IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 858 OF 2017

Ashok Vasantrao Bochare,
Age : 50 years, Occ. Service
R/o. Bhavani Chowk, S.T. Colony,
Osmanabad, Taluka and District Osmanabad … PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Chief Secretary,
Finance Department & Department
Of School Education & Sports,
Mantralaya, Mumbai.

2. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.

3. Dharashiv Prashala, Osmanabad,
Taluka and District Osmanabad
Through its Headmaster … RESPONDENTS

Mr. S. S. Jadhavar, Advocate for the petitioner
Mr. S. S. Dande, AGP for respondents No. 1 and 2
Mr. S. G. Kawade, Advocate for respondent No. 3.

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

DATED : 10-10-2019

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

. Rule. Rule made returnable forthwith, heard finally with the consent of the parties.

2. By this petition the petitioner Assistant Teacher in respondent No.3-School has prayed to issue writ of certiorari or any other direction to

quash and set aside the action of respondents No. 2 and 3 subjecting petitioner to new pension scheme i.e. Defined Contribution Pension Scheme (for short hereinafter referred to as 'DCP Scheme') introduced vide Government Resolution dated 31-10-2005 and thereby directing deduction of amount from payment of petitioner towards DCP Scheme with further direction to deduct amount towards arrears of amount of DCP Scheme vide order dated 21-06-2016 issued by respondent No. 3 and also prayed to declare that petitioner is eligible and entitled for regular pension scheme as per the Maharashtra Civil Services (Pension) Rules, 1982 and to direct the respondents to subject petitioner to the pension scheme as per the Maharashtra Civil Services (Pension) Rules, 1982.

3. Briefly stated, the facts which are not in dispute are that the petitioner was appointed in 1988 as an Assistant Teacher in sister school of respondent No. 3-school and thereafter he was transferred to respondent No. 3-school. He was continued in service without any break. His appointment was approved by respondent No. 2-Education Officer (Secondary) as an untrained teacher on 15-09-1994. The respondent No.3-school is a sanctioned school and it has 100% grant-in-aid as per order dated 12-03-1993. Appointment of petitioner was approved as a trained teacher with effect from 20-08-2013, as he has acquired training qualification on 20-08-2013. There is also no dispute that respondent No. 1 by Government Resolution dated 31-10-2005 introduced DCP Scheme for the employees who have been appointed on or after 01-11-2005.

4. According to petitioner as he has been appointed in the year 1988 and the respondent No. 3-School has been granted 100% grant-in-aid since 1992 he cannot be subjected to new pension scheme i.e. DCP Scheme as per Government Resolution dated 31-10-2005. Therefore, action of the respondent No. 3 deducting petitioner's contribution towards DCP Scheme and towards installment of arrears of DCP Scheme by the impugned order/salary certificate dated 21-06-2016 is contrary to Government Resolution dated 31-10-2005.

5. Mr. Jadhavar, learned counsel appearing for petitioner submitted that only objection of the respondents for not applying old pension scheme to the petitioner and applying DCP Scheme to the petitioner is that, petitioner was appointed in 1988 as untrained teacher. While in service he completed his D.Ed. course and accordingly after acquiring said requisite qualification of trained teacher he was granted approval as a trained teacher with effect from 20-08-2013 and thus as the petitioner is a trained teacher from 2013 new pension scheme i.e. DCP Scheme is applicable to him. According to learned counsel said objection of the respondents is not tenable because when the petitioner was appointed as an Assistant Teacher in 1988 required qualification for appointment as primary teacher was S.S.C. as per Schedule 'B' of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 and as per Schedule 'C' of the said Rules only pay scale of the untrained teacher and trained graduate teacher was different. Therefore

since the date of appointment the petitioner was a regular employee. It is submitted that admittedly respondent No. 3-school has been granted 100% grant-in-aid since June,1992 vide order dated 12-03-1993 (Exhibit 'A') of respondent No. 2. It is submitted that in the above circumstances when the petitioner was appointed prior to 01-11-2005 in the school receiving 100% grant since 1992 and he was permanent employee the DCP Scheme cannot be forced on the petitioner and therefore impugned order/salary certificate is liable to be set aside as prayed by the petitioner by allowing the petition.

