

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13034 OF 2025

Vidya Vishwanath Phalke,
Age: 58 years, residing at B2/2405,
Wadhawa Complex, Opposite R City Mall,
Ghatkopar (West), Mumbai – 400 086 ...Petitioner

Versus

1. The State of Maharashtra,
The Principal Secretary,
Department of School Education and Sports, Mantralaya,
Mumbai – 400 032.
2. The Director of Education (Secondary),
Dr. Annie Besant Marg, Madhyavarti Building,
Pune – 411 001
3. Deputy Director of Education, Jawahar Bal Bhavan,
Ground Floor, Netaji Subhash Marg,
Charni Road, Mumbai – 400 004
4. The Education Inspector,
Greater Mumbai, North Zone, Chembur,
Administrative Building, Building No. 2,
2nd Floor, R.C. Marg,
Chembur, Mumbai – 400 071
5. The Superintendent,
Pay and Provident Fund Unit, Mumbai Division,
Administrative Building, Building No. 2, 2nd Floor, R.C. Marg,
Chembur, Mumbai – 400 071
6. The Chairman/Secretary, Harihar Warkari Sant Seva Mandal,
Kurla, Vitthal Mandir, New Mill Road,
Kurla (West), Mumbai – 400 070

7. The Headmaster/Headmistress,
Prabodhan Kurla Madhyamik Shala, Vitthal Mandir,
New Mill Road, Kurla (West), Mumbai – 400 070

8. The Chairman/Secretary, Abhudya Dnyanvardhini Sanstha,
Parsiwadi, Ghatkopar (West),
Mumbai – 400 086

9. The Headmaster/Headmistress, Abhudya Vidyalay,
Parsiwadi, Ghatkopar (West),
Mumbai – 400 086

10. The Chairman/Secretary,
Samata Shikshan Sanstha, Mohili Village,
Sakinaka, Mumbai – 400 072

11. The Headmaster/Headmistress,
Samata Vidya Mandir, Mohili Village,
Sakinaka, Mumbai – 400 072

...Respondents

Mr Suresh Pakale, Senior Advocate, with Mr Nilesh Desai, for Petitioner.

Mr A R Deolekar, AGP for Respondents-State.

CORAM: **G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.**

RESERVED ON: 22nd SEPTEMBER 2026
PRONOUNCED ON: 30th SEPTEMBER 2026

JUDGMENT (Per Dr Neela Gokhale, J.)

1. The Petitioner retired on superannuation on 31st July 2025 as the Headmistress of Respondent No. 7 school. She assails an order dated 11th July 2025, passed by Respondent No. 4 – the Education Inspector, Brihanmumbai

(North Zone), which rejected the proposal for her pension under the Maharashtra Civil Services (Pension) Rules, 1982 ('Pension Rules'); and seeks a direction for the release of her pension.

2. The material facts are not in dispute. On 13th June 1990, the Petitioner was appointed as an Assistant Teacher in Respondent No. 11 – Samata Vidya Mandir, Sakinaka, a fully aided school. Upon completion of her probation, she was granted a permanent appointment on 7th August 1991. She enrolled in the pension scheme, including the family pension scheme, and by order dated 10th September 1993, she was assigned a General Provident Fund Account.

3. On 21st July 1998, the Petitioner joined Respondent No. 9 – Abhudya Vidyalay, Ghatkopar, a fully aided school, as an Assistant Teacher. Her payments continued to be credited to the same provident fund account until 13th June 2000. Subsequently, on 14th June 2000, she assumed the position of Headmistress at Respondent No. 7 – Prabodhan Kurla Madhyamik Shala, Kurla, which was then unaided. Respondent No. 7 school transitioned to a grant-in-aid status only after 1st November 2005, and, as per the impugned order, thereafter qualified for 100% grant-in-aid by a communication from Respondent No. 4 dated 3rd November 2009. At no stage was there a break in the Petitioner's service.

4. Regarding the Petitioner's imminent superannuation, Respondent No. 6 – Management forwarded her pension proposal on 16th April 2025. By the impugned order, Respondent No. 4, after recording that the Petitioner had served in aided schools only from 13th June 1990 to 13th June 2000, rejected the proposal

and returned it to the Management. The stated reason was that Respondent No. 7 school received a 100% grant only on 3rd November 2009, and in accordance with the Government Resolution dated 31st October 2005.

5. Mr Pakale, learned Senior Advocate representing the Petitioner, submitted that the Petitioner entered pensionable service in 1990 on a sanctioned post in a fully aided school and was admitted to the pension scheme in 1993. Furthermore, he contended that the Defined Contribution Pension Scheme ('DCPS') pertains solely to employees recruited on or after 1st November 2005. He contended that this Court's judgment in *Dattatrya Patingrao Borse v. State of Maharashtra*¹ governs the present case. He also relied on this Court's recent decision in *Dadasaheb Sada Kadam v. State of Maharashtra*.² Additionally, he cited this Court's decision in *Anuradha Jayant Gangakhedkar v. Brihanmumbai Municipal Corporation*³, to submit that service rendered before a school started receiving a grant cannot be disregarded. Alternatively, he submitted that even if the period from 14th June 2000 to 29th July 2008 is excluded, the Petitioner possesses approximately 27 years of qualifying service.

6. Mr Deolekar, learned Additional Government Pleader, relying on the affidavit in reply of Respondent No. 4, submitted that the Petitioner resigned from Respondent No. 11 school; that her appointment in Respondent No. 9 school was a fresh appointment; that she left that school voluntarily and subsequently joined Respondent No. 7 school having knowledge that it was unaided; that on 1st

1 BHC:2026-AUG:8401-DB (Writ Petition No. 8548 of 2022, decided on 25th February 2026).

2 (Writ Petition No. 11651 of 2023, decided on 11th September 2026).

3 2012 (5) Mh.L.J. 775.

November 2005, Respondent No. 7 school was not receiving full grant-in-aid; and hence she does not qualify for the Old Pension Scheme.

7. We have heard learned Counsel representing their respective parties and perused the documents on record.

8. The DCPS introduced by the Government Resolution dated 31st October 2005 applies to employees recruited on or after 1st November 2005. Rule 2(2) of the Pension Rules similarly excludes from its scope only those employees recruited on or after that date. The Petitioner was recruited on 13th June 1990. From that date, she served on an aided post, and by the order dated 10th September 1993, she was admitted to the pension scheme and the General Provident Fund. The Respondents do not contend that this admission was ever revoked, nor do they contend that the Petitioner at any time opted for the DCPS.

9. This Court has consistently held that the initial date of appointment to an aided post, not the date of a subsequent appointment, determines the applicability of the Old Pension Scheme. In *Renuka Chandrabhan Umredkar v. State of Maharashtra & Ors.*⁴, this Court held that the petitioner therein's entitlements under the Old Pension Scheme would be based on her initial date of appointment as a part-time Librarian on an aided post and not on the basis of her later appointment as a full-time Librarian under the DCP Scheme. Furthermore, in *Dadasaheb Sada Kadam* (supra), this Court rejected the State's contention that

4 2021 SCC OnLine Bom 9587.

the subsequent appointment, being a ‘fresh appointment’, invalidated the earlier service rendered in the aided post for pension calculations.

10. Thereafter, in *Dattatrya Patingrao Borse* (supra), the Aurangabad Bench of this Court has followed the decision in *Nilesh Namdev Gurav v. State of Maharashtra*⁵. The relevant portion reads as follows:

“9) The law as declared in the above judgments is that the employees similarly placed to the petitioners are entitled to old pension scheme who are appointed prior to 1.11.2005 in the 100% aided schools and not the DCP Scheme unless specifically opted by the employees. All the employees who have not applied for the DCP Scheme and the present petitioners, having not opted for the DCP Scheme, ought to have been granted the benefit of the old pension scheme.”

Thus, employees appointed before 1st November 2005 in 100% aided schools are entitled to the Old Pension Scheme unless they have explicitly opted for the DCP Scheme.

11. In the case in hand, the Petitioner was not merely appointed prior to the cut-off date. She was appointed to a sanctioned post in a fully aided school, served on aided posts for ten years, and was enrolled in the pension scheme twelve years before the inception of the DCPS. When the Government Resolution dated 31st October 2005 was issued, she was already a participant in the pension scheme.

