
(2021) 10 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 4744, 4747, 4748, 4749 Of 2019

Nilesh S/O Namdev Gurav And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 19

Citation : (2021) 10 BOM CK 0010

Hon'ble Judges : R.D. Dhanuka, J; R.I. Chagla, J

Bench : Division Bench

Advocate : P.R. Kantneshwarkar, Arvind G. Ambetkar, V.M. Mali

Final Decision : Disposed Of

Judgement

R.I. Chagla, J

1. Rule. Learned AGP waives service on behalf of the Respondent-State.

2. Heard finally by consent of parties.

3. By this Petition filed under Article 226 of the Constitution of India, the Petitioners are seeking declaration that they are governed under the old pension scheme i.e. Pension i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Communication of Pension) Rules, 1984 and General Provident Fund which are applicable to the Assistant Teachers and Non-Teaching employees, who are appointed prior to 1st November 2005.

4. Further direction is sought directing Respondent Nos. 1 to 5 to continue to extend the benefits of old pension scheme to the Petitioners and the Respondents be restrained from enforcing and applying the new pension scheme i.e. Defined Contribution Pension Scheme ("DCP Scheme") to the Petitioners in any manner and/or by any method. The challenge to the Government Resolution dated 29th November 2010 although raised in the Petition, is not pressed. Since almost

identical issues arise in these Petitions, they are disposed of together.

5. The Petitioners in these Petitions along with the dates of appointment to their respective posts; dates of approval of the respective posts; and the names of the respective schools in which the Petitioners are employed, are set out as under:-

WRIT PETITION NO. 4748 OF 2019

SR. NO.

NAME OF THE PETITIONERS

DATE OF APPOINTMENT AND POST

DATE OF APPROVAL AND POST

PRESENT NAME OF THE SCHOOL

G.P. F. A/C NO.

1.

Nilesh Namdev Gurav

26/03/1998 Part-Time Librarian

01/04/2006 Librarian

Vidhapeeth High School Kolhapur, Dist. Kolhapur

2.

Sanjay Maruti Mane

16/01/1999 Part-Time Assistant Teacher

01/12/2007 Assistant Teacher

New English School, Channekuppe, Tq. Gadhinglaj, Dist. Kolhapur

3.

Vinayak Gangadhar Chavan

10/07/1998 Part-Time Assistant Teacher

01/07/2006 Assistant Teacher

Ajara Mahavidyalaya, Ajara, Tq. Ajara. Dist. Kolhapur

4.

Dilip Pandurang Sankpal

20/07/1996 Part-Time Assistant Teacher

12/06/2006 Assistant Teacher

Ajara Mahavidyalaya, Ajara, Tq. Ajara. Dist. Kolhapur

5.

Smt. Ragini Shankarrao Rajmane

01/12/1999 Part-Time Assistant Teacher

13/07/2006 Assistant Teacher

Ajara Mahavidyalaya, Ajara, Tq. Ajara. Dist. Kolhapur

6.

Dhanaji Vishnu Kesarkar

09/06/2004 Part-Time Assistant Teacher 01/08/2007 Shikshan Sevak

24/02/2009 Assistant Teacher

Vidhapeeth High School Kolhapur, Dist. Kolhapur

WRIT PETITION NO. 4744 OF 2019

Name of Teacher : Shri. Aspak s/o Allabaksh Kazi

Name of School : English School Mangalwedha,

Tq. Mangalwedha, Dist. Solapur

Post : Assistant Teacher

Sr.No

Academic Years

Post

01.

From 08.06.2001

Part time Shikshan Sevak

02.

From 11.06.2004

Part Time Assistant Teacher

03.

From 01.10.2007

Full Time Assistant Teacher

WRIT PETITION NO. 4747 OF 2019

Name of Teacher : Shri. Vijay Mukund Kulkarni

Name of School : Vidya Mandir High School & Jr.

College, Salgar Bk., Tq. Mangalwedha,

Dist. Solapur

Post : Assistant Teacher

Sr.No.

Academic Years

Post

01.

From 10.06.2004

Part time Shikshan Sevak

02.

From 10.06.2007

Part Time Assistant Teacher

03.

From 15.06.2009

Full Time Assistant Teacher

WRIT PETITION NO. 4749 OF 2019

SR .N O

NAME OF THE PETITIONER S

DATE OF APPOINTM ENT AND POST

DATE OF CONFIRMA TION AND POST

DATE OF APPROVA L AND POST

PRESENT NAME OF THE SCHOOL

G.

P.

F.

A/

C

N O

1.