6. To support his aforesaid submissions learned counsel for petitioner has relied upon the full bench decision of this court in *Deshmukh Dilipkumar Bhagwan and Others Vs. State of Maharashtra, Through chief Secretary, General Administration Dept. And Others* with connected writ petitions, *(2019) 3 Mah LJ 903(FB)* and particularly on paragraphs No. 6, 7, 22 and 43 which read thus:-

> "6. The Government in exercise of powers under proviso to Article 309 of the Constitution of India framed the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'the Pension Rules of 1982"). Rule 2 of the Pension Rules of 1982 pertains to extent of application and provides that unless otherwise expressed or implied, these Rules shall be applicable to all members of services and holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe. They shall also apply to -
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> > (a) any person for whose appointment and conditions of employment special provision is made by or under any law for the time being in force;
> >
> > (b) any person in respect of whose service, pay and allowances and pension or any of them special provision has been made by an agreement made with him, in respect of any matter not covered by the provisions of such law or agreement, and

> (c) Government servants paid from Local Funds administered by Government, except rules relating to the foreign service.

7. Chapter V of the Rules pertains to qualifying service. Rule 30 pertains to commencement of qualifying service and inter alia provides that subject to the provisions of the rules, qualifying service of a Government servant shall commence from the date, he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

22. The court, therefore, referred the following questions for consideration of the Larger Bench.

> 1. Whether only those schools and colleges of education which are receiving 100% aid can be termed as the aided institutions or whether schools and colleges of education receiving less than 100% aid can also be termed as aided institution?
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> 2. Whether the employees who were appointed prior to 1st November 2005 in the aided recognized primary, secondary and higher secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1st November 2005 are entitled to the benefice of Old Pension Scheme under the Pension Rules and the Commutation of Pension Rules or whether they will be governed by the New pension Scheme under the GR of 2005?
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> 3. Whether the employees who were appointed prior to 1st November 2005 in the aided recognized primary, secondary and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 1st November 2005 but which became 100% aided before the date on which the GR of 2010 came into force, are entitled to the benefit of Old Pension Scheme under the Pension Rules and the Commutation of Pension Rules or whether they will be governed by the New Pension Scheme under the GR of 2005?

43. 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.
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> **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.
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> **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."

7. Mr. Dande, learned AGP referring the affidavit-in-reply submitted on behalf of respondent No. 2 submitted that when the petitioner was appointed by respondent No. 3-School he was not having requisite qualification and he had passed only S.S.C. examination. As such petitioner does not have qualification as prescribed under the law to be considered as his regular appointment on the post of Assistant Teacher. The petitioner was granted approval from 01-08-1994 as untrained, ungraduate teacher which shows that his education qualification was S.S.C. Therefore, he cannot to be said to be appointed on 100% grant-in-aid on the post of Assistant Teacher. At the relevant time he was not having requisite qualification for the post of Assistant Teacher. The DCP Scheme stipulates that only the school which had been granted 100% grant and the teachers who had been receiving

100% grant-in-aid to their salary who are appointed prior to 01-11-2005 would be governed by the earlier policy of pension. In the circular dated 12-01-2007 issued by the government clarifying the scheme it is mentioned that the persons whose appointment is made in accordance with procedure of law and the persons who had requisite qualification had been considered for the earlier scheme if they are appointed to prior to 01-11-2005. It is submitted that petitioner has acquired requisite qualification on 20-08-2013 i.e. after 01-11-2005 and he can be considered as a trained Assistant Teacher from the date of acquiring qualification i.e. D.Ed, in accordance with the Act and rules and therefore he has been granted approval from 20-08-2013 as an under graduate Assistant Teacher. Therefore, he cannot be considered for old pension scheme and he can be considered for DCP Scheme. As such there is no error in applying DCP Scheme to the petitioner and directions to deduct amount towards said scheme and recovery of arrears as per the impugned communication/ order and thus learned AGP has prayed to reject the petition.

8. Respondent No. 3 in reply affidavit states that petition is devoid of merits and required to be dismissed summarily contending that DCP Scheme is rightly made applicable to the petitioner from 20-08-2013 as he acquired requisite educational qualification on the said date and prior to that he was working on pay-scale of untrained teacher.

