (*supra*) taking a review of the decisions of this Court as also the Supreme Court answered the said questions when it *inter alia* held that only those employees of private recognized aided schools who were recruited prior to 01 November 2005 in schools receiving 100% grant-in-aid would continue to be governed by the old pension scheme was the correct and valid interpretation. Referring to Rule 19 of the 1981 Rules, it was held that it

recognized the rights of the employees of the aided schools and colleges to receive pension at the rates and in accordance with the rules as sanctioned by the Government to the employees of such schools. It was observed that by G.R. dated 31 October 2005, the State Government replaced the existing pension scheme by the DCPS which would be applicable to certain class of employees. It was observed that Rule 19 of the 1981 Rules does not prescribe any specific pension scheme, it only refers to payment of pension at the rates and in accordance with the rules as sanctioned by the State Government. It was further observed that the DCPS which replaced the existing pension scheme would also be in consonance with Rule 19 of the 1981 Rules and as per the said rule, it was within the powers of the State Government to prescribe the rates and the rules in accordance with which the employees would become eligible to receive pension. It was further held that the relevant rules under the grant-in-aid code refer to an aided school and does not make a distinction between a partially or fully aided school. It was observed that nevertheless, the liability of the Government to pay pensionary benefits to a retired employee of a private school can arise only if the Government has undertaken to pay 100% grant to the school. The Full Bench held that the service put in by an employee of a recognized private school during the time when such school was not receiving grant, would also count towards the qualifying service for pension when such employee retires from a school which receives grant, which was also in the context of G.R. dated 08 April 2018. It was held that this, however, would not mean that the employee appointed in a school can claim to be governed by the pension scheme till the school starts receiving

100% grant. The following observations as made by the Court are required to be noted which read thus:-

“32. Rule 19 of the Rules of 1981 only recognizes the right of employees of the aided schools and colleges to receive pension at the rates and in accordance with the rules as sanctioned by the Government to the employees of such schools. Under GR dated 31.10.2005, the Government replaced the existing pension scheme by the DCP scheme which would be applicable to certain class of employees. Rule 19 of the Rules of 1981 does not prescribe any specific pension scheme, it only refers to payment of pension at the rates and in accordance with the rules as sanctioned by the Government. The DCP scheme which replaced the existing pension scheme would also be in consonance with Rule 19 of the Rules of 1981. As per this rule, it was within the powers of the Government to prescribe the rates and the rules in accordance with which the employees would be eligible to receive pension. The contention of the learned counsel for the petitioners, therefore, that the DCP scheme could not have been implemented without amending Rule 19 of the Rules of 1981 cannot be accepted.

33. It is true that the relevant rules under grant-in-aid code refer to an aided school and does not make a distinction between a partially or fully aided school. Nevertheless, the liability of the Government to pay pensionary benefits to a retired employee of a private school can arise only if the Government has undertaken to pay 100% grant to the school. As noted, very concept of expecting the Government to pay such pension even in a case where the Government has so far not undertaken the liability to pay 100% grant is abhorrent to the basic principle of service law.

34. It is true that the service put in by an employee of a recognized private school during the time when such school was not receiving grant, would also count towards the qualifying service for pension when such employee retires from a school which receives grant. This was also the context of G.R. dated 8.4.2018 noted earlier. This, however, would not mean that the employee appointed in a school can claim to be governed by the pension scheme till the school starts receiving 100% grant.

36. The petitioners had also argued that right of retired Government servants to receive pension is a vested right. It is neither bounty nor a largesse to be given by the employer. To this proposition, there can be no quarrel. However, right to receive post-retiral benefits flow from the scheme provided by the employer. In the present case, as discussed earlier, the existing pension scheme is replaced by new pension scheme. No vested right of the employees is being taken away.

37. Under these circumstances, we answer the Reference as under:-

Question No. 1:

In the context of the right of an employee of private school or college of education to receive pensionary benefits and the corresponding liability of the Government to pay the same, only those schools and colleges of education which are receiving 100% grant-in-aid can be termed as aided institutions.

Question No. 2 :

The employees who were appointed prior to 1.11.2005 in aided recognized primary, secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1.11.2005 would be governed by the DCP scheme.

Question No. 3:

Similar will be the situation of the employees who were appointed prior to 1.11.2005 in aided primary, secondary and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 1.11.2005 but which became 100% aided before 29.11.2010 would also be governed by the DCP scheme.”

