

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

WRIT PETITION NO. 8911 OF 2015

- 1] Venkat Mahadji More,
- 2] Bhaskar Nagnath Madewar,
- 3] Dyanand Ramrao More,
- 4] Shivanand Chilbarao Jadhav,
- 5] Pandurang Laxman Bainwad,
- 6] Vishwanath Parashuram Pahukar,
- 7] Smt. Pratibha Govindrao Mugutkar,
- 8] Nandkishore Ganapati Rajemod,
- 9] Nagorao Laxman Darshane,
- 10] Pandit Jaywantrao Patil,
- 11] Bhagvan Vithal Dhepe

All age major,
All occ. Service in
SC Ashram School
A/p Mughat, Tq.Mudkhed,
District Nanded

...Petitioners

VERSUS

- 1] The State of Maharashtra,
through the Chief Secretary
to Government of Maharashtra,
Mantralaya, Mumbai,
- 2] The State of Maharashtra
through the Secretary,
Social Welfare and Community
Development Department,

Government of Maharashtra,
Mantralaya, Mumbai,

- 3] The Director, Social Welfare,
Department, Pune ...Respondents

WRIT PETITION NO. 3897 OF 2011

- 1] Balaji s/o Nagorao Chandankar,
age 30 years, occ. Asstt. Teacher,
R/o Mugat, Tq. Mudkhed,
District Nanded. ... Petitioners

VERSUS

- 1] The State of Maharashtra,
through the Chief Secretary,
Mantralaya, Mumbai,
- 2] The Secretary
Social Welfare Department,
Mantralaya, Mumbai,
- 3] Principal Secretary,
General Administration Department,
Social Justice Cultural Affairs and
Special Assistance Department,
Mantralaya, Mumbai,
- 4] The Director,
Social Welfare Department, Pune
- 5] Regional Provident Fund
Commissioner for Marathwada
Region, N-5, CIDCO, Aurangabad,
- 6] Social Welfare Officer,
Group A, Class I,
Zilla Parishad, Nanded,
- 7] President, Sant Rohidas
Seva Samiti Kinwat,
Tq. And Dist. Nanded. ...Respondents

WRIT PETITION NO. 4825 OF 2014

- 1] Scheduled Caste Ashram Schools
Shikshak -Shikshaketar Karmachari
Sanghtana, Maharashtra
(Duly Registered),
through its President,
Shri Dayanand Ramrao More,
age 43 years, occ. Service,
R/o 55, Deepkunj,
Deepaknagar, Taroda (Bk),
Nanded,
- 2] Shri Dayanand Ramrao More,
age 43 years, occ. Servicer,
R/o 55, Deepkunj, Deepaknagar,
Taroda (Bk.), Nanded ...Petitioners

VERSUS

- 1] The State of Maharashtra,
through the Chief Secretary
to Government of Maharashtra,
Mantralaya, Mumbai-32,
- 2] The State of Maharashtra
through the Secretary,
Social Welfare and Community
Development Department,
Government of Maharashtra,
Mantralaya, Mumbai,
- 3] The State of Maharashtra,
Through the Secretary,
Finance (Expenditure),
Government of Maharashtra,
Mantralaya, Mumbai - 32. ...Respondents

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Mr. R.R.Mantri, advocate in Wps 8911/2015 and
4825/2014

and

Mr. S.R.Choukidar, advocate in WP 3897/2011
for the petitioners.

Mr. Y.G.Gujarathi, A.G.P. for resp. nos. 1 to 3.
Mr. K.B.Chaudhari, advocate for respondent no.5 in
Writ Petition No. 3897 of 2011
Mr. S.B.Pulkundwar, advocate for respondent no. 6
in Writ Petition No. 3897 of 2011
Mrs. M.A.Deshpande, advocate for respondent no. 6
in Writ Petition No. 4825 of 2014

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CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

**DATE OF RESERVING
THE JUDGMENT : 02.3.2017**

**DATE OF PRONOUNCEMENT
OF THE JUDGMENT : 05.5.2017**

JUDGMENT (Per K.L.Wadane, J.)

Rule. Rule is made returnable forthwith.
Since the issue involved in the above referred
Writ Petitions is identical, therefore, those
Petitions are heard together finally at the
admission stage.

2. Since the main contention of the
petitioners in all the petitions is similar,
therefore, the brief facts in Writ Petition No.
8911 of 2015 are taken into consideration which
are as follows :-

The petitioners are the employees of Ashram School of Scheduled Caste. Though the Ashram School for the Scheduled Caste is started since 1995, in spite of several representations, the State did not apply the General Provident Fund Rules 1998 to them, though it applied for the Ashram Schools of Vimukta Jati and Nomadic Tribes. Both the Schools are run with the same object, rules and procedure.

