



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7620 OF 2023

Savita Kamlakar Pingale

Age : 60 years, Occupation : Retired

Bramhtej Apartment, Shardanagar,

Flat No.3, Shikshak Wasahat,

Malegaon BK., Pune – 413 115.

... Petitioner

Versus

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by PALLAVI  
MAHENDRA  
WARGAONKAR  
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1. Mr. Directorate of Art  
Sir J.J. School of Art Campus,  
Dr. D.N. Raod, Fort,  
Mumbai 400 001.
2. State of Maharashtra  
Through the Principal Secretary,  
Department of Higher and Technical  
Education, having his office at Mantralaya,  
Mumbai 32.
3. Shardabai Pawar Mahila Kalaniketan,  
Shardanagar, Malegaon Colony,  
Taluka – Baramati, District – Pune. ... Respondents

...

Mr. Mrinal A. Shelar i/b. Mr. S.S. Patwardhan, Advocate for the  
Petitioner.

Ms. Nisha Mehra, AGP, Advocate for Respondent Nos.1 and 2.

Dr. Rajendra Anbhule a/w Ms. Revathi Nair & Nisha Ahire,  
Advocate for Respondent No.3.

...

Pallavi Wargaonkar, PS

**CORAM : RAVINDRA V. GHUGE  
&  
M.M. SATHAYE, JJ.**

**DATE :- 7<sup>th</sup> OCTOBER, 2024**

**ORAL JUDGMENT (Per : Ravindra V. Ghuge, J.) :-**

1. **Rule.** Rule made returnable forthwith and heard finally with the consent of the parties.

2. The Petitioner was appointed in the Respondent No.3 Institute, as a Full Time Lecturer in A.T.D. by the Agricultural Development Trust, on 18<sup>th</sup> August 1993. Her services were confirmed in May 1996. The College in which the Petitioner was working (Respondent No.3 herein), was operational on 'Non Grant-in-Aid' basis, since June 1993, which is evident from the letter dated 14<sup>th</sup> June, 1993. The College received approval for 'Grant-in-Aid' vide communication dated 1<sup>st</sup> July, 2004 issued by the Directorate of Art, Respondent No.1 herein.

3. The Petitioner on account of her ill-health, opted for

*Pallavi Wargaonkar, PS*

a voluntary retirement by tendering her resignation letter, dated 29<sup>th</sup> April, 2017. The same was accepted and the Petitioner was relieved on 31<sup>st</sup> July, 2017. The Petitioner's total service in continuous employment was from 18<sup>th</sup> August 1993 to 31<sup>st</sup> July 2017, with the Respondent No.3, Institute. The qualifying service for pensionary benefits is 20 years.

4. The Petitioner relies upon the judgment delivered by this Court [Coram: B.R. Gavai (as his Lordship then was) and A.P. Bhangale, JJ.] dated 7<sup>th</sup> December, 2022 in Writ Petition No.2087 of 2012 (*Dnyaneshwar s/o Shankarrao Marotkar vs. State of Maharashtra, Thr. It Secretary, Department of Higher and Technical Education & Ors.*) at Nagpur. It has been noted in Dnyaneshwar s/o Shankarrao Marotkar (supra), in paragraph Nos.3 to 6, as under :-

“3. The petitioner was initially appointed as Assistant Lecturer in the said College on 1/7/1985. The petitioner was promoted on 22/3/1995 to the post of Lecturer and subsequently, to the post of Principal. The said College came on grant-in-aid basis with effect from 1/1/2005. The petitioner stood retired on superannuation with effect from 31/10/2012. After retirement, the petitioner has been denied the retiral benefits on the ground that he has not completed qualifying service of ten years from the date on which

*the said College came on grant-in-aid basis.*

- 4) *The pension scheme is applicable to the employees of Arts Institutes vide Government Resolution dated 16/11/1996. English translation of the relevant part of the said Government Resolution reads thus :*

*“Now, Government is pleased to issue direction whereby the Pension and Death/Retirement Gratuity Scheme and other Pensionary benefits including Family Pension Scheme, 1964 with necessary changes, which are applicable to the Maharashtra State Government Employees under the provisions of Maharashtra Civil Services (Pension) Rules, 1982 are hereby made applicable to the full time, approved teaching and non teaching staff of the recognized and aided non-Governmental Arts Institutions in the State subject to conditions of this Government Resolution with effect from 1/4/1995.”*