33. We find that the decision of the Full Bench was thereafter followed in similar circumstances by the co-ordinate Benches of this Court in **Purushottam Harishchandra Shirsekar & Anr. vs. The State of Maharashtra & Ors.** (supra). In case of **Nilesh s/o. Namdev Gurav & Ors. vs. The State of Maharashtra & Ors.** (supra) (batch of petitions), the Division Bench was considering the case of the petitioners who were appointed prior to 01 November 2005 on part-time posts. Almost all the petitioners were teaching employees (Assistant Teachers) and one of the petitioners was a non-teaching employee. They were employed in fully aided schools and thus, they had claimed that they are entitled to the old pension scheme and the respondents were directed to extend the benefits of the old pension scheme to the petitioners, which was denied to them. The Division Bench considering the decision of the Full Bench (supra) and the other decisions held that the issue arising in the petitions was no longer *res integra*. The petitioners were accordingly held entitled for pension. The following observations as made by the Division Bench of this Court are required to be noted which read thus:-

“12. Having considered these submissions, it is to be noted that the Petitioners were appointed as employees on part-time posts in education institutions which were fully aided educational institutions i.e. receiving 100% grant-in-aid prior to 1st November 2005.

13. We are of the view that the issue arising in these Petitions is no longer res integra. There has been a consistent stand taken by this Court in the decisions referred to and relied upon by the learned Counsel for the Petitioners that the service of the employees of educational institutions is to be counted from the first date of appointment irrespective of whether it is on part-time or full time basis. This stand has been made clear by this Division Bench in Renuka Chandrabhan Umredkar (supra), wherein the Government Resolution dated 31st October 2005 as well as the Full Bench decision of this Court in case of Deshmukh Dilipkumar Bhagwan (supra) and prior decision of Division Bench of this Court in case of Shri Purushottam Harishchandra Shirsekar (supra) amongst other decisions were considered. This Court had upon considering the Government Resolution dated 31st October 2005 and in particular Clause 4 thereof observed that as per Government Resolution, employees recruited on or after 1st November 2005 in the services of the recognized aided educational institutions, the new pension scheme i.e. DCP Scheme has been made applicable

14. The Full Bench decision of this Court in the case of Deshmukh Dilipkumar Bhagwan (supra) had held that employees appointed prior to 1st November 2005 in aided educational institution and receiving 100% grant-in-aid prior to 1st November 2005 shall be governed by the old pension scheme. It was held that since employees in that matter had been appointed prior to 1st November 2005 and occupied a part time fully aided post i.e. receiving 100% grant-in-aid from the State Government, the old pension scheme would be made applicable to such employees. This decision has been followed in the subsequent decision in Shri Purushottam Harishchandra Shirsekar (supra) wherein this Division Bench held that the Petitioner had been appointed as part time Shikshan Sevak on 11th September 2001 on the post which was a sanctioned aided post in the school. The Petitioner's services were granted approval by the Education Officer and the services continued. The employee was thereafter, appointed as part time teacher and upgraded to full time teacher in the said school on 15th June 2015 which post was a sanctioned aided post. It was accordingly, held that the Petitioner would be entitled to the benefits of the old pension scheme and the relevant date of the service of the employee is to be counted from the first date of appointment irrespective of whether it is on a part-time or full time posts.

15. The Division Bench in the recent decision in Renuka Chandrabhan Umredkar (supra) after referring to the above referred decisions held that the Respondent-State could not overlook the fact that the Petitioner therein was appointed as part-time Librarian on aided post in 100% aided school and the said appointment was duly approved by the Education Officer. The Respondents-State thus, could not refuse to give benefit of 50% of services rendered by the Petitioner therein as part-time Librarian prior to 1st November 2005 for computation of pensionable services along with the services rendered by the Petitioners on full time basis after 31st October 2005. The entitlement of the Petitioner for pension under the old pension scheme would be on the basis of initial date of appointment as part-time Librarian on aided post and not on the basis of appointment as full time

Librarian under DCP Scheme. It has accordingly, been held that the Petitioner would be governed by the old pension scheme and not DCP Scheme introduced on 31st October 2005.

