

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12213 OF 2025

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA
NITIN CHAVAN
Date: 2026.09.01
18:38:57 +0530

1. Abhijeet Manohar Mudrale
Age- 45 years, Occu-Service,
R/o. Tulsi Nivas Building, B Wing,
Flat No. 101, Near Ridhi Sidhi building,
Pasalpe Village,
Tq. Panvel, Dist. Raigad -410 221

2. Devidas Tulshiram Patil
Age-52 years, Occu - Service,
R/o. Lake View CHS, A. 103, Chikhale,
Tq. Panvel, Dist. Raigad-410 221.

3. Darshana Narayan Gavand
Age-47 years, Occu - Service,
R/o. B-301, Jindal Avenue, Near Prant Office,
Sai Nagar-Karnala Sports Road, Old Panvel,
Dist. Raigad-410 206.

... Petitioners

Versus

1. The State of Maharashtra,
Department of School Education and Sports,
Through its Secretary,
Mantralaya, Mumbai.

2. Deputy Director, Education
Department of Education,
Mumbai Division,

3. The Education Officer (Secondary)
Zilla Parishad, Raigad

...Respondents

Ms. Priya Gondhalekar a/w Adv Stawan Telgote i/b Mr. Ajay Rupanwar and Ms. Anushka Patil for the Petitioners.

Mr. A. R. Deolekar AGP for the Respondent Nos. 1 to 3/State.

CORAM : G. S. KULKARNI AND

M. M. SATHAYE, JJ.

RESERVED ON : 06th AUGUST 2026

PRONOUNCED ON : 01st SEPTEMBER 2026

JUDGMENT (Per M. M. Sathaye J.)

1. Rule. Rule made returnable forthwith. Learned AGP waives service on behalf of Respondents. Heard finally by consent of the parties.

2. Petitioners are seeking direction holding them entitled to the Old Pension Scheme ('OPS' for short) as per the Maharashtra Civil Services (Pension) Rules, 1982 and consequent directions to Respondents to take all necessary steps for grant of such OPS to Petitioners.

BACKGROUND

3. Case of the Petitioners is as under. That Petitioner No.1 was appointed as Assistant Teacher, Petitioner No.2 as Junior Clerk and Petitioner No.3 as Computer Superintendent in Vijay Army School and Junior College on 09.11.2005. That they were appointed by participating in the selection process which was undertaken pursuant to advertisement issued in local newspaper on 22.05.2005. That they were granted appointment after interview conducted by the appointing committee. Petitioners' appointments have been duly approved

by the concerned Education Officer, on 100% grant in aid. That since their recruitment process has admittedly started prior to cut-off date of 01.11.2005, pursuant to notification dated 02.02.2024 issued by Finance Department of the State, the Petitioners had applied to concerned educational institute opting for OPS and their proposal was also forwarded to concerned Education Officer, but it was not considered. Hence the petition is filed.

SUBMISSIONS

4. Learned counsel for the Petitioners submitted that in above backdrop, the Petitioners filed representation on 25.06.2025 with the Respondent No.1 praying for benefit of OPS. She contended that only Respondent No.1 (School Education and Sports Department) has not formulated scheme for employees like Petitioners to opt for OPS and all other departments have formulated such scheme and this amounts unreasonable discrimination. She submitted that Petitioners are clearly covered by the policy inasmuch as their recruitment process admittedly started prior to said cut-off date and therefore, they are entitled to opt for OPS. She relied upon the following Judgments and Government Resolutions (GR) and notification in support of her case:

- (i) Deshmukh Dilipkumar Bhagwan Vs. State of Maharashtra, AIR Online 2019 Bom 1508.
- (ii) Rahul Laxmikant Kontamwar and Ors. Vs. State of Maharashtra and Ors in Writ Petition No. 3715 of 2022 and others, Judgment dated 28.06.2023.
- (iii) Vasantrao Naik Marathwada Krishi Vidyapeeth Through its

Registrar Vs. Ganpat Maroti Sutare and Anr. 2024 SCC OnLine Bom 5169.

(iv) Dr. Rajendra Shankar Mahamuni Vs. Fergusson College, Pune and Ors. in Writ Petition No. 8292 of 2024, Judgment dated 03.09.2025.

(v) GR issued by the Finance Department, dated 12.01.2007 referring to GR dated 31.10.2005, 18.08.2009 and 02.02.2024;

(vi) GR issued by the Rural Development Department dated 01.10.2024;

(vii) GR issued by the Department of School Education and Sports, dated 28.04.2025

(viii) GR issued by the Revenue and Forest Department dated 20.05.2025.

5. On the other hand, learned AGP has supported the impugned order contending *inter alia* that specific instructions for school staff (teaching and non-teaching) is not available and for that reason, the Petitioners' request can not be accepted.

REASONS AND CONCLUSION

6. When the petition was filed, the representation of Petitioners was pending. However, the Respondent No.3 Education Officer has filed affidavit-in-reply placing on record that on 03.12.2025, Petitioners' representation was decided by him under impression that he has the authority, however, on realising that the authority vests in Deputy Director of Education, he has recalled order dated 03.12.2025 and has placed the matter before the concerned Deputy Director. Both, the order of recall as well as communication placing the matter before the Deputy Director, are placed on record.

7. Learned counsel for the Petitioners has placed on record an order dated 23.04.2026 passed by the Divisional Deputy Director, Mumbai which shows that the Petitioners' representation is rejected, holding that the Petitioners being appointed after 01.11.2005, they are entitled to Defined Contributory Pension Scheme ('DCPS' for short) and not OPS.

8. We have considered the rival submissions and perused the record.

9. So far as the judgment of **Deshmukh Dilipkumar Bhagwan (Supra)** is concerned, a Co-ordinate Bench of this Court was considering whether the employees appointed prior to 01.11.2005 however their schools were not receiving 100% grant-in-aid from Government as on 01.11.2005, would be governed by DCPS or OPS. The Division Bench has held that employees who were appointed prior to 01.11.2005 in aided recognized primary, secondary schools and colleges which were receiving less than 100% grant-in-aid as on 01.11.2005, would be governed by DCPS. It was further held that similar will be situation of employees who were appointed prior to 01.11.2005 in institutes which were receiving less than 100% grant-in-aid as on 01.11.2005 but which became 100% aided before 29.11.2010. It was also held that in the context of right of an employee of institutes to receive pensionary benefits and the corresponding liability of the Government, only such institutes which are receiving 100% grant-in-aid can also be termed as 'aided institutions'.

It is therefore, clear that the issue involved in the said judgment was

different than present issue. Therefore, said judgment will not advance case of the Petitioners.

10. In **Rahul Laxmikant Kontamwar (Supra)** while deciding a batch of writ petitions, a Co-ordinate Bench of this Court (Nagpur Bench) considered the case of one Gram Sevak and two Shikshan Sevaks who were appointed after 01.11.2005 but who had participated in the recruitment process pursuant to advertisement issued before 01.11.2005. While considering their case, this Court considered GR dated 31.10.2005 which was policy decision to adopt provisions of DCPS to all Government servants. Relying on the Judgment of **Khilari Rajendra Eknath and Ors. Vs. The State of Maharashtra and Ors. in Writ Petition No. 2270 of 2021** passed by the Co-ordinate Bench of this Court, it is held that those Petitioners shall be entitled to be governed by OPS. This Judgment supports the case of the present Petitioners, who are teaching and non-teaching staff of Vijay Army School and Junior College.

11. In **Vasantrao Naik Marathwada Krishi Vidyapeeth (Supra)**, Full Bench of this Court was considering the following issue under reference :

"The Hon'ble The Chief Justice has been pleased to refer the following issue for its answer by this Full Bench:-

"While considering the applicability of either the old Pension scheme or the Defined Contributory Pension Scheme, whether the word "नियुक्ती" (appointment) as set out in the Government Resolution dated 31.10.2005 in the State language Marathi, would be decisive or whether the word "recruitment" (भरती प्रक्रिया) appearing in the English version of the Government Resolution dated 31.10.2005, should apply to the situation, considering Sub-Rule (2)

of Rule 2 of the M.C.S. (Pension) Rules, 1982?"

12. During hearing, the Full Bench was shown notification dated 02.02.2024 issued by the Government whereunder it is decided that, with a view to extend the benefits of the Maharashtra Civil Services (Pension) Rules, 1982, the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the General Provident Fund Rules to the Government Officers and Employees who have resumed after 01.11.2005 but the advertisement was published for recruitment prior to 01.11.2005, one time option is made available, granting 6 months time, from the date of the notification to exercise such option. Full Bench considered that *ex facie*, notification dated 02.02.2024 gives an opportunity to the government officers and employees who had undertaken a recruitment process commenced prior to 01.11.2005, but their appointment orders have been issued after said date, to exercise the option. Full Bench held that since this notification does not admit of any exception, it would be applicable to all similarly placed employees.

This judgment also clearly support the case of the Petitioners that they ought to have been given an option to opt for old pension scheme.

13. In **Rajendra Shankar Mahamuni (Supra)**, a Co-ordinate Bench of this Court considered the case of Assistant Professor having similar case of participating in recruitment process pursuant to advertisement prior to 01.11.2005 and appointment order after the said date. After considering various judgments, the Division Bench allowed the petition directing grant of old

pension scheme to the Petitioners therein.

14. Returning to the present case, it is not disputed that the Petitioners' appointment were approved on 100% grant-in-aid post; therefore, it is necessary to give them option to choose between OPS and DCPS as per notification dated 02.02.2024. In the present case, the Petitioners had filed applications to the concerned institute on 24.06.2024, 29.06.2024 and 01.07.2025 opting for old pension scheme and the institute has forwarded the proposal with necessary documents to the Education Officer on 07.04.2024 and 05.08.2024. This fact is brought to the notice of the concerned Education Officer by letter dated 20.05.2025, a copy of which is produced by Education Officer himself along with reply.

15. In such circumstances, when the decision taken by the Deputy Director of Education, Mumbai Division dated 23.04.2026 is perused, it is seen that the concerned Deputy Director has held that no directions are available from the Department of School Education and Sports in the respect of teaching and non-teaching staff. GR dated 28.04.2025 is referred taking stand that it is applicable to Lecturers and Principals only, but not to teaching and non-teaching staff such as Petitioners. Therefore, Petitioners are held not entitled to OPS. Merely because no directions are received from the Department of School Education and Sports, representation has been rejected perversely, without considering the effect of Notification dated 02.02.2024 and a clear view taken by Full Bench of this Court in **Vasantrao Naik Marathwada Krishi Vidyapeeth (Supra)**.

16. In the aforesaid facts and circumstances and for reasons recorded above, interference is necessary.

17. Writ Petition is therefore allowed in terms of prayer clause (B) which reads as under:

"B] By issuing a writ of mandamus or any other writ of like nature, this Hon'ble Court be pleased to hold that the Petitioners are entitled for old pension scheme and the Maharashtra Civil Services (Pension) Rules, 1982 are applicable for the Petitioners and consequently direct the Respondents to take all necessary steps to grant the old pension scheme to the Petitioners."

18. Rule is made absolute and Writ Petition is disposed of in above terms.

No order as to costs.

19. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M. M. SATHAYE, J.)

(G. S. KULKARNI, J.)