- 5) *It could thus be seen that vide said Government Resolution, the pension scheme is made applicable to the full time approved teaching and non-teaching staff working in the recognized and aided non-Governmental Arts Institutes in the State of Maharashtra. A pari materia provision with regard to the Municipal Corporation of Greater Bombay came up for consideration before Division Bench of this Court at the principal seat. The Division Bench observed thus :*

*“The definition of the expression “qualifying service” in the Pension Rules refers to service rendered in a permanent post. In the present case, there is no dispute about the position that the petitioner worked in a post which was sanctioned. Her services were duly approved by the Education Officer. The test which must be applied is as to whether an employee was a full time confirmed and approved member of the teaching or non-teaching staff of a private primary aided School on the date of her retirement. If that test is satisfied, the Pension Scheme is made applicable by virtue of the provisions of Clause 5(ii). There is no*

*warrant in the Pension Scheme or the Pension Rules to exclude while computing qualifying service, the service which is rendered by an employee before a School came to be in receipt of grant-in-aid. So long as the School was in receipt of grant-in-aid on the date on which an employee retired from service upon attaining the age of superannuation, the application of the Pension Scheme would be attracted. The petitioner was an employee of a private primary aided School on the date of retirement and was hence, eligible.”*

*It could thus be clearly seen that the Division Bench has held that so long as School is in receipt of grant-in-aid on the date on which employee has retired upon attaining the age of superannuation, his service rendered during the period when such Institute was on no grant-in-aid basis is also required to be taken into consideration while computing the eligible period for grant of pensionary benefits. In that view of the matter, the petition deserves to be allowed.*

- 6) *In the result, rule is made absolute in terms of prayer clause (i) of the petition. The necessary steps be taken by the respondents within three months from today. No order as to costs.”*

5. The learned AGP has vehemently opposed this Petition on the basis of the affidavit-in-reply filed through Vinod Rangnathh Dandage, Deputy Director, Directorate of Art, Mumbai wherein it is specifically canvassed that the judgment in Dnyaneshwar s/o Shankarrao Marotkar (supra), would not be applicable to the case since the Petitioner has opted for voluntary retirement from her post, and that the Petitioner Dnyaneshwar s/o

Shankarrao Marotkar (supra), had attained the age of superannuation and was, therefore, entitled for pensionary benefits.

6. It is beyond debate that merely because a person has sought voluntary retirement by following the applicable rules, on account of personal reasons, he is never deprived of pension or pensionary benefits. No law holding that any employee who opts for voluntary retirement, would be deprived of pensionary benefits, is cited before us.

7. We find that the facts in the case in hand would clearly indicate that when the Petitioner joined employment, said Institution did not have the grants from the State Government. On the date she opted for retirement and was granted retirement as per rules, the institution was receiving 100% Grant-in-Aid. This issue has been covered in paragraph Nos.4 and 5 in Dnyaneshwar s/o Shankarrao Marotkar (supra), reproduced above.

8. Considering the law and the facts of the case, we are of the view that the ratio laid down in Dnyaneshwar s/o Shankarrao Marotkar (supra), would squarely cover the case of the present Petitioner. She would be entitled for the retiral benefits. Needless to state, the statutory interest payable on amounts like pension, gratuity, etc. would also be payable to her. If leave encashment has not been paid to the Petitioner, the same shall carry simple interest @ 6% per annum.

9. As such, **this Writ Petition is allowed** in terms of prayer clauses (a) and (b). The Interest on delayed payment of gratuity shall be @ 12% in the light of the Government Notification dated 5<sup>th</sup> October, 1999 issued by Government of India, Ministry of Personnel, Department of Pension & Pensioners' Welfare, New Delhi. Other benefits which attract the statutory interest for delayed payment, would also be payable. We are granting 6% simple interest per annum on the delayed payment of leave encashment, if not already paid.

10. Let all those benefits be calculated by the employer within a period of 30 days from today and the payments to be made, shall be made in two equal installments, first being payable by 15<sup>th</sup> December 2024 and the second installment to be paid by 15<sup>th</sup> January 2025.

11. Rule is made absolute in the above terms.

(M.M. SATHAYE, J.) (RAVINDRA V. GHUGE, J.)