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(2022) 11 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition No.1955 Of 2019

Jitendrakumar Krishnarao Lanjewar And Others — APPELLANT

Vs

State Of Maharashtra And Others — RESPONDENT

Date of Decision : 30-11-2022

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act, 1977 — Section 5(3)

Citation : (2022) 11 BOM CK 0098

Hon'ble Judges : Sandeep K. Shinde, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : P.N. Shende, Kalyani Deshpande

Judgement

Vrushali V. Joshi , J

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. By the instant petition, the petitioners are challenging the legality and validity of the Government Resolution dated 29.11.2010 issued by the respondent no.1–State Government, inter alia taking away the rights of the petitioners of all the pensionary benefits applicable to them as per the old pension scheme and started applying the new D.C.P.S. Pension Scheme, in spite of the fact that the appointment of the petitioners were made prior to the year 2005.

3. According to the petitioners, they are appointed as a Junior College Lecturers. The petitioner nos.1 and 2 were appointed in respondent no.4-College on sanctioned posts as Junior College Lecturers on probation for the period of two years vide appointment order dated 30.12.1999 and 27.12.1999, which was prior to the year 2005. Likewise the petitioner nos.3 to 5 were also appointed by following the due, procedure of law against the clear and sanctioned posts of Junior College Lecturers on probation for the period of two years, vide appointment order dated 01.10.2000 and 26.09.2005 issued by the respondent

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no.4. Thus, it makes clear that the petitioner nos.3 to 5 were appointed prior to 01.11.2005. The appointments of the petitioners were made by following the due procedure and further the said school was started getting grant-in-aid, though it is mentioned by the petitioners in the body of petition it is not there, since when they school started getting aid, it is therefore not clear and, therefore, the Education Officer required to verify whether the school was getting 100% grant and since when. The respondent no.4 sent the proposal of the petitioners to the respondent no.2 for grant of its approval and the said appointments of the petitioner nos.1 and 2 were duly approved by the respondent no.2 initially on probation for the period of two years and, thereafter, on regular and permanent basis on 30.10.2001 to petitioner nos.1 to 3 and 08.12.2010 to petitioner nos.4 and 5.

4. The entire service record of the petitioners was excellent and satisfactory and the petitioners working with the respondent no.4 for more than 15 years and as per Section 5 (3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 they attained the status of permanency in the services. As the appointment of the petitioners were held to be duly approved and hence it is the case of the petitioners that they are entitled to benefit of old pension scheme, in that backdrop, they have sought to challenge the Government Resolution dated 29.11.2010, which requires service on aided post prior to the cut off date which is 01.11.2005. Since the petitioners have deprived of applicability of the old pension scheme, they have filed the present writ petition as regards their entitlement to such benefits.

5. The learned counsel for the petitioners has relied upon the judgment of this Court in Writ Petition No.8990/2021 Smt. Manasi Sudhir Mane @ Aruna Yashwant Patil .vs. The State of Maharashtra and others with connected writ petitions, decided on 11.04.2022. It has been held therein after referring to earlier decisions of this Court that if an employee had been appointed prior to 01.11.2005 on an unaided post, but the school has been receiving 100% grant-in-aid prior to 01.11.2005, such employee would be entitled to get the benefit of the old pension scheme as per Government Resolution dated 19.07.2011. Thereafter directions were issued to examine the case of each petitioner therein to apply benefit of the old pension scheme if found entitled.

6. After hearing the learned counsel for the petitioners as well as learned counsel for the respondents, we find that a similar exercise of examining the case of each petitioner for entitlement under the old pension scheme can be issued. Hence for reasons contained in the decision in Smt. Manasi Sudhir Mane (supra) the following order is passed :

(1) The respondent No.2-Deputy Director of Education is directed to decide the case of each petitioner regarding applicability of the old pension scheme as per Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Computation of Pension) Rules, 1984 and General Provident Fund Scheme and also after verifying whether the school was receiving 100% grant-in-aid by

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keeping in view the law laid down by this Court in its various judgments including the judgment in Smt. Manasi Sudhir Mane (supra).

(2) If it is so found by the Deputy Director of Education that the petitioners are governed by the old pension scheme, the Deputy Director of Education shall issue necessary directions to not deduct any amount from the salary payable to the petitioners governed by the old pension scheme for the purposes of its applying to the DCPS or NPS and shall also issue necessary directions for refunding of these amounts to those petitioners from whose salary same are deducted within four weeks of the date of which such deduction is made.

(3) In case it is found that the petitioners are governed by the old pension scheme, necessary directions shall be issued by the Deputy Director of Education to open GPF accounts in the name of the petitioners who are found eligible for the same within a period of four weeks of such date on which their eligibility is determined if such accounts are not already opened.

(4) The petitioners shall appear before the Deputy Director of Education, Nagpur Division, Nagpur on 12-12-2022.

Rule is made absolute in aforesaid terms with no order as to costs.

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