Some of the petitioners in the above Writ Petitions have filed Writ Petition No. 3893 of 2011 to 3896 of 2011 in this Court for extending the benefit of applicability of the Maharashtra General Provident Fund Rules, 1998 and Pension Scheme 1977. During the pendency of those petitions, it was stated that the matter is pending before the Hon'ble Minister. Therefore, this Court by its common order dated 14.8.2014 expected the State Government to take the decision about the applicability of the said General Provident Fund Rules and Pension Scheme. The Secretary of respondent no.1, however, by

communication, dated 2.3.2015 has refused to extend the benefit of applicability of the General Provident Fund Rules and Pension Scheme. Therefore, these Writ Petitions.

3. The petitioners prayed in this Writ Petition as follows : -

" (B) Issue a writ of mandamus or any other appropriate order directing the respondents to make the Maharashtra General Provident Fund Rules 1998 applicable to the services of the petitioner and give Distinct Account Number to each of the petitioner.

(C) Issue similar writ and direct the respondents to make Pension Scheme 1977 applicable to all the pre-2005 appointees in the Ashram Schools for SC in the State of Maharashtra.

(D) Issue a writ of certiorari or any other appropriate writ, order or direction and quash and set aside the communication dt. 2.3.2015, Annexure-A, issued by the Upper Secretary, State of Maharashtra Social Justice and Special

Assistance, Mantralaya, Mumbai. "

4. It is contended that the above mentioned communication does not show that the decision has been taken by the Government or the respondent as per the order of this Court passed in group of Writ Petitions. The concerned Secretary by reproducing the earlier instances by other Departments and on the vague grounds rejected the request of the petitioners without authority of law and against the principles of natural justice. It is further contended that, in fact, the communication does not show that the State Government, as such, has taken the decision to apply the said scheme. It is further contended that the applicability or non-applicability of pension has no concern nor it is a criteria to make the Provident Fund scheme applicable. It is contended that, it is the employees who will be contributing and getting the amount with interest at the fag end of their service, of course, small part can be taken as loan or non-refundable for

specific purpose even before end of service. There is no question of change in circumstance about pension and Provident Fund position and surely not in case of employees pre-2005 appointments. The State is bound to provide equal service conditions for equally situated and employed persons as provided for Vimukta Jati and Nomadic Tribes. The discrimination, as done, is arbitrary. The communication dated 2.3.2015 is thus illegal, arbitrary and against the principles of natural justice. Therefore, same needs to be quashed and set aside.

5. Affidavit-in-reply is filed on behalf of the respondents by one Sunil Nagesh Khamitkar, the District Social Welfare Officer, Zilla Parishad, Nanded and it is contended that as per the common order passed by this Court on 14.8.2014 in Writ Petition No. 3893 of 2011 including the group of petitions, the Government has taken decision in the coordination of the General Administration Department as well as the Finance Department. The

detailed information of the decision has been communicated to the petitioners by the Government vide letter dated 2.3.2015, which is already submitted by the petitioners with this Petition. The General Administration Department has given its opinion, wherein it is stated that the Maharashtra General Provident Fund Rules 1998 would be made applicable to those employees to whom Pension Scheme is applicable. To the employees to whom Pension Scheme is not applicable, the Maharashtra General Provident Funds Rules, 1998 are not applicable to them.

6. It is further contended that revised rules for the Scheduled Caste Ashram Schools have been formed on 29.5.1999. It is not provided anywhere in these Rules that the the General Provident Fund Rules and Pension Scheme is applicable to the teaching and non-teaching staff of the Scheduled Caste Primary Ashram Schools. Hence, benefit of Provident Fund Rules and Pension Scheme is not granted to the petitioners. It is further

contended that the proposal for applicability of of the the General Provident Fund Rules and Pension Scheme to the teaching and non-teaching staff of the Scheduled Caste Primary Ashram Schools was frequently presented to the Finance Department, however, it is informed by the Finance Department that considering the change in implementation of scheme of General Provident Fund and Pension Plans, the proposal for application of the scheme of General Provident Fund and Pension plan to the teaching and non-teaching staff of the Scheduled Caste Primary Ashram Schools cannot be accepted. Therefore, the respondents lastly prayed to dismiss the Writ Petitions.