16. We are of the view that the present case of all the Petitioners are similar as to the Petitioners in the above referred decisions as they were appointed prior to 1st November 2005 in fully aided education institutions albeit on part-time basis. It is clear from the Affidavit in Reply of Respondent No. 5 fled in Writ Petition No. 4748 of 2019 and Writ Petition No. 4749 of 2019 that the only contention of the Respondents is that the Petitioners were not appointed as full-time employees prior to 1st November 2005 and were appointed as part-time employees and thus, not extended the old pension scheme. However, it has not been disputed that the Petitioners were employees in educational institutions which were fully aided institutions prior to 1st November 2005.”

(emphasis supplied)

34. In **Renuka Chandrabhan Umredkar vs. State of Maharashtra & Ors.**¹⁰, the Division Bench of this Court was considering a similar challenge as raised in the present proceedings, namely, the petitioner therein being appointed on 15 April, 1996 as a librarian (Part Time) in the employment of respondent no. 8-School, which was approved by the Education authorities. The school was 100% aided school. The part time post was upgraded to the post of full time librarian as per the policy of the Government and an appointment order dated 11 December, 2007 came to be issued to the petitioner being appointed as full time librarian w.e.f. 1 April, 2006. The school thereafter had forwarded a proposal to the Education Authorities for approval of the petitioner to the post of full time librarian w.e.f. 1 April, 2006. The petitioner retired on 31 July, 2019. The petitioner on her retirement was denied pension under the old pension scheme, as the petitioner was being categorized to be falling under the Government Resolution dated 31 October, 2005 under which it was provided that the employees employed after 1 November, 2005 would be covered by the Defined

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Contributory Pension Scheme (DCPS) and would not be entitled to the benefits of the MCS (Pension) Rules. It is in such circumstances, the petitioner contended that although the petitioner was appointed in the year 1996 as a part time librarian, she was entitled to be governed by the MCS (Pension) Rules and accordingly, the petitioner had approached this Court. The Division Bench of this Court after taking into account several decisions on the issue and more particularly the decision of Full Bench of this Court in **Deshmukh Dilipkumar Bhagwan vs. State of Maharashtra** (supra), held that the petitioner therein would become entitled for the pension under the old pension scheme. The relevant observations as made by the Court in that regard are required to be noted, which read thus:

“15. Division Bench of this Court (Coram : Shri R.D. Dhanuka and R.I. Chagla, JJ.) in the case of Smt.Kalpana Jagatrao Dahiwalé (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 in Writ Petition No.8832 of 2015 delivered on 22nd 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 th December 1995 and was appointed as full time Librarian on 1 st 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 31st October 2005 came to be issued. The judgments of this Court in the cases of Shri Purushottam Harishchandra Shirsekar (supra) and Smt.Kalpana Jagatrao Dahiwalé (supra) apply to the facts of this case.

16. It is not disputed by the respondents that the said school was 100% aided school when the petitioner was appointed on aided post initially as a part time Librarian prior to 31st October 2005 and as a full time Librarian after 31st October 2005. In our view, the petitioner cannot be denied the pensionary benefits under the old pension scheme on the ground that the petitioner was appointed as full time Librarian only after 31st October 2005.

17. The respondents cannot overlook the admitted fact that the petitioner was already appointed as part time Librarian on the aided post in

the 100% aided school and the said appointment was duly approved by the Education Officer. It was not the case of the respondents that the petitioner was appointed for the first time in the said 100% aided school on the aided post only after 31st October 2005 and that also under different managements or different schools or institutions. The respondents cannot refuse to give benefits of 50% of the services rendered by the petitioner as part time Librarian appointed prior to 31st October 2005 for computation of pensionable services along with the services rendered by the petitioner on full time basis after 31st October 2005. The entitlement of the petitioner for pension under Old Pension Scheme would be on the basis of her initial date of appointment as part time Librarian on aided post and not on the basis of her appointment as full time Librarian under DCP Scheme.”

(emphasis supplied)

35. We may also refer to the decision of the Division Bench in **Dilip Rana Randive vs. State of Maharashtra & Ors.**¹¹. The facts of the said case are identical to the present case. In the said case, the petitioner had challenged an order dated 14 September 2022 passed by the Education Officer (Secondary), Pune Zilla Parishad, Pune, whereby it was held that the petitioner was not entitled for the pension benefit under the MCS (Pension) Rules, on the ground that the initial service of the petitioner was part time. The petitioner therein was initially appointed as a ‘part time librarian’ at Shree Sant Muktabai Vidyalaya, Shelgaon, Taluka – Indapur, District – Pune, a school run by the Rayat Shikshan Sanstha, on 17 April 1995. His appointment was approved by the then Education Officer (Secondary), Zilla Parishad, Pune, by an order dated 28 July 1997. The petitioner retired on 30 April 2022 from the post of full time librarian. In the intervening period, he was transferred as a full time librarian to one of the schools run by the management/respondent no.4 therein. The Education Institution had also forwarded a proposal to the Education Officer (Secondary), Pune Zilla Parishad, Pune, for grant of the pension benefit. However, by an order dated 14 September