9. We have carefully considered the submissions made by the learned counsel for petitioner and the learned AGP and perused the pleadings and the documents placed on record by the parties.

10. Considering the admitted facts referred earlier in paragraph No. 3 (Supra) and the submissions of the learned counsel for petitioner it is clear that petitioner's qualification was S.S.C and he was appointed as Assistant Teacher in 1988 in Sidheshwar Niwasi Vidyalaya Warwanti a Primary School run by Osmanabad District Swatantrya Sainik Samiti in the pay-scale of Rs. 975-1650 per month. He served upto 13th July, 1993 approval was also granted to his appointment by education officer in the year 1992-93. However, as it appears from Exhibit 'H' judgment of the School Tribunal that his services were terminated by oral order with effect from 14-07-1993. Therefore, he filed appeal in the school tribunal and as per judgment of the school tribunal dated 18-04-2000 (Exhibit 'H') oral termination order of the petitioner was set aside and he was directed to be reinstated within 30 days with directions to pay him full backwages and consequential benefits. It is seen that during pendency of appeal before the school tribunal interim relief was granted to the petitioner directing respondent in the said appeal to continue the petitioner in service. However, said interim order was not respected by the management and petitioner was not allowed to join service in view of interim order. Therefore, he filed contempt petition No. 109 of 1994 before this Court and by order dated 14-07-1994 management was directed to permit the petitioner to join the

services. Accordingly, petitioner resumed on his duties on 29-07-1994. As mentioned earlier as per schedule 'B' the required qualification of the teacher at the relevant time when the petitioner was appointed was SCC and as such he was untrained teacher and his pay was Rs.975-1650 per month. Thus, it is clear that he was continuous in service. Admittedly in 2013 while serving as untrained teacher petitioner completed postal D.Ed course in the light of interim order of the this court in writ petition No. 7044 of 2009. Thereafter, as the petitioner completed postal D.Ed course respondent No. 3 submitted proposal to respondent No. 3 seeking approval to the appointment of the petitioner as a trained teacher and respondent No. 2 granted permanent apporval to the appointment of petitioner as under graduate trained teacher with effect from 20-08-2013 vide order dated 31-01-2014 (Exhibit 'G'). As mentioned earlier the respondent-school is receiving 100% grant since 1992 i.e. prior to 01-11-2005. Only objection of the respondents that the petitioner has acquired a required qualification of trained teacher in 2013 i.e. after 01-11-2005 and therefore DCP Scheme is applicable to the petitioner. However, as the petitioner was permanent employee working since 1988 in respondent No. 3-school and respondent No.3-school is receiving 100% grant since 1992 only because petitioner has acquired D.Ed qualification in 2013 it cannot be said that DCP Scheme is applicable to him as he is fulfilling the requirement of getting pension as per the old scheme in the light of decision of full bench of this court in case of *Deshmukh Dilipkumar Bhagwan* (Supra). Another aspect to be noted is that the Government Resolution dated 31-10-2005 applying DCP scheme since

01-11-2005 does not have bearing on the educational qualification of the teaching or non teaching employee. Therefore, there is no substance in the objection raised by the respondents that as the petitioner has been granted approval as a trained under graduate Assistant Teacher from 20-08-2013 as he acquired requisite qualification on the said date his case would be governed by the DCP scheme.

11. In view of the above we hold that action of respondents No. 2 and 3 by the impugned order dated 21-06-2016 (Exhibit ‘K’) on the basis of Government Resolution dated 31-10-2005 deducting contribution of the petitioner towards DCP Scheme and further deducting installment towards arrears of DCP scheme is not sustainable and the same is liable to be set aside. We, accordingly, set aside the impugned order/salary certificate dated 21-06-2016 holding that DCP scheme cannot be forced on the petitioner. Amount whatever deducted till date from the salary of the petitioner in pursuance of the impugned order towards contribution of DCP scheme and installment of arrears of DCP Scheme shall transferred in the GPF account of the petitioner and in case the petitioner is not having GPF account said amount shall be refunded to him.

12. Writ petition is, accordingly, allowed. Rule is made absolute in above said terms.

[S.M. GAVHANE, J.] **[SUNIL P. DESHMUKH, J.]**