Jagdish Maruti Bhadarage

01/10/2005 Part-Time Shikshan Sevak

01/12/2006 Shikshan Sevak

28/05/20 09 Assistant Teacher

Sou.Vijaymal a Dinkarrao Shinde High School Gadhinglaj, Ta. Gadhinglas, Dist. Kolhapur

2.

Kumar Ramchandra Kurukale

01/10/2005 Part-Time Shikshan Sevak

15/06/2007 Shikshan Sevak

22/09/20 09 Assistant Teacher

Nagojirao Patankar High School Kolhapur, Dist. Kolhapur

3.

Tanaji Bharamu Amage

01/09/2004 Part-Time Shikshan Sevak

01/12/2007 Shikshan Sevak

18/06/20 09 Assistant Teacher

Shri Ram High School, Nangnur, Tq. Gadhinglaj, Dist. Kolhapur

4.

Narayan Vithoba Hodage

02/0- 7/2001 Part-Time Shikshan Sevak

10/07/2007 Shikshan Sevak

11/02/20 08 Assistant Teacher

Shri Mahatma Phule Vidyalay Junior College, Tq. Gadhinglaj, Dist. Kolhapur

5.

Ranjit Gananan Ingavale

30/08/2005 Part-Time Shikshan Sevak

16/06/2008 Shikshan Sevak

21/01/201 0 Assistant Teacher

Shri Ram High School and Junior College, Kuditre, Tq. Karvir, Dist. Kolhapur

6.

Smt. Nirmala Dipak Bhjoite

01/10/2005 Part-Time Shikshan Sevak 14/06/2010 Part-Time Assistant Teacher

01/11/2010 Shikshan Sevak

11/10/201 1 Assistant Teacher

Chatrapati Yuraj Shahu Maharaj High School Gandhinagar, Tq. Karvir,
Dist.Kolhapu r

7.

Sadanand Basavant Phutane

22/07/2003 Part-Time Shikshan Sevak

13/11/2006 Shikshan Sevak

13/11/200 9 Assistant Teacher

Jagruti High School Gadhinglaj Tq. Gadhinglaj, Dist.Kolhapu r

8.

Nihal Ramjan Makandar

11/07/2005 Part-Time Shikshan Sevak

20/06/2007 Shikshan Sevak

16/08/20 09 Assistant Teacher

Sadhana High School, Junior College of Science and Vocational Gadhinglaj Tq.
Gadhinglaj, Dist. Kolhapur

6. The Petitioners' case is that they have been appointed prior to 1st November 2005 to part-time posts. Almost all of the Petitioners are Teaching employees (Assistant Teachers). One of the Petitioners is a Non-Teaching employee. All Petitioners are employed in fully aided schools and thus, they have claimed that they are entitled to the old pension scheme and for the Respondents to extend the benefits of the old pension scheme to the Petitioners.

7. Mr. Kantneshwarkar, the learned Counsel appearing for the Petitioners in these Petitions has submitted that the issue arising in these Petitions have been covered in several decisions of this Court and which include the following :-

(1) Jyoti Prakash Chougule Vs. State of Maharashtra & Ors. Writ Petition No. 2354 of 2012 (Bombay Bench)

(2) Shalini w/o Asaram Akkarbote Vs. The State of Maharashtra & Ors. Writ Petition No. 8289 of 2013 (Aurangabad Bench)

(3) Smt. Darshana wd/o Adikrao Gaikwad Vs. State of Maharashtra & Ors Writ Petition No. 5421 of 2017 (Nagpur Bench)

(4) Smt. Prema Narsinha Herkal Vs. State of Maharashtra & Ors. Writ Petition No. 3719 of 2019 (Bombay Bench)

(5) Smt. Kalpana Jagatrao Dahiwalé Vs. The State of Maharashtra & Ors. Writ Petition No. 1673 of 2021 (Bombay Bench)

(6) Smt. Vina Vinayak Upasani Vs. State of Maharashtra & Ors Writ Petition No. 3386 of 2021 (Bombay Bench)

(7) Deshmukh Dilipkumar Bhagwan & Ors. Vs. State of Maharashtra Writ Petition No. 8387 of 2013 (Bombay Bench)

(8) Shri Purushottam Harishchandra Shirsekar Vs. The State of Maharashtra & Ors. Writ Petition No. 2538 of 2021 (Bombay Bench)

(9) Renuka Chandrabhan Umredkar Vs. State of Maharashtra & Ors. Writ Petition No. 3696 of 2021 (Bombay Bench)

8. He has submitted that this Court has consistently held that the services of employees of education institutions is to be counted from the first date of appointment irrespective of whether it is on a part-time or full time post. Where such appointment is prior to 1st November 2005, then the old pensions scheme would be made applicable to such employee. The only additional condition imposed by the Full Bench in case of Deshmukh Dilipkumar Bhagwan (supra) is that the employees appointed prior to 1st November 2005 must be employed in aided education institutions, receiving 100% grant-in-aid prior to 1st November 2005 to be granted the old pension scheme. He has accordingly, submitted that the Petitioners in these Petitions who are employees of the educational institutions were appointed on the part-time posts in fully aided education institutions prior to 1st November 2005 and thus, following the above referred decisions, they would be entitled to the benefits of the old pension scheme.