12. In any case, the issue is no longer *res integra*. The Full Bench decision in *Deshmukh Dilipkumar Bhagwan & Ors v. State of Maharashtra & Ors.*⁶ concerned employees who, at the time of their appointment, were employed in schools not receiving a 100% grant-in-aid, and whose schools only began to receive such aid after 1st November 2005. The fundamental premise is that the

⁵ 2022 (3) Mh.L.J. 615.

⁶ 2019 SCC OnLine Bom 729.

Government's liability to provide pension benefits to a retired employee of a private school can arise only if the Government has committed to pay a full grant to the school. In the case of the Petitioner, the Government assumed this liability starting from 1990, when she was appointed to a fully aided post, and admitted her to the pension scheme in 1993. The premise of the Full Bench is therefore satisfied.

13. The decision of the Full Bench in *Deshmukh Dilipkumar Bhagwan* (supra) observed as follows:

“34. It is true that the service put in by an employee of a recognized private school during the time when such school was not receiving grant, would also count towards the qualifying service for pension when such employee retires from a school which receives grant. This was also the context of G.R. dated 8.4.2018 noted earlier. This, however, would not mean that the employee appointed in a school can claim to be governed by the pension scheme till the school starts receiving 100% grant.”

(emphasis supplied)

14. The Full Bench judgment observed that the service rendered by an employee of a recognised private school during periods when such school did not receive a grant would also be considered as qualifying service for pension purposes upon the employee's retirement from a school that does receive a grant. A similar standpoint is reflected in the decision in *Anuradha Jayant Gangakhedkar* (supra), where a Division Bench of this Court, construing the pension scheme for private primary aided schools in Greater Mumbai, held that there is no basis in the Pension Scheme or the Pension Rules to exclude, during the calculation of qualifying service, the period of service rendered by an employee prior to the school obtaining grant-in-aid. The Petitioner retired from a school that received 100% grant-in-aid;

therefore, her service in Respondent No. 7 – school from 14th June 2000 must also be included.

15. Recently, this Court, in its decision in *Dadasaheb Sada Kadam* (supra), has considered a series of decisions on the issue involved in the present matter. We have also referred to the Full Bench's observations in *Deshmukh Dilipkumar Bhagwan* (supra). Paragraph 36 of *Dadasaheb Kadam* (supra) reads thus:

“36. From the aforesaid discussion, it is clear that various decisions as rendered by this Court have taken into consideration the applicability of the 1981 Rules as also MCS (Pension) Rules to hold that in situations when initially an appointment is on a post which is a part-time post, in an aided institution and subsequently followed by regular appointment, the period spent by the employee on the part-time appointment necessarily would be taken into consideration for the purpose of calculating the qualifying service, for the purpose of pension. Similarly, in case of an employee of a recognized private aided school, appointed during the time when school was not receiving grant and the tenure on such position also would be counted towards the qualifying service for pension, when such an employee retires from a school receiving grant-in-aid. This is in pursuance of the policy decision dated 08 April 2018 in G.R. dated 20 April 2018 as considered by the Full Bench when it held that an employee appointed in a school could be governed by the pension scheme not merely from the time the school starts receiving 100% grant as held by the Full Bench.”

16. In view of the aforesaid discussions and the settled legal position, the impugned order cannot be sustained. We accordingly pass the following order:

- (i) The order dated 11th July 2025 passed by Respondent No. 4 is quashed and set aside.
- (ii) It is declared that the Petitioner is governed by the Maharashtra Civil Services (Pension) Rules, 1982, the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the General Provident Fund.

- (iii) Respondent Nos. 6 and 7 shall submit the Petitioner's pension proposal afresh to Respondent No. 4 within two weeks from the date of this judgment.
- (iv) Respondent Nos. 4 and 5 shall process the proposal and sanction the Petitioner's pension within four weeks thereafter in accordance with law.

17. Writ Petition is allowed. No order as to costs.

(DR. NEELA GOKHALE, J.)

(G. S. KULKARNI, J.)

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