

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

WRIT PETITION NO. 2689 OF 2014

Kishor Asaram Nirwal and others .. Petitioners
Versus
The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 12036 OF 2016**

Vishnu Ganpat Gawali .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

Shri. S. B. Solanke, Advocate for Petitioners.

Shri. S. S. Tope, Advocate for Respondent Nos. 4 and 5 in W. P. No. 2689/2014.

Shri. K. N. Lokhande, A.G.P. for Respondent/State.

**CORAM : S.V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATED : 27th August, 2018

ORAL JUDGMENT:

1. Rule. Rule returnable forthwith. With the consent of learned

counsel for respective parties taken up for final hearing.

2. In Writ Petition No. 2689/2014, Mr. Solanke the learned counsel, on instructions, submits that the Petitioner No. 7 would withdraw the present writ petition with liberty to file afresh if the cause of action arises.

3. The Writ Petition No 2689/2014 to the extent of Respondent No. 7 stands disposed of as withdrawn with the liberty as aforesaid.

4. It is submitted that all these petitioners are appointed under the appointment orders dated 26th October, 2005 and Petitioner No. 2 in Writ Petition No. 2689/2014 is appointed on 29th 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 16.11.2005. The learned counsel submits that the date of recruitment would be the relevant date to be considered.

5. Mr. Tope, learned advocate for the Zilla Parishad submits that these petitioners have been recruited and appointment orders are issued to them on 26.10.2005 and 29.10.2005, however, as there was Diwali Vacation the petitioners were directed to report to the duty on 16.11.2005. 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 26.10.2005 and 29.10.2005.

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

7. We have considered the submissions canvassed by the learned counsel for 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 26.10.2005 and 29.10.2005. They were directed to join the duties on 16.11.2005, 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 01.11.2005. 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 01.11.2005. Clause 4 -A of the said scheme also specifically provides that the scheme will apply to those who are appointed after 01.11.2005.

10. In the present case, undisputedly the petitioners are appointed under the valid appointment orders dated 26.10.2005 and 29.10.2005. Sub rule 2 of rule 2 of 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 01.11.2005, 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, 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 above terms. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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