

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

WRIT PETITION NO. 4115 OF 2016

Balasaheb Subrao Kale and Others

..PETITIONERS

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. S.B. Solanke, Advocate for petitioners.

Mr. S.P. Tiwari, A.G.P. for respondent – State.

Mr. A.D. Aghav, Advocate for respondent no.4.

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**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

DATED : 30th NOVEMBER, 2018

ORDER :

Rule, made returnable forthwith. Head finally with the consent of the learned Counsel for the parties.

2. Though Respondent no.7 is served, none appeared for Respondent no.7.

3. Petitioner nos. 1 to 4, 7 and 8 are appointed as Assistant Teachers as per appointment orders dated 26th October, 2005 issued by Respondent no.4 and Petitioner nos. 5 and 6 are appointed as Assistant Teachers as per the appointment order dated 26th October, 2005 issued by Respondent no.7.

4. It is submitted that all these petitioners are appointed under the appointment orders dated 26th October, 2005. The learned Counsel submits that these petitioners would be governed by Old Pension Scheme, 1982 and not by the Defined Contributory Pension Scheme, 2005, which has been brought into effect from 1st November, 2005. However, the respondents are applying the DCPS scheme to the petitioners. The petitioners are deprived of their right under the Old Pension Scheme only on the ground that in the appointment orders the petitioners were directed to report at duty on 16th November, 2005. The learned Counsel submits that the date of recruitment would be the relevant date to be considered.

5. Mr. Aghav, the learned Counsel for the Zilla Parishad submits that these petitioners have been recruited and appointment orders are issued to them on 26th October, 2005, however, as there was Diwali Vacation, the petitioners were directed to report to the duty on 16th November, 2005. The advertisement was also issued and pursuant to the advertisement, the selection process was undertaken, and after undergoing selection process, these petitioners have been appointed under the appointment orders dated 26th October, 2005.

6. The learned A.G.P. submits that the petitioners have joined their duty after introduction of DCPS, as such are governed by the DCPS and not by the Old Pension Scheme, 1982.

7. We have considered the submissions canvassed by the learned Counsel for the respective parties.

8. It is not disputed that the petitioners are appointed by the local bodies after conducting the selection process and the appointment orders are issued to them on 26th October, 2005. They were directed to join the duties on 16th November, 2005, as during the interregnum there was Diwali Vacations and on the opening day of the Diwali Vacations they were directed to join the duties.

9. Sub-rule 2 of Rule 2 of the Maharashtra Civil Services (Pension) Rules, 1982 provides that these Rules shall not apply to the government servants, who are recruited on or after 01st November, 2005. The emphasis is on the word “recruited”. Under the notification dated 31st October, 2005, viz. introducing the scheme of DCPS it is specifically stated in clause 2 that the scheme will apply to those employees, who were appointed after 01st November, 2005. Clause 4-A of the said scheme also specifically provides that the scheme will apply to those who are appointed after 01st November, 2005.

10. In the present case, undisputedly the petitioners are appointed under the valid appointment orders dated 26th October, 2005. Sub-rule 2 of

Rule 2 of the Maharashtra Civil Services (Pension) Rules, 1982, so also, Clause 2 and Clause 4 of the DCPS scheme introduced under notification dated 31st October, 2005 are unambiguous. When the provisions are unambiguous, literal interpretation is the rule.

11. The petitioners having been appointed prior to 01st November, 2005, they would be governed by the Old Pension Scheme, 1982 and not by the DCPS scheme introduced under notification dated 31st October, 2005.

12. In the light of above, both the writ petitions are allowed. The petitioners would be governed by the Old Pension Scheme, 1982 and not by the DCPS scheme. Rule accordingly made absolute in the above terms. No costs.

(R.G. AVACHAT, J.)

(S.V. GANGAPURWALA, J.)

SSD