

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

**WRIT PETITION NO. 3364 OF 2017**

Sajeda Begum Shaikh Bashir  
Age- 44 years, Occu.- Service  
Working as Assistant Teacher  
With the Maulana Abulkalam  
Azad High School & Junior College,  
Faizpur, Dist - Jalgaon

**... PETITIONER**

**VERSUS**

1. The State of Maharashtra,  
Through its Secretary,  
School Education Department  
Mantralaya Mumbai - 32.
2. The Secretary,  
Finance Department,  
State of Maharashtra  
Mantralaya Mumbai - 32.
3. The Director of Education,  
Maharashtra State, Pune.
4. The Superintendent,  
Salary and Provident Fund  
Squad (Secondary) Education  
Department, Jalgaon.
5. The Education Officer,  
(Secondary) Zilla Parishad,  
Jalgaon at Jalgaon.
6. Maulana Abulkalam  
Azad High School & Junior College,  
Faizpur, Dist - Jalgaon  
Through its Head Master

**... RESPONDENTS**

Mr. Ajay G. Talhar, Advocate for the petitioner  
Mr. S.S. Dande, AGP for the respondents/State.

WITH

WRIT PETITION NO. 3375 OF 2017

Shaikh Naseem Shaikh Bashir  
Age- 35 years, Occu.- Service  
Working as Assistant Teacher  
With the Maulana Abulkalam  
Azad High School & Junior College,  
Faizpur, Dist - Jalgaon

... PETITIONER

VERSUS

1. The State of Maharashtra,  
Through its Secretary,  
School Education Department  
Mantralaya Mumbai - 32.
2. The Secretary,  
Finance Department,  
State of Maharashtra  
Mantralaya Mumbai - 32.
3. The Director of Education,  
Maharashtra State, Pune.
4. The Superintendent,  
Salary and Provident Fund  
Squad (Secondary) Education  
Department, Jalgaon.
5. The Education Officer,  
(Secondary) Zilla Parishad,  
Jalgaon at Jalgaon.
6. Maulana Abulkalam  
Azad High School & Junior College,  
Faizpur, Dist - Jalgaon  
Through its Head Master

... RESPONDENTS

Mr. Ajay G. Talhar, Advocate for the petitioner  
Mr. S.S. Dande, AGP for the respondents/State.

CORAM : SUNIL P. DESHMUKH &  
S.M.GAVHANE,JJ.

DATED : 05-08-2019

**ORAL JUDGMENT (PER :- S.M.GAVHANE, J.)**

. By these petitions under Articles 226 and 227 of the Constitution of India, the petitioners have prayed following reliefs in terms of prayer clauses (B-1) and (C):

"(B-1) By appropriate writ order or direction the respondents No. 3 to 5 may kindly be directed to consider the case of the petitioner for pension as per the then existing pension scheme (i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Communication of Pension) Rules, 1984).

(C) By appropriate writ order or direction the respondent No. 4 and 5 may kindly be directed to deduct the P.F. from the monthly salary of the petitioner regularly."

2. Mr. Talhar, learned counsel for the petitioners submitted that the petitioner in Writ Petition No. 3364 of 2017 is S.S.C., D.Ed and petitioner in Writ Petition No.3375 of 2017 is B.Sc., B.Ed. They were interested in academic field. There was advertisement by the respondent. Petitioners had applied in pursuance of said advertisement. They were appointed by order dated 06-10-2004 and 13-06-2004 respectively. Education Officer granted approval to the appointments of the petitioners as 'Assistant Teacher' w.e.f. 06-10-2004 and 13-06-2004 by orders dated 01-07-2009 and 10-04-2007 respectively. The first appointment of the petitioners was on the partially grant-in-aid basis i.e. 20-40% grant was given by the government. Thereafter, said grant was increased gradually and it was on 100% grant w.e.f. 2008. Though the appointment of the petitioners was on grant-in-aid basis, respondent No. 4-authority did not deduct the Provident Fund from the regular salary of the

petitioners.

3. Mr. Talhar, learned counsel further submitted that on 31-10-2005 respondent No. 1-The State of Maharashtra issued a notification and introduced a new "Defined Contribution Pension Scheme" on the lines of Government of India replacing the existing pension scheme, for the Government Servants, who are recruited on or after 1<sup>st</sup> November, 2005 in the State Government service. It was further decided that existing pension scheme (i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984) and the existing General Provident Fund Scheme would not be applicable to the Government Servants, who are recruited on or after 1<sup>st</sup> November, 2005. It is submitted that the petitioners were appointed on 01-10-2004 and 13-06-2004 respectively prior to cutoff date i.e. 1<sup>st</sup> November, 2005 of the notification dated 31-10-2005 and approval to the appointment of the petitioners was also granted by the Education Department from 01-10-2004 and 13-06-2004 respectively and therefore the respondent authority ought to have considered the claim of the petitioners as per the old pension rules. Thus, learned counsel has prayed to issue directions in terms of prayer clauses (B-1) and (C).

4. Mr. Dande, learned AGP for the respondents/State relying upon the decision of full bench of this Court at the principal seat in *Deshmukh Dilipkumar Bhagwan and Ors. Vs. The State of Maharashtra and Ors., 2019(3) Mh.L.J. 903* submitted that the petitioners are not entitled to directions as

sought in both the writ petitions as per the old scheme of pension. In paragraphs No. 35, 36 and 37 the full bench has observed thus:

"35. The petitioners have also based their case on right to education arguing that the State must undertake the full responsibility to provide quality basic education which would include payment of full pension to the retired teachers of primary and secondary schools. However, in our opinion, the obligation of the State of provide free and compulsory primary and secondary education or free and compulsory education to all children of the age of six to fourteen years cannot be linked with the scale and manner of payment of post-retiral benefits of the employees of such schools. The liability and obligation of the State to weigh the burden of such post-retirement benefits must depend on range of factors such as existing scheme for payment of such death-cum-retirement benefits and the financial and budgetary consideration of the State. In the present case, the DCP scheme as applicable to the employees of the State Government and private aided schools is not under challenge.

36. The petitioners had also argued that right of retired Government servants to receive pension is a vested right. It is neither bounty nor a largesse to be given by the employer. To this proposition, there can be no quarrel. However, right to receive post-retiral benefits flow from the scheme provided by the employer. In the present case, as discussed earlier, the existing pension scheme is replaced by new pension scheme. No vested right of the employees is being taken away.

37. Under these 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 29.11.2010 would also be governed by the DCP scheme."

5. In the present case the petitioners were appointed on 06-10-2004 and 13-06-2004 respectively i.e. prior to 01-11-2005 and respondent No.6-High School was granted 100% grant w.e.f. 2008. Thus, said High School was receiving less than 100% grant-in-aid on 01-11-2005 but became 100% aided before 29-11-2010. However, considering answer to question No. 3 referred to above of the full bench, the case of the petitioners would also be governed by the DCP scheme. Thus, the petitioners cases cannot be considered for pension as per the then existing pension scheme and no directions can be given to respondents No. 4 and 5 to deduct Provident Fund from the monthly salary of the petitioners as requested by the petitioners. Therefore, there is no merit in both the petitions.

6. Accordingly, both the writ petitions are dismissed. No order as to costs.

[S.M.GAVHANE,J.]

[SUNIL P. DESHMUKH,J.]