IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13205 OF 2023

Dr. Vijay S. Shedage
Age : 57, Occu- Service
Agasti Arts, Commerce and Dadasaheb
Rupwate Science College, Akole,
Dist. Ahmednagar ...Petitioner

VERSUS

1. The State of Maharashtra
Through the Secretary of Higher Education
Department, Mantralaya Mumbai-32

2. The Director Higher Education
Maharashtra State Pune

3. The Joint Director Higher Education
Pune Regional Office, Pune

4. The Savitribai Phule Pune University,
Through its Registrar,
Ganesh Khind, Pune

5. Agasti Arts, Commerce & Dadasaheb
Rupwate Science College
Akole, Dist- Ahmednagar
Through its Principal ...Respondents

...

Mr. R. R. Deshpande h/f. Ms. Priyanka R. Deshpande, Advocate for the Petitioner.
Mr. B. B. Bhise, AGP for Respondent No.1 to 3
Mr. R. D. Bhalerao, Advocate for Respondent No.5

...

CORAM : NITIN B. SURYAWANSHI AND
ABASAHEB D. SHINDE, JJ.

RESERVED ON : 22.06.2026

PRONOUNCED ON : 23.07.2026

JUDGMENT (Per Abasaheb D. Shinde J.) :-

1. Heard.

2. Rule. Rule made returnable forthwith. By consent of the parties, Writ Petition is taken up for final hearing at the stage of admission.

3. By this Writ Petition, under Article 226 of the Constitution of India, the petitioner has put forth the following main prayers :

> *"A] This writ petition may kindly be allowed.*
>
> *B] By issuing the writ of certiorari or any other appropriate writ or order or direction in the like nature, the communication dated 01/09/2023 issued by the respondent No. 5 to the petitioner may kindly be quashed and set aside.*
>
> *C] By issuing the writ of mandamus or any other appropriate writ or order or direction in the like nature, it may kindly be held and declared that the petitioner is entitled for the pension under the provisions of the Old Pension Scheme and in furtherance of the same the respondent Nos. 1 to 3 may kindly be directed to open the account of the petitioner in GPF in consonance with the Rules for the purpose of the applicability of the Old Pension Scheme to the petitioner within the stipulated period which this Hon'ble Court would deem fit and proper.*
>
> *D] By issuing the writ of mandamus or any other appropriate writ or order or direction in the like nature, the respondents may kindly be directed to confer all the benefits of the CAS on the part of the petitioner by considering his services from 16/09/1995 and to pay the arrears of the same within stipulated time as this Honorable court deem fit along with interest thereon as this Honorable court deem fit.".*

FACTUAL MATRIX :-

4. It is the case of the petitioner that after following due procedure of law Respondent No.5 had appointed the petitioner as a lecturer on part-time basis for teaching the subject of Philosophy on a clear and sanctioned post by appointment order dated 16.04.1996 w.e.f. 16.09.1995. The services of the petitioner were approved by Respondent No.4 on 05.11.1999 with a condition that the petitioner should pass NET-SET examination. Though the appointment is shown to have been made on part-time basis, the service record of the petitioner indicates that his appointment has been treated as that of a regular and permanent employee. The petitioner was granted the benefits of the pay revision in consonance with 5th, 6th and 7th pay commission. The Scrutiny Committee consisting of the representatives of Respondent No.2 as well as nominee of Respondent No.4 verified the entire service record of the petitioner and held him entitled for the senior pay-scale as well as the selection grade pay-scale. The petitioner received Ph.D. degree in the relevant subject on 23.09.2003. On 08.10.2013, Respondent No.4 granted permanent approval to the services of the petitioner subject to passing NET-SET examination.

5. The petitioner further contends that, though his initial appointment is of 16.09.1995, the respondents refused to open his GPF account; consequently, the necessary deductions are not made from his salary. On 01.09.2023 Respondent No.5 intimated the petitioner that the petitioner should apply in the prescribed form for the purpose of opening the account under the National Pension System (NPS), failing which the salary of the petitioner would be stopped. The Petitioner, therefore, has approached this Court.

SUBMISSIONS :

6. At the outset, learned Counsel for the petitioner fairly submits that during pendency of this petition, the petitioner stood retired on 30.05.2025, as such, prayer clauses “B” and “D” of the Writ Petition do not survive. He, therefore, restricted his submissions to the extent of prayer clause “C”.

7. The submission of the learned Counsel for the petitioner is twofold. According to him, by virtue of grant of permanent approval by Respondent No.4 on 11.08.2024, to the service of the petitioner, he is deemed to have become a regular and permanent employee from the date of his initial appointment and; therefore, the petitioner is entitled for the benefits of the

Old Pension Scheme. He has placed the copy of order dated 11.08.2024 on record.

The second limb of his submission is that, even if the appointment of petitioner as a full time lecturer is reckoned from 25.09.2011, fifty percent of part-time services rendered by him deserves to be considered for the purpose of grant of pensionary benefits as per the provisions of Maharashtra Civil Services (Pension) Rules, 1982 (for the sake of brevity, hereinafter referred to as ***"the Pension Rules"***). In support of his submissions, he relied on the decision of this Court dated 04.08.2021 in the case of ***Kalpana Jagatrao Dahiwale Vs. The State of Maharashtra & Ors. (Writ Petition No. 1673 of 2021).*** He, therefore, urged that Respondent Nos.1 to 3 be directed to open the account of the petitioner in GPF so as to get the benefits of Old Pension Scheme.