11 Writ Petition No. 14880 of 2022, decided on 06 December 2023

2022, the Education Officer held that the petitioner was not entitled for the pension benefit under the MCS (Pension) Rules, on the ground that the initial service of the petitioner was on a part time post. The Division Bench held that the said reason given by Education Officer could not be sustained in the light of the settled principles of law, which were to the contrary. This more particularly having regard to the facts of the case, that the petitioner had rendered part time service from 17 April 1995 till his transfer as a full time librarian on 25 April 2007, i.e. for approximately 12 years, and thereafter rendered full time service from 25 April 2007 till 30 April 2022, i.e., for approximately 15 years, when he attained the age of superannuation. The Court observed that as per the MCS (Pension) Rules, for counting the services for pension benefit, half of the period of the part time service has to be treated as full time i.e. six years and full time service of fifteen years was required to be considered. Accordingly, the total service of the petitioner for pension benefit was held to be six years plus fifteen years i.e. twenty one years. The relevant observations as made by the Court are required to be noted which read thus:-

“6. Thus, the total Part Time service of the Petitioner from 17th April 1995 till his transfer as a Full Time Librarian on 25th April 2007 was twelve years and his service as a Full Time Librarian from 25th April 2007 till 30th April 2022 was fifteen years. It is the case of the Petitioner that, as per the Maharashtra Civil Services (Pension) Rules, 1982, for counting the services for pension benefit, half of the period of the Part Time service has to be treated as Full Time i.e. six years and Full Time service of fifteen years was also to be considered. Accordingly, the total service of the Petitioner for pension benefit is six years plus fifteen years i.e. twenty one years. It is also the case of the Petitioner that therefore he is clearly entitled to pension benefits as per the Maharashtra Civil Services (Pension) Rules, 1982.

8. By an Order dated 14th September 2022, Respondent no.3 held that the Petitioner was not entitled for the pension benefit under the Maharashtra Civil Services (Pension) Rules, 1982, on the ground that the initial service of the Petitioner was on a part time post.

9. The said reason given by Respondent no.3 cannot be sustained in the light of the settled law to the contrary. The settled position in law is that the date of appointment on Part Time basis is required to be treated as the date of entry into service for the purpose of applicability of the pension scheme under the Maharashtra Civil Services (Pension) Rules, 1982, and that further, even in respect of part time employees, their part time services have to count towards qualifying service for pension, albeit only 50%. This settled position of law has been laid down in various judgments of this Court. However, in order not to burden this judgment, we would like to refer to the following judgments; (i) Anil Popat Chobhe v. State of Maharashtra¹ and (ii) Pratibha Prakash Almast and Others vs. State of Maharashtra and Ors.² which have been cited on behalf of the Petitioner, which uphold the aforesaid position in law.”

36. From the aforesaid discussion, it is clear that various decisions as rendered by this Court have taken into consideration the applicability of the 1981 Rules as also MCS (Pension) Rules to hold that in situations when initially an appointment is on a post which is a part-time post, in an aided institution and subsequently followed by regular appointment, the period spent by the employee on the part-time appointment necessarily would be taken into consideration for the purpose of calculating the qualifying service, for the purpose of pension. Similarly, in case of an employee of a recognized private aided school, appointed during the time when school was not receiving grant and the tenure on such position also would be counted towards the qualifying service for pension, when such an employee retires from a school receiving grant-in-aid. This is in pursuance of the policy decision dated 08 April 2018 in G.R. dated 20 April 2018 as considered by the Full Bench when it held that an employee appointed in a school could be governed by the pension scheme not merely from the time the school starts receiving 100% grant as held by the Full Bench.