9. The learned Counsel for the Petitioners has submitted that this position is also clear from the Government Resolution dated 31st October 2005 under Clause 4, titled applicability of the scheme, that the new pension scheme is made applicable to employees of the educational institutions who are recruited on or after 1st November 2005 in the services of the recognized and aided educational institutions. There is no distinction made between full time and part-time employees in the services of such aided educational institutions. He has accordingly, submitted that in the present case the Petitioners' educational institutions where the Petitioners were appointed, were receiving 100% grant-in-aid prior to 1st November 2005. The Petitioners having been appointed as employees prior to 1st November 2005 in such fully aided educational institutions, they would be entitled to the benefit of the old pension scheme i.e. the scheme prevailing prior to 1st November 2005 in accordance with the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and

Maharashtra Civil Services (Communication of Pension) Rules, 1984 and General Provident Fund shall be made applicable to the Petitioners.

10. Learned AGP appearing for the Respondents has referred to the Affidavit in Reply filed on behalf of the Respondent No. 5 in Writ Petition No. 4748 of 2019 and the Affidavit in Reply filed on behalf of the Respondent No. 5 in Writ Petition No. 4749 of 2019, both dated 6th September 2021 as well as the Charts annexed to the said Affidavits. He has submitted that the Petitioners having been appointed prior to 1st November 2005 on part-time basis in fully aided schools would not be entitled to pensionary benefits as per the old pensionary scheme. Learned AGP has submitted that the Petitioners came to be appointed on full time posts only after 1st November 2005 and they would thus, be entitled to the revised "Defined Contribution Pension Scheme" (new pension scheme) and as per the provisions of the Government Resolution dated 29th October 2010, the relevant dates of the appointment for full time posts are to be taken into consideration.

11. Learned AGP has further submitted that as per Rule 19 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, it is made clear that full time employees in aided schools are entitled to pensionary benefits. Accordingly, those employees appointed on full time basis on fixed honorarium per month prior to 1st November 2005 and in continuous appointment and subsequently appointed in regular pay-scale are held eligible for the old pension scheme. He has relied upon the decision of the Nagpur Bench of this Court in Writ Petition No. 1574 of 2017, dated 4th January 2020 in this context. He has submitted that the Petitioners are not entitled to the old pension scheme. They are entitled to the revised DCP Scheme introduced with effect from 1st November 2005.

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 filed 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.

17. It is noted that Respondents have in the Charts annexed to the said Affidavits singled out the case of Petitioner No. 6 in Writ Petition No. 4748 of 2019 by stating that he was an employee on unaided post. However, it is clear from the Government Resolution dated 19th July 2011 that what is to be taken into consideration is whether the educational institution is a fully aided educational institution, receiving 100% aid from the Government Resolution and not whether particular post is aided or not.

18. Petitioner No. 6 in Writ Petition No. 4748 of 2019, having been appointed prior to 1st November 2005 on part-time basis in a fully aided education institutions would along with the other Petitioners be entitled to the benefits of the old pension scheme. Hence, we pass the following order:-

(i) Petitioners in Writ Petition No. 4748 OF 2019, Writ Petition No. 4744 OF 2019, Writ Petition No. 4747 OF 2019 and Writ Petition No. 4749 OF 2019 are entitled to be governed under the old pension scheme i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Communication of Pension) Rules, 1984 and General Provident Fund is applicable to the Petitioners who are either Assistant Teachers or Non-Teaching employees, appointed prior to 1st November 2005.

(ii) The Respondent Nos. 1 to 5 shall extend the benefits of the old pension scheme to the Petitioners and shall not deduct any amount from the salary of the Petitioners by applying the DCP Scheme (New Pension Scheme). In the event, any amount has been deducted by applying the DCPS, such amount shall be refunded to the Petitioners within a period of four weeks from today.

(iii) Respondents shall allot the General Provident Fund Account (GPF Account) to the Petitioners and thereafter, permit the educational institutions to deduct the amount of monthly compensation from the monthly salary of the Petitioners and deposit the same in the said GPF Account which shall be done within a period of six weeks from the date of this order.

(iv) Rule is made absolute in the above terms.

(v) Writ Petition is accordingly disposed of.

(vi) There shall be no order as to costs.

(vii) Parties to act upon an authenticated copy of this order.