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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 864 OF 2016

Sagar Tanaji Shinde & ors. .. Petitioners

Vs.

State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 11951 OF 2016

Maharashtra Rajya Madhyamik
Va Uccha Madhyamik Shala Kruti
Samittee .. Petitioner

Vs.

State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 4727 OF 2016

Maharashtra Rajya Madhyamik
Va Uccha Madhyamik Shala Kruti
Samittee .. Petitioner

Vs.

State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 9544 OF 2017

Maharashtra Rajya Madhyamik
Va Uccha Madhyamik Shala Kruti
Samittee

.. Petitioner

Vs.

State of Maharashtra & Ors.

.. Respondents

WITH
WRIT PETITION NO. 6315 OF 2016

Nalkade Alka Gulabrao & Ors.

.. Petitioners

Vs.

State of Maharashtra & Ors.

.. Respondents

WITH
WRIT PETITION NO. 7369 OF 2016

Maharashtra Rajya Madhyamik
Va Uccha Madhyamik Shala Kruti
Samittee

.. Petitioner

Vs.

State of Maharashtra & Ors.

.. Respondents

Mr. Suresh Pakale a/w Mr. Saurabh Pakale and P. T. Waghmare I/by Mr. Avinash Belge for petitioners in WP/864/16.

Mr. Suresh Pakale a/w Mr. Saurabh Pakale and P. T. Waghmare I/by S. M. Katkar for petitioner in WP Nos.4727/16, 6315/16, 7369/16, 11951/16 & 9544/17.

Mr. P. P. Kakade, Government Pleader a/w Mr. M. M. Pabale, AGP and B. V. Sawant, AGP for respondent No.1 to 16, 19, 20 in WP/864/16, for respondent Nos. 1 to 9, 11, 13, 15, 17, 19 to 22, 24, 26 to 28 in WP/4727/17, for respondent Nos.1 to 4, 6, 7 and 11 in WP/6315/17, for respondent Nos. 1 to 4, 6 to 11, 13, 14, 16, 18, 19, 21, 23, 25, 27, 28 in WP/7369/16, for respondent Nos.1 to 4, 6 to 10, 12 to 14, 20 and 22 in WP/11951/16 and for respondent Nos.1 to 4, 6 to 9, 11, 13, 15, 16, 17, 20, 22, 24, 26, 28, 29, 31 in WP/9544/17.

Ms. Neeta Masurkar a/w Ms. Nisha Valani for respondent Nos.5 in WP/6315/16.

CORAM: PRADEEP NANDRAJOG, CJ. &
N. M. JAMDAR, J.

JULY 18, 2019.

P.C.

1. The Writ Petitioners in the above captioned Writ Petitions are employees of Private Organizations and the undisputed stand of both sides is that their services are regulated by the Maharashtra Employees of Private Schools (Conditions of

Service) Regulation Rules, 1981 framed in exercise of the power conferred by Section 16 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

2. Since the same Counsel has filed the above captioned Writ Petitions without segregating the employees who were appointed pre 01.11.2005 and post 01.04.2005, we would be granting a declaratory relief, requiring the factual aspect to be considered by the Deputy Director of Secondary Education, State of Maharashtra, in light of the declaratory relief.

3. The relevance of the dated 01.11.2005 arises out of the fact that with effect from said date the Government of Maharashtra introduced the Defined Contributory Pension Scheme for not only State Government employees as also staff of Private Aided Schools and Colleges; replacing the existing pension scheme. Earlier on, vide a Government Resolution dated 04.11.1968 the Government extended pensionary benefits to the full time teaching staff of recognized aided private schools as admissible to the government servants in the State of Maharashtra under the Pension Rules.

4. In the State of Maharashtra not all private schools are admitted to grant-in-aid. Further, some schools are admitted to a

partial grant-in-aid and some 100% grant-in-aid.

5. The issue of the right of employees of private schools or junior colleges to receive pensionary benefits has been set at rest by a Full Bench judgment of this Court pronounced in a batch of Writ Petitions on 30.04.2019, lead matter being Writ Petition No. 8387 of 2013 *Deshmukh Dilipkumar Bhagwan & Ors. vs. The State of Maharashtra & Ors.* The Full Bench held 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.

6. The only argument advanced by learned Counsel for the petitioners is that the issue raised by the petitioners was not considered by the Full Bench and thus Counsel prays that the Writ Petitions be not disposed of in the light of the law declared by the Full Bench of this Court.

7. The argument of learned Counsel is that Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 is a statutory Rule, and unless the statutory Rule is amended by issuing a Government Resolution, the pensionary benefits available under the pension scheme for the government employees cannot be altered.

8. Rule 19 of the Rules relied upon reads as under :-

19. Pension.

An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after the 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above-mentioned respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools.

9. The argument is that Rule 19 stipulates that employees of aided senior secondary schools and aided junior colleges of education would be paid pension as per rules and thus by a Government Resolution the pensionary benefit cannot be altered.

10. Now, no rule has been framed by the appropriate authority regulating payment of pension to employees of aided secondary schools and aided junior college of education. By a Government Resolution the pension rules applicable to the State employees had been made applicable to the employees of aided senior secondary schools and aided junior colleges of education. Thus, the question of amending any rule applicable to the petitioners does not arise.

By virtue of Government Resolution it can be prescribed that as applicable to State employees inducted in service after 1.11.2005 employees of private aided institutions, would be governed by the new pension scheme, and needless to state such employees in private institutions who were working prior to said date but against unaided post or partially aided post would not be entitled to the benefit of the old pension scheme and would be governed by the new pension scheme if the post held by them became eligible for grant-in-aid whether in full or part after said date.

11. Thus, when the State Government amended the Rule for pension concerning State Government employees, it was fully competent to issue a Government Resolution that employees of private aided schools would also be covered by the said amended Rule. For the employees of private aided schools no presidential order in exercise of the power conferred under Article 309 of the Constitution of India is warranted because they are not public servant or employees of the State Government. Relevant would it be to highlight that the Government of Maharashtra introduced the Defined Contributory Provident Fund Scheme for government employees in super-session of previous pension scheme.

12. Thus, there is no further issue which could possibly

have been argued and the issue which learned counsel for the petitioners urges is a non issue. Since there are no specific pleadings qua the various writ petitioners, we dispose of the writ petitions declaring that the law declared by the Full Bench, as noted above, would govern the rights of the employees of private aided institutions and the State of Maharashtra shall implement the same for the employees of private aided institutions and should an employee of a private aided institution have a grievance of being made a member of the Defined Contributory Pension Scheme, the employee concerned would be permitted to challenge the specific decision against which the employee is aggrieved of.

N. M. JAMDAR, J.

CHIEF JUSTICE