37. On the aforesaid backdrop, we consider the contentions urged on behalf of the respondents by Ms. Mehra. The main plank of her argument is that the

petitioner would not become entitled for pension under the old pension scheme relying on the decision of the Division Bench of this Court in **Sunil Subhash Ekhande vs. State of Maharashtra & Ors.** (supra) wherein according to her, the Court has held that G.R. dated 03 August 2006 was a one time measure, under which the post of part-time librarian was upgraded to a full-time post in aided institutions. It is hence contended that considering the context of the said G.R. and more particularly considering Clauses 4 and 5 of the said G.R., it would not be open to the petitioner to assert that the service rendered by the petitioner on the part-time post be counted in the qualifying service for the purposes of pension, as the appointment of the petitioner as full-time librarian was a fresh appointment. In short, the contention of Ms. Mehra is that the principle of estoppel applies against the petitioner when the petitioner makes a claim for the period of service rendered on the part-time post to be counted in the qualifying service to be reckoned for the purposes of the pensionary benefits and more particularly when the appointment of the petitioner according to her, is fresh appointment on the post of the full-time librarian.

38. We are not in agreement with Ms. Mehra when she contends that the petitioner would not be entitled to the reliefs in view of the decision of the Division Bench in **Sunil Subhash Ekhande vs. State of Maharashtra & Ors.** (supra). In our opinion, as rightly contended by Mr. Khairnar (see paragraph 15) this decision certainly is not applicable to the facts in hand as the decision is not an authority which would decide the issue in hand. The issue which fell for adjudication before the Division Bench in **Sunil Subhash Ekhande vs. State of**

Maharashtra & Ors. (supra) was the challenge to Clauses 1, 3 and 4 of the G.R. dated 03 August 2006 being illegal and contrary to the recommendations of the Chiplunkar Committee accepted by the State. The petitioners therein claimed that they should be regularized and be appointed as full-time employees from the date of their appointment as a part-time employees. The Court rejected such contention and upheld the said G.R. The said decision is also certainly not a decision which decides an issue attracting the provisions of Rule 19 of the 1981 Rules read with the provisions of the MCS (Pension) Rules, as in the present case. In the context of a challenge to the said G.R., the Court in paragraph 29 of the said decision observed that the assailed clauses of the G.R. dated 03 August 2006 are not in any way arbitrary or in violation of Articles 14 or 21 of the Constitution of India.

39. We may also observe that a contention similar to the one raised by Ms. Mehra relying on the decision in **Sunil Subhash Ekhande vs. State of Maharashtra & Ors.** (supra) was raised on behalf of the State, before the Augrangabad Bench of this Court in **Sunanda Sahatragun Ingale vs. The State of Maharashtra & Ors.** (supra) wherein the Division Bench considering a similar challenge as in the present proceedings i.e. prayer of the petitioner for issuance of a writ of mandamus to the respondents therein, to grant the family pension to the petitioner, by considering the part-time service of the deceased husband of the petitioner, as a “Librarian” from 04 August 1975 to 01 April 2006 and full time service as a Librarian from 01 April 2006 till 2011 the date of retirement totaling 20 years 6 months, as qualifying service of the deceased. It is in such context, the

Court observed that the contentions as urged on behalf of the State relying on the decision in **Sunil Subhash Ekhande vs. State of Maharashtra & Ors.** (supra) would not assist the respondent, as in such decision, the Court was not considering the applicability of Rules 30, 57 Note 1 and 110 of the MCS (Pension) Rules, whereby 50% of part-time service would require consideration for calculating pension. The Division Bench considering different decisions and applying the decision of the Division Bench in **Punjabari Baburao Dighe And Others Vs The State Of Maharashtra And Others**¹², held that as the husband of petitioner therein had served as a part time librarian between the period 04 August 1975 to 09 January 2007 with Respondent no. 4/School and thereafter, he was granted approval as full time librarian from 09 January 2007. In such circumstances, it was held that 50% of the service rendered by the husband of the petitioner as a part time librarian would be required to be reckoned for the purpose of computing the qualifying service, for the purpose of pension, along with the entire service rendered as a full time employee. The relevant observations of the Court are required to be noted which read thus:-

“9. Per contra, learned AGP for the State authorities and learned Advocate for respondent No.4/school vehemently opposed the petition. Learned AGP places reliance upon the judgment of this Court in Sunil Subhash Ekhande Vs. State of Maharashtra and others, reported in AIR Online 2023 Bom. 1633, wherein this Court dismissed the identical writ petition by placing reliance upon the judgment delivered in Satish Ganpatrao Patil and Ors. Vs. State of Maharashtra and others, AIR Online 2015 Bom. 104. In the said judgment, there was challenge to the Government Resolution dated 03/08/2006 on the ground that the same is illegal and contrary to the report of the Chiplunkar Samiti. The petitioners therein had sought relief that they be considered as Full Time Librarian from the day of their initial appointments as Part Time Librarian. Thus, learned AGP prays for dismissal of this writ petition.

