

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

M.C.A. NO.174/2016 IN WRIT PETITION NO. 6726/2013

(DNYANESHWAR DATTATRAYA KAMBLE **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri P.S. Kshirsagar, counsel for the applicant.
Shri A.M. Joshi, A.G.P. for the R-1 to 4.
Shri Mahesh Rai, counsel for the R-6.

CORAM : SMT.VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.

DATE : MARCH 21, 2016.

By this miscellaneous civil application, the applicant-original petitioner seeks a recall-review of the judgment dated 10.07.2014.

It is stated on behalf of the applicant that though the applicant was appointed before the cut-off date, i.e. 01.11.2005, in a school that was brought on 100% grant-in-aid before that date, the applicant-original petitioner sought a declaration that prescribing of the cut-off date, i.e. 01.11.2005 for providing benefits under the Maharashtra Civil Services (Pension) Rules, 1982 was bad in law. The applicant-original petitioner had only challenged the validity of the Government Resolutions dated 31.10.2005 and 21.05.2010 in the writ petition.

Since inadvertently, the petitioner had challenged the Government Resolutions prescribing the cut-off date for grant of pensionary benefits as 01.11.2005 without seeking the appropriate relief, i.e. a direction to the respondents to provide the benefits under the Maharashtra Civil Services (Pension) Rules, 1982, it would be necessary to recall the judgment

dated 10.07.2014. Since it is well settled that a client should not suffer for the mistake of his counsel, it would be necessary to review the judgment dated 10.07.2014 in Writ Petition No.6726 of 2013.

Hence, the judgment dated 10.07.2014 is recalled. The writ petition should be re-heard and appropriate orders may be passed. The miscellaneous civil application is allowed in the aforesaid terms and disposed of.

JUDGE

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APTE

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CORAM : SMT.VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.

DATE : MARCH 21, 2016.

The learned counsel for the petitioner seeks leave to
delete prayer clause (i).

Leave is granted.

The amendment should be carried out forthwith.

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Shri Mahesh Rai, counsel for the R-6.

**CORAM : SMT.VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.**

DATE : MARCH 21, 2016.

By this petition, the petitioner seeks a direction to the respondents to extend the benefits of the Maharashtra Civil Services (Pension) Rules, 1982 to the petitioner.

According to the petitioner, the petitioner was appointed in the school run by the respondent no.6-Society as an Assistant Teacher, on 01.07.2004. According to the petitioner, his services were approved by the Education Authorities and the petitioner continues to work on the said post. Since the school was brought on 100% grant-in-aid before the cut-off date, i.e. 01.11.2005, according to the petitioner, the petitioner is entitled to the benefits of the Maharashtra Civil Services (Pension) Rules, 1982. It is stated that in similar set of facts, this Court has allowed the writ petition filed by the two other employees of the respondent no.6-Society, bearing Writ Petition No.4915 of 2015. It is stated that since the petitioner was appointed before the cut-off date and since the school in which the petitioner was appointed was also brought on 100% grant-in-aid before the cut-off date, the petitioner would be entitled to the benefits of the Maharashtra Civil Services (Pension) Rules, 1982.

Shri Rai, the learned counsel for the respondent no.6-Society and Shri Joshi, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 to 4, do not dispute the factual statements made on behalf of the petitioner. It is not disputed that the petitioner was appointed before the cut-off date, i.e. 01.11.2005 and the school was also brought on 100% grant-in-aid from the year 2005-06. It is stated that appropriate orders may be passed in the circumstances of the case.

It appears on hearing the learned counsel for the parties and on a perusal of the order dated 28.09.2015 in Writ Petition No.4915 of 2015 that the relief sought by the petitioner needs to be granted. Admittedly, the petitioner was appointed before the cut-off date and the school in which the petitioner was appointed was also brought on 100% grant-in-aid before the cut-off date. Hence, the petitioner would be entitled to the benefits of the Maharashtra Civil Services (Pension) Rules, 1982 and the New Defined Contributory Pension Scheme would not be applicable to the petitioner.

Hence, for the reasons aforesaid, the writ petition is allowed. It is hereby declared that the petitioner would be entitled to the benefits of the Maharashtra Civil Services (Pension) Rules, 1982 and the petitioner would not be governed by the New Defined Contributory Pension Scheme.

Order accordingly. No costs.

JUDGE

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