7. We have heard Mr. R.R.Mantri, learned counsel in Writ Petitions nos. 8911 of 2015 and 4825 of 2014 and Mr. S.R.Choukidar, learned counsel in Writ Petition No. 3897 of 2011 for the petitioners, Mr. Y.G.Gujarathi, A.G.P. for respondent nos. 1 to 3, Mr. K.B.Chaudhari,

advocate for respondent no.5 in Writ Petition No. 3897 of 2011 and Mr. S.B.Pulkundwar, advocate for respondent no. 6 in Writ Petition No. 3897 of 2011, and Mrs. M.A.Deshpande, advocate for respondent no. 6 in Writ Petition No. 4925 of 2014.

8. Learned counsel for the petitioners argued that the General Provident Fund Rules and Pension Scheme are applicable to the employees of Ashram Schools belonging to Vimukta Jati and Nomadic Tribes, which is governed under the same Rules. Therefore, the employees of Scheduled Caste Ashram Schools are similarly situated, therefore, the State cannot discriminate amongst the employees of Ashram Schools of Vimukta Jati and Nomadic Tribes and the employees of Ashram Schools of Scheduled Caste. The Rules and Regulations applicable to the Ashram Schools of Vimukta Jati and Nomadic Tribe are made applicable to the employees of Ashram Schools of Scheduled Caste. It is argued on behalf of the respondents that the Government

has also taken a decision to apply the Defined Contributory Pension Scheme to the employees who are appointed on or after 1.11.2005 as per the Government Resolution dated 9.11.2012. The Provident Fund Scheme is discontinued in the year 2005 and it is replaced by Defined Contributory Pension Scheme 2005. Due to the change in policy, the proposal of the petitioners could not be accepted.

9. We have perused the record. From the contents of the affidavit submitted on behalf of the respondents as well as impugned order dated 2.3.2015, it reveals that the respondents frequently submitted the proposals to the Finance Department for applicability of the Provident Fund Rules and Pension scheme, however, the Finance Department rejected such proposals on the ground that there is change in circumstances in regard to the Provident Fund Rules and Pension scheme. Thus, from the record, it is seen that the Social Welfare Department has recommended to the

Finance Department for implementation of the Provident Fund Rules and Pension scheme to the employees of Scheduled Caste Ashram Schools.

10. The learned A.G.P. appearing for the respondents has relied upon the observations in the judgment Hon'ble Apex Court in the case of **State of Himachal Pradesh and Others vs Rajesh Chander Sood and Others**, reported in (2016) 10 SCC 77, wherein it is observed that the Government cannot be obliged to bear financial burden of non-viable Pension Scheme, introduced not as employer but as welfare measure for employees of Government-controlled corporate bodies as self-financing scheme.

11. It is material to mention here that when the earlier Writ Petitions in this behalf were decided by this Court, at that time it was submitted on behalf of the respondents that the discussion is in progress for bringing the Primary Ashram Schools for Scheduled Caste also on

non-plan scheme and the matter is pending with the Hon'ble Minister. However, no such decision by the Hon'ble Minister is on record nor it has been communicated to the petitioners. Therefore, the observations of this Court in the order dated 14.8.2014 in Writ Petition No. 3893 of 2011 and others are relevant, which read as under : -

"7) It is for the State to take decision expeditiously on the same. When the process has been almost completed and the matter is now with the Hon'ble Minister, there should be no impediment for the respondent - State to take decision on the same considering the fact that it concerns all the employees of the Primary Ashram Schools for scheduled caste.

8) In the light of above, we hope and trust that the respondents shall take decision on the aspect about applicability or otherwise of the provient fund scheme under the Maharashtra Provident Fund Rules, 1977 to the employees of the Primary Ashram Schools for scheduled caste expeditiously and preferably within a period of six months from today. The Writ Petitions are accordingly disposed of. No order as to costs. "

Looking to the above observations of this Court, it appears that the respondents have not taken decision as per the directions of this Court

mentioned above.

12. No doubt to apply Pension Scheme or Provident Fund Rules is within the realm of the policy decision of the State. In earlier Writ Petitions it was submitted by the State that matter is under consideration with the Hon'ble Minister but on perusal of impugned communication it nowhere transpires that it was considered by Hon'ble Minister. It was expected that the matter be considered by the Department in consultation with the Hon'ble Minister.

13. In the circumstances, we dispose of the above Writ Petitions with direction to the respondents to reconsider the reliefs claimed by the petitioners in these petitions in consultation with the Hon'ble Minister, in accordance with law, as expeditiously as possible and preferably within a period of six months from today.

14. Rule is accordingly made absolute. No order as to costs.

(K.L.WADANE)
JUDGE

(S.V.GANGAPURWALA)
JUDGE

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