FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

Writ Petition No. 1804 of 2016

Dinkar Motiram Gaikwad & anr.

v.

State of Maharashtra & ors.

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Mr. P.S. Kshirsagar Advocate for the Petitioner.

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Coram : Smt. Vasanti A. Naik &
V.M. Deshpande, JJ.

Date : 15th March, 2016.

By this writ petition, the petitioners seek a declaration that they are entitled for the benefits under the provisions of The Maharashtra Civil Services (Pension) Rules, 1982 and the new Contributory Pension Scheme is not applicable to them.

Shri Tembhare, the learned Asstt. Govt. Pleader, raises a preliminary objection to the tenability of the writ petition. It is stated that the petitioners have never made a demand for the application of the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 to the case of the petitioners. It is stated that since the petitioners have never made a demand in respect of the

aforesaid benefits, there was no question of either granting the same or denying the same to the petitioners. It is stated that it is well settled that a writ of mandamus cannot be issued unless there is a demand for the relief claimed and the same is denied by the State Government.

We uphold that preliminary objection raised on behalf of the respondents no. 1 to 4 to the tenability of the writ petition. As rightly submitted by the learned Asstt. Govt. Pleader, there cannot be the issuance of a writ of mandamus unless the petitioner seeking a particular relief has sought to enforce the right by making a demand and the demand is rejected by the authority.

In view of the aforesaid, we dismiss the writ petition with no order as to costs.

The points raised in the writ petition are, however, kept open.

Judge **Judge**

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