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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2288 OF 2017

Mohammed Qasim Mohammed Abdul Quddus & Ors PETITIONERS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mrs. A. N. Ansari, Advocate for the petitioners

Mr. G. O. Wattamwar, AGP for respondent - State

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[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]

DATE : 3rd JULY, 2019

ORDER :

1. Petitioners, by this petition, under Article 226 of the Constitution of India, seek quashing of condition of receiving 100% grant in aid by institutions, incorporated in government resolution dated 19th July, 2011, for application of old pension scheme to employees. Petitioners further request to give them benefits of old pension scheme i.e. Maharashtra Civil Services Pension Rules, 1982.

2. Learned advocate for the petitioners submits that employees who were in service prior to 1st November, 2005 even on contract basis or on honorarium are governed by old pension

scheme. However, in respect of schools, a condition of receiving 100% grant prior to 1st November, 2005 has been imposed which is erroneous and unjustified. After the schools started receiving grant in aid, GPF accounts of all the petitioners were opened and subscription was being deducted regularly from their monthly salary. It is submitted that services rendered by employees in unaided schools are counted for all purposes i.e. for seniority, promotion, increments. However, by issuing circular and resolution dated 26th February, 2008 and 30th June, 2009 government has implemented and made applicable new pension scheme denying old pension scheme benefits to the petitioners. It is further submitted that the government has adopted discriminatory approach inasmuch as, services rendered by Shikshan Sevaks are counted for application of old pension scheme, however, teachers like petitioners who are appointed in regular pay scales are not considered eligible to receive old pension scheme. It is unjust, unfair and illegal.

3. Learned AGP submits that since the schools in which the petitioners are working started receiving 100% grant in aid after November, 2005, the petitioners are not eligible to receive benefits of old pension scheme. In support of his submissions, learned AGP refers to and relies on a decision of the full bench in

the case of *“Deshmukh Dilipkumar Bhagwan and Others V/s State of Maharashtra and Others”* reported in 2019 (3) *Mh.L.J.* 903.

4. It is not disputed that the petitioners joined services as teachers prior to 1st November, 2005 i.e. the date on which the new pension scheme, namely Defined Contributory Pension Scheme has been introduced. At the time of their initial appointments, the schools, in which they are serving were not receiving grant in aid. The schools started receiving grant in aid subsequently. However, prior to November, 2005 the schools were receiving grant in aid, albeit not 100%. From 2009 the schools started receiving 100% grant in aid. Even GPF accounts of the petitioners were opened by the respondents and amount of subscription towards GPF was being deducted from their salary. It is contended that since the petitioners are appointed prior to November, 2005 and the schools were receiving some grant, their services ought to have been governed by old pension scheme. However, in 2012, in view of guidelines issued by the government, the GPF accounts of the petitioners were closed and all the petitioners were asked to open new accounts under the new Defined Contributory Pension Scheme.

5. It appears that the issue involved in present writ petition is

no more *res integra*. Full bench of this court, in the case of “*Deshmukh Dilipkumar Bhagwan and Others V/s State of Maharashtra and Others*” (*supra*) has held that only employees of the schools which were receiving 100% grant in aid prior to November, 2005 are covered by old pension scheme.

6. Paragraph No. 37 of aforesaid judgment reads, thus-

“ 37. Under the circumstances, we answer the Reference as under:-

Question No. 1

In the context of the right of an employee of private school or college of education to receive pensionary benefits and the corresponding liability of the Government to pay the same, only those schools and colleges of education which are receiving 100% grant-in-aid can be termed as aided institutions.

Question No. 2

The employees who were appointed prior to 1-11-2005 in aided recognized primary, secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1-11-2005 would be governed by the DCP scheme.

Question No. 3

Similar will be the situation of the employees who were appointed prior to 1-11-2005 in aided primary, secondary and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 1-11-2005 but which became 100% aided before 29-11-2005 would also be governed by the DCP scheme.”

7. In the circumstances, we do not see that the challenge to Government Resolution dated 19th July, 2011 can now be sustained and request for benefits of old pension scheme to the petitioners can be acceded to.

8. Having regard to aforesaid, writ petition is not liable to be further entertained and is dismissed and disposed of.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE