



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11567 OF 2024

Dr. Pramila Ashok Divate

... PETITIONER

VERSUS

1. State of Maharashtra,
through its Principal Secretary
Medical Education and Drugs Department
Mantralaya, Mumbai – 32.
2. The Director of Ayurved,
Ayush Directorate, Maharashtra State,
Mumbai C/o : Government Dental
College & Rugunalaya Building, 4th Floor,
Saint George Hospital Area,
P Demalo Road, Fort, Mumbai – 6.
3. Assistant Director,
Ayurved, New Administrative Building
4th Floor, Block – C- 10, in front of
Vidhan Bhavan, Pune – 1.
4. Chancellor,
Maharashtra Health Sciences University
Gangapur Road, Anandwali, Nasik-3
5. President/Secretary,
Ayurved Shastra Seva Mandal,
Ahmednagar
C/o : Gangadhar Shashtri Gune,
Ayurved College, Ahmednagar
District Ahmednagar.
6. Principal, Gangadhar Shastri
Gune, Ayurved College, Ahmednagar,
District Ahmednagar

... RESPONDENTS

...

Advocate for the Petitioner : Mr. Vitthal G. Salgare

AGP for respondent Nos.1 to 3 : Mr. S.R. Wakale

Advocate for respondent No.5 : Mr. N. S. Shah

...

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

Reserved on : 16.09.2026

Pronounced on : 29.09.2026

JUDGMENT (PER: ABASAHEB D. SHINDE, J.) :

1. Rule. Rule is made returnable forthwith. With the consent of the parties, the writ petition is heard finally at the stage of admission.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has put forth the following substantive prayers:

“B. By writ, order or directions the respondent No.5 Ayurved Shastra Seva Mandal, Ahmednagar may kindly be directed to forward the Pension Papers/Proposal of the petitioner through proper channel to the respondent No.2 for grant of Pension and Gratuity and Pensionary benefits to the petitioner who is due for retirement on 31.05.2024 by superannuation in view of the Judgment and Order passed by the Hon'ble Bombay High Court on 28.04.2023 in WP No. 2270/2021 as provided under Old Pension Scheme as per the provisions under the Maharashtra Civil Services (Pension) Rules, 1982 and the respondent No.2 be directed to grant old pension, gratuity and other pensionary benefits to the petitioner from the date of her retirement i.e. from 31.05.2024 in view of the Judgment and Order passed by this Hon'ble High Court dated 28.04.2023 in WP No. 2270/2021 in the interest of justice.

B-1. By Writ order or directions the respondent No.1 to 5 may kindly be directed to grant old pension scheme to the

petitioner as per the Judgment and Order dated 28.04.2023 passed in WP No. 2270/2021 and as per the GR dated 02.02.2024 as the petitioner opted for old pension scheme as per GR dated 02.02.2024 on 29.02.2024 within 6 months from the date of issued of the GR dated 02.02.2024 which is submitted by the respondent No.5 to the respondent No.3 for opting old pension scheme as provided under MCS (Pension) Rules, 1982 the provisions of MCS (Commutation of Pension) Rules, 1984 and the provisions of General Provident Fund Rules, 1998 as is granted to the similarly situated employees those who were appointed on or after 01.11.2005 and whose recruitment process was started prior to 01.11.2005 as of the petitioner in the interest of justice.

- C. *By writ, order or directions the respondent No.5 Ayurved Shastra Seva Mandal, Ahmednagar may kindly be directed that, the petitioners contribution to the Defined Contribution Pension Scheme be credited to her General Provident Fund from the date of her initial contribution to the DCPS till the sanction of Old Pension Scheme to the petitioner as per the Judgment and Order dated 28.04.2023 passed in WP No. 2270/2021 in the interest of justice.”*

3. It is the case of the petitioner that she possesses the qualifications of Ayurveda Wachaspati (M.D. Ayurvedic) in the Sharir Rachna and Kayachikitsa as well as Ph.D. in the subject of Sharir Rachana. On 11.06.2004, respondent No. 5 published an advertisement for recruitment to the post of Professor in the subject of Sharir Rachana from the Open Category. She applied for the said post. On 25.02.2005, respondent No. 5 issued a call letter to the

petitioner for an interview, which was scheduled to be held on 14.03.2005. The petitioner accordingly appeared for the interview before the Selection Committee. However, she was not interviewed on the ground that she was age-barred. She approached this Court by filing Writ Petition No.3139/2005 seeking direction that, she be interviewed. This Court, by order dated 09.03.2006, directed respondent No. 5 to interview her and, if found eligible, to issue her an appointment order. Though the order dated 09.03.2006 was sought to be reviewed at the behest of one Vikas Mahadev Ghutke, this Court dismissed the said review application by order dated 30.09.2006. Accordingly, on 10.07.2006, she was interviewed and selected for the post of Professor. Respondent No. 5, on 11.07.2006, issued her an appointment order. Respondent No. 4 approved her services. The petitioner stood superannuated in the year 2022. The respondents, by virtue of Government Resolution dated 31.10.2005, made the Defined Contribution Pension Scheme (DCPS) applicable to the petitioner under the pretext that, she was appointed after 01.11.2005. The petitioner, therefore, has approached this Court.

4. Learned counsel for the petitioner submits that though the respondent no.5 had issued appointment order in favour of the

petitioner on 11.07.2006, however, the recruitment process pursuant to which she was appointed had commenced on 11.06.2004, in that view of the matter the petitioner is governed by Old Pension Scheme as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. To buttress his submission, he has relied upon the judgment of this Court at the Principal Seat in Writ Petition No. 2270/2021, in the case of ***Khilari Rajendra Eknath and Others Vs. The State of Maharashtra and Others***, decided on 28.04.2003.

5. Per contra, learned AGP strenuously contends that the petitioner's case would not be governed by the Old Pension Scheme, as the petitioner was appointed on 10.07.2006, i.e. after 01.11.2005. He further submits that though the pension proposal of the petitioner has been forwarded to respondent No. 2 for granting gratuity and pensionary benefits, as per the Old Pension Scheme, there is no specific Government Policy as regards employees working in aided Ayurvedic colleges. Respondent No.3 has, therefore, sought guidance from the State Government and there is no policy decision taken so far in that regard. He, therefore, urged that the petition deserves to be dismissed.

6. We have heard learned counsel for the petitioner, learned AGP and perused the record.

7. Indisputably, the recruitment process to the post of Associate Professor had commenced on 11.06.2004, when the Respondent No.5 issued the advertisement. Pursuant to the said advertisement, the petitioner was called for an interview on 14.03.2005, however she was not interviewed on that day. It is under the orders of this Court that the petitioner was interviewed on 10.07.2006 and was appointed on 11.07.2006. We find that the petitioner cannot be faulted with that, she was not issued an appointment order immediately. Be that as it may, the fact remains that, the petitioner has been appointed pursuant to the recruitment process that had commenced prior to 01.11.2005. We are therefore of the considered view that, the petitioner is entitled for the benefits of Old Pension Scheme.

8. The issue involved in this Writ Petition had fallen for consideration before this Court at Principal Seat in the case of ***Khilari Rajendra Eknath*** (*supra*) wherein this Court while interpreting the words 'recruitment' and 'appointment' held that, 'recruitment' is a stage prior to appointment which entails selection

of the candidates. 'Selection' is a process of picking a candidate from the short listed candidates. An appointment means the actual act of posting a person to a particular office. The relevant observations of this court reads thus :

“29. In the present case, the advertisement was issued on 20.06.2005 and the last date for submission of Application was 11.07.2005. The written test was also conducted on 09.08.2005 which was cleared by the Petitioner. They also cleared typing test prior to 01.11.2005. The appointment order is issued subsequently. The legislature in its wisdom has not used the term "appointment on or after 01.11.2005" in Sub-Rule (2) of Rule 2 of the M.C.S. (Pension) Rules, 1982. The M.C.S. (Pension) Rules, 1982 would not apply to the persons who are recruited on or after 01.11.2005 meaning thereby that the said Rule would not apply to the persons whose recruitment process had commenced after 01.11.2005. The M.C.S. (Pension) Rules, 1982 shall apply to persons recruited in government services prior to 01.11.2005 though appointment orders are issued subsequent to 01.11.2005.

30. Resultantly, the Writ Petition succeeds. It is declared that Petitioners shall be governed by the provisions of the Old Pension Scheme in vogue prior to 1.11.2005, as well as General Provident Fund Scheme. Petitioners shall not be governed by the provisions of the Defined Contributory Pension Scheme introduced vide G.R. dated 31.10.2005. The Petitioners' contribution to DCPS be credited to their GPF Accounts. The modalities as suggested in para- 8 of the Office Memorandum dated 03.03.2023 issued by the Government of India be adopted while switching over Petitioners from DCPS to Old Pension Scheme.”

9. In view of the aforesaid discussion and in the light of the observations of this Court in the case of ***Khilari Rajendra Eknath***

(*supra*) we find that the Writ Petition deserves to be allowed. In the result, we pass the following order.

ORDER

- I. The writ petition is allowed in terms of prayer clauses 'B', 'B-1' and 'C'.
- II. Rule is thus made absolute in the above terms.

(ABASAHEB D. SHINDE, J.)

(NITIN B. SURYAWANSHI, J.)