8. Per contra, learned AGP would submit that the advertisement, pursuant to which the petitioner was appointed shows that the post advertised was that of a part-time lecturer. He submits that, on 25.09.2011 for the first time the petitioner was treated as full time lecturer, therefore, as per Note-2 of Rule 10 of the Pension Rules the part-time or honorary service

rendered by the petitioner cannot be considered for the purpose of granting benefits under the Old Pension Scheme.

9. We have heard the rival submissions of the respective Counsels and with their able assistance, we have perused the entire record.

CONSIDERATION :-

10. In view of the fact that the petitioner stood retired on 30.05.2025, the core question that falls for consideration before this Court is, 'whether the petitioner is entitle to the pensionary benefits under the Old Pension Scheme.' Undisputedly the Pension Rules are applicable to the petitioner therefore, before adverting to the submissions advanced by the learned Counsel for both the sides, it would be apposite to reproduce the relevant pension rules :-

> *"30. Commencement of qualifying service -*
>
> *Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:*
>
> *Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:*
>
> *[Provided further that, in cases where a temporary Government servant retires, on Superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less that 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 [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 the 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 the employees of former India 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 on 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 in pensionable or not should be determined in accordance with these rules as if those rules were applicable to that service."

11. Rule 57 of the Pension Rules, reads thus:-

*"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 1 st April 1966, one-half of their previous continuous service as Attendants, shall be allowed to count for pension.*

12. Similarly, Note-2 of Rule 10 of the Pension Rules relied upon by the learned AGP reads thus :

> ***10. Age of retirement :***
>
> *....*
>
> *Note 2- For the purposes of sub-clauses (a) and (b) of sub-rule (4), the age of entry into Government service or recruitment in Government service shall be the age at which a Government servant was appointed to a full time post and not to a part time or honorary post."*

13. As per Rule 30 of pension Rules the qualifying service of a government servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

Rule 57, however, carve out exceptions to Rule 30. Note-1 appended to Rule 57 contemplates that one-half of the previous continuous service of an employee is allowed to be counted for pension.

14. In the judgment of ***Kalpana Jagatrao Dahiwale*** (supra), this Court while considering the provisions of Rule 30 and 57 of the Pension Rules made following observations :-

> *7. Learned Counsel invited our attention to various judgment annexed to the Writ Petition at pages 31 to 58 in support of his submission that under Rule 57 Note 1 of the Maharashtra Civil Services (Pension) Rules, 1982, the Petitioner was entitled to benefit of 50% of the services rendered by him as part time Librarian in the school approved by the said Management which was aided post and also entitled to period of services rendered as full time Librarian for the purpose of superannuation pension under Rule 30 and 57 of the Maharashtra Civil Services (Pension) Rules, 1982.*
>
> *10. A Division Bench of this Court in case of Abaso Ganpati Aoute Vs. State of Maharashtra & Ors. has after adverting to the judgment of Jyoti Prakash Chougule (supra) has held that 50% of the part time services rendered by the Petitioner has to be taken into consideration along with the services rendered by the Petitioner as full time teacher for grant of superannuation pension benefits.*
>
> *11. The principles laid down by this Court in the aforesaid judgment will apply to the present case regarding non teaching staff also. A Division Bench of this Court in case of Smt. Darshana wd/o Adikrao Gaikwad Vs. State of Maharashtra has considered identical facts where the Petitioner was appointed as part time Librarian initially and thereafter, full time Librarian. In that matter also authority had refused to grant superannuation pension to the Petitioner therein. This Court after adverting to various judgments including Jyoti Prakash Chougule (supra) held that 50% of the part time services rendered by the part time Librarian is required to be counted for the purpose of pensionary services along with full time services rendered by the employee. The said judgments squarely applies to the facts of this case. We are not inclined to take different view in the matter."*

15. It is also pertinent to note that the permanent approval to the service of the petitioner was granted by Respondent No.4 on 11.08.2024, from his initial appointment, i.e. from 16.09.1995, by virtue of exemption from passing the NET-SET examination pursuant to Government Resolution dated 29.10.2021.

16. In the light of ratio laid down by this Court in the case of ***Kalpana Jagatrao Dahiwale*** (supra) and the fact that the petitioner's services have been approved by Respondent No.4 on 11.08.2024 w.e.f. 16.09.1995, in the light of Government Resolution dated 29.10.2021, the petitioner is entitled to superannuation pension under the Old Pension Scheme. In the result, the Writ Petition deserves to be allowed. Hence, the following order :-

ORDER

i. Writ Petition is allowed in terms of prayer Clause C.

ii. Respondent No.5 shall submit a pension proposal of the Petitioner to Respondent Nos.2 and 3 within a period of six (6) weeks from the date of receipt of this order.

iii. Respondent Nos.2 and 3 shall process the said proposal and pass appropriate orders for grant of pensionary benefits to the petitioner as per Old Pension Scheme within a period of six (6) weeks thereafter.

iv. Rule is made absolute in above terms.

(ABASAHEB D. SHINDE, J.) **(N. B. SURYAWANSHI, J.)**