12 Writ Petition No. 12902 of 2018, decided on 06 May 2022 (Aurangabad Bench)

10. After hearing learned Advocates for the respective parties, we have gone through the record available with the Court. We find that the petitioner relying on Rule 30, Rule 57 Note 1 and Rule 110 of Maharashtra Civil Services (Pension) Rules prays for considering 50% of the Part Time service for calculating the pension which was not the subject matter in Sunil Subhash Ekhande (supra) and Satish Ganpatrao Patil (supra) aforesaid judgments. Claiming Full Time Librarian status from first day of part time service and claiming 50% service of part time service as full time service are two different issues. Thus, the husband of Petitioner had rendered 31 years of service as a Part Time Librarian and 4 years of Full Time Librarian till his unnatural death, can be said to be legally justified for the entitlement of the regular 10036.10wp.odt pensionary benefits. In that view of the matter, it is also equally important to place reliance on the following judgments:

(I) Shivappa Bhujangappa Bembale Vs. State of Maharashtra & Anr., 2005(3) Mh.L.J. 709;

(II) Anil Popat Chobhe Vs. State of Maharashtra and others, (2022) SCC Online Bom. 1726; and

(III) Pratibha Prakash Almast and others Vs. State of Maharashtra and others, (2023) SCC Online Bom. 1262.

11. In Writ Petition No.12902 Of 2018 (Punjabari Baburao Dighe And Others Vs The State Of Maharashtra And Others), on 6 May, 2022, Aurangabad Bench, observed as under:-

"40. The learned Additional Government Pleader placed reliance on the judgment of the Supreme Court in the case of Rajasthan Public Service Commission with State of Rajasthan Vs. Harish Kumar Purohit and Kishanlal Banshal (supra) and more particularly para No. 18 and would submit that if this Court is of the view that the judgment delivered by the co-ordinate bench of this Court in the case of Satish Ganpatrao Patil and Others Vs. The State of Maharashtra and others (supra) is not correct view, the matter has to be referred to the larger bench for resolving the conflict.

41. It is not in dispute that some time prior to 1994 the State Government had constituted Shri. V. V. Chiplunkar Committee for recommending staffing pattern of non teaching employees for the schools, high schools and junior colleges based upon the strength of the students. The staffing pattern prescribed in the Secondary School Code was found to be inappropriate and efficiency of the administration was adversely affected. Shri. V.V. Chiplunkar Committee submitted its report to the State Government. It is not in dispute that pursuant to the report of Shri. V.V. Chiplunkar Committee, the State Government issued Government Resolution dated 28th June 1994. In the said report, insofar as the post of part time librarian and full time librarian is concerned, considering the 10036.10wp.odt number of students in each school, post of such part time librarian and full time librarian were recommended.

42. In view of the said Government Resolution dated 28th June 1994, the staffing pattern of non teaching employees in the school was governed by the provisions of the Secondary School Code. Clause 4 of the said Government Resolution dated 28 th June 1994 clearly provided that for filling up the posts of non teaching staff in the secondary school, it should be presumed that the existing norms prescribed in the Secondary School Code were changed accordingly. The Director of Education, Maharashtra State, Pune should submit a draft of necessary amendment to Secondary School Code to the Government. New norms prescribed in the Secondary School Code were accordingly changed. The Education Officer (Secondary) of each district was directed to evaluate strength of each school and submit the report as to in which school the post of full time librarian would become available and from which year the post of full time librarian was required to be approved.

43. The State Government issued Government Resolution dated 03rd August, 2006, by relying upon the Government Resolution dated 28th June, 1994. It was clearly provided in the said Government Resolution that the Government had already granted approval for creation of 284 posts of full time librarian in the Government Resolution dated 28.06.1994. The State Government up-graded posts of part time librarian of 924 schools to full time librarians contending that it would be a fresh appointment as full time librarian and accordingly the period of services rendered by part time librarian would not be counted for pay fixation and that the appointment would be on the lowest scale as basic as full time librarian with effect from 01st April, 2006. A perusal of the said Government Resolution dated 28th June 1994 would indicate that based on the report submitted by Shri. V.V. Chiplunkar Committee, the posts of part time librarian and full time librarian were prescribed in the said Government Resolution.

44. Nagpur Bench of this Court delivered a judgment on 22nd July 2005 in Writ Petition No. 1197/2005 filed by one of the part time librarian pursuant to the directions issued by this Court in the said matter. The Education Officer in that case passed order dated 12th September 2009, granting approval to the said petitioner as full time librarian with effect from 1st July 1994 on the basis that the strength of the students in the concerned school had become more than 1000 from the year 1994-95.

45. Large number of such employees who were initially appointed as part time librarian and were subsequently appointed as full time librarian were not granted the pension under the MCS (Pension) Rules, 1982, by computing 50% of their service as part time librarian alongwith their 100% of service as full time librarian. Nagpur Bench of this Court in the said judgment had considered the fact that the petitioner was working as librarian on part time basis on 7th December 1992 and at that time the total strength of the students of the school was less than 1000 and in or about the year 1999 the strength of the students had exceed to 1000. After considering the Government Resolution dated 28th June 1994 and after considering the effect of Shri V.V. Chiplunkar Committee Report, this Court

directed the petitioner therein to make fresh application to the respondent 10036.10wp.odt No.2 to make enquiry and pass appropriate order. The respondent No. 2 had thereafter granted approval to the appointment of the petitioner as full time librarian with effect from the date of the strength of the students in the school exceeding to 1000.

56. Insofar as the judgment of this Court in the case of Satish Ganpatrao Patil (supra) relied upon by the learned Additional Government Pleader is concerned, a perusal of the prayers made in the said writ petition with the judgment would clearly indicate that the Division Bench of this Court was considering alterate prayer for quashing and setting aside the word 'fresh' in the impugned Government Resolution dated 3rd August 2006 by substituting or deleting the same and held that the petitioners therein were promoted from part time librarians to full time librarians. In that context, this Court held that the petitioners had accepted the benefits of the said Government Resolution dated 3rd August 2006 and had accepted without any protest. Large number of judgments delivered by this Court taking different view prior to the said judgment in case of Satish Ganpatrao Patil (supra) were not brought to the notice of this Court. Be that as it may, the facts in the case of Satish Ganpatrao Patil (supra) were totally different and are distinguishable on facts. The said judgment is already distinguished by Division Bench of this Court recently in case of Ganesh Narhar Chavan (supra) and would not advance case of the respondents. We are thus not required to refer the issue to Larger Bench.

57. In our view, the State Government while issuing Government Resolution dated 3rd August 2006 could not have been taken away the benefits granted under the Government Resolution dated 28th June 1994 which were granted pursuant to the acceptance of Shri V. V. Chiplunkar Committee Report. The said Government Resolution dated 3rd August 2006 could not have been issued inconsistent with the provisions of Secondary School Code. In our view, by the said Government Resolution dated 28 th June 1994 there was only up-gradation of approved part time posts of part time librarians to the post of full time librarians and such up- gradation was automatic once the strength of students had become 1000 or above. The respondents were thus obliged to grant status of full time librarian to the petitioners on the date of strength of the students had become 1000 or more WP No.12902/18 & Ors. alongwith all consequential benefits, pay fixation from due date.

59. The respondents are required to compute 50% of the services rendered as part time librarian along with period of 100% service rendered as full time librarian for computing pensionable service.

60. There is no substance in the submission of the State Government that there would be any discrimination between the part time librarian given status of full time librarian on the date of the strength of the students having reached 1000 or more and the full time librarian appointed after D. C. P. S. scheme came into force. The said Government Resolution dated 03.08.2006 taking away the rights vested in employees under G. R. dated 28.06.1994 is illegal, arbitrary and in violation of Article 14 of the Constitution of India. The judgments relied upon by the learned Additional Government Pleader are distinguishable on facts and would not assist the case of

the State Government.

12. In the case in hand, the husband of petitioner has admittedly served as Librarian (Part Time) on 04/08/1975 to 09/01/2007 in Respondent no. 4/School. Thereafter, he was granted approval as Full Time Librarian from 09/01/2007.

13. In view of the settled legal position consistently laid down by this Court, it is no longer res integra that 50% of the service rendered as a Part Time Librarian is liable to be reckoned for the purpose of computing qualifying service for pension, along with the entire service rendered as a full time employee. The distinction sought to be drawn by the respondents between part-time and full-time service, to the extent of denying pensionary benefits, has been repeatedly rejected. In the present case, the husband of the petitioner had rendered long years of service, first as a part-time Librarian and thereafter as a full-time Librarian, and therefore, the petitioner, being his widow, cannot be deprived of family pension. Denial of such benefit would defeat the very object of social security underlying the pension scheme. Therefore, we are of the view that the petitioner is entitled for family pension as per the relief sought by her vide prayer clause (C-1.)”

(emphasis supplied)

40. Further recently a co-ordinate Bench of this Court at the Kolhapur Circuit Bench in **Smt. Vanita Rajendra Bhadule (Aka. Vanita Somnath Dikole) vs. The State of Maharashtra & Ors.**¹³, also considered a similar contention as urged on behalf of the State relying on the decision in **Sunil Subhash Ekhande** (supra). In the said case also, the challenge as mounted by the petitioner was to an order dated 16 February 2024 passed by the Deputy Director of Education, Kolhapur, denying the benefit of the MCS (Pension) Rules, i.e. Old Pension Scheme to the petitioner, who had claimed to be entitled to pension under the Old Pension Scheme, on the ground that initially she was appointed as part-time teacher on 06 June 1998 in the Commerce Faculty and thereafter from the year 2006, she was appointed as a full-time teacher on the sanctioned post in an institution receiving aid. It is in these circumstances, the Court following the principles of law as discussed by us hereinabove, allowed the said writ petition thereby declaring that the petitioner was entitled to receive pensionary benefits as per the MCS

13 Writ Petition (Stamp) No. 18703 of 2024, decided on 25 June 2026

(Pension) Rules i.e. the old pension scheme, considering that her total tenure on the post was 20 years and 3 months including 16 years as a full time Assistant Teacher and half of the continuous qualifying service to the post of part-time Teacher i.e. 4 years and 1 month and accordingly the respondents were directed to release in favour of the petitioner all pensionary benefits as per the old pension scheme within a period of three months from the date of the said order. In reaching to such conclusion, the Division Bench observed that the decision of the Division Bench in **Sunil Subhash Ekhande** (supra) would not be applicable in relation to the controversy as involved which was also similar to one raised in the present proceedings.

41. In the light of the above discussion, in our opinion, it is quite clear that, in the facts and circumstances of the present case, it would be arbitrary on the part of the respondent to exclude the period of service rendered by the petitioner from 12 June 1995 to 31 March 2006 on the post of part-time librarian for the purpose of determining the qualifying service. In our opinion, Rule 57 Note 1 of the MCS (Pension) Rules would thus become applicable, and 50% of the period of part-time service rendered by the petitioner would be required to be taken into consideration for calculating the qualifying service for the purpose of pension. Accordingly, the petitioner would become entitled to pension under the old pension scheme, by taking into consideration 50% of the period of service rendered as a part-time librarian together with the period of service spent on the full-time post of librarian, for determining the petitioner's pensionable service. Accordingly, the petitioner's qualifying service for the purpose of pension would

be about 23 years (i.e approximately 5 years 4 months, i.e. , 50 % of service as part time librarian and 17 years 8 months as full time librarian) which is a period of about 5 years prior to the cut of date of 1 November 2005 being reckoned towards the qualifying service for the grant of pension.

42. In this view of the matter, the writ petition is allowed in terms of the following order:-

ORDER

- i. It is declared that 50% of the service rendered by the petitioner as a part-time librarian shall be taken into consideration along with the entire service rendered as a full-time librarian for the purpose of qualifying service for pensionary benefits. Accordingly, the petitioner is entitled to pension under the Old Pension Scheme.
- ii. Respondent no.6 is directed to submit the petitioner's pension proposal to respondent nos. 3 and 4 within a period of three weeks from today and on the same being received, respondent nos.3 and 4 shall take further steps to disburse the pension to the petitioner under the Old Pension Scheme.
- iii. Let the arrears of pension be disbursed to the petitioner within a period of six weeks with interest at the rate of 8% per annum by adjusting any amounts which would be required to be returned by the petitioner to the State Government in the event a conversion was made under the DCPS.
- iv. The petitioner shall accordingly be paid pension on a monthly basis, in accordance with the rules.
- v. In the event any other retirement dues as legitimately entitled to the petitioner are not disbursed, the same be disbursed to the petitioner within four weeks from today.
- vi. Rule is made absolute in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)