

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

WRIT PETITION NO. 4258 OF 2016

Chandrakant Namdeo Gund,
Age : 54 years, Occu. Service,
R/o. Nipani, Taluka Kallam,
District Osmanabad.

.... Petitioner

Versus

- 1] The State of Maharashtra
Through the Department of
School Education & Sports And
Finance Department, Mantralaya,
Mumbai.
- 2] The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
- 3] Dnyan Prakash Shikshan Mandal,
Yermala, Taluka Kallam,
District Osmanabad,
Through its Secretary.
- 4] Dnyanprasar Vidyalaya, Moha,
Taluka Kallam, District Osmanabad,
through its Headmaster

.... Respondents

...

Shri. Santosh S. Jadhavar, Advocate for the petitioner
Smt. D. S. Jape, AGP for respondent/State
Shri. P. G. Tambade, Advocate for respondents No. 3 & 4

...

WITH

WRIT PETITION NO. 4270 OF 2016

Dhananjay S/o. Bhausahab Barkul,
Age : 42 years, Occu. Service,
R/o. Yermala, Taluka Kallam,
District Osmanabad.

.... Petitioner

Versus

- 1] The State of Maharashtra
Through the Department of
School Education & Sports And
Finance Department, Mantralaya,
Mumbai.
- 2] The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
- 3] Dnyan Prakash Shikshan Mandal,
Yermala, Taluka Kallam,
District Osmanabad,
Through its Secretary.
- 4] Dnyanodyog Vidyalaya, Yermala,
Taluka Kallam, District Osmanabad,
through its Headmaster Respondents

...

Shri. Santosh S. Jadhavar, Advocate for the petitioner
Smt. D. S. Jape, AGP for respondent/State
Shri. P. G. Tambade, Advocate for respondents No. 3 & 4

...

WITH

WRIT PETITION NO. 4271 OF 2016

Ashram Baliram Waghmare,
Age : 39 years, Occu. Service,
R/o. Punarwasan Sawargaon,
Taluka Kallam, District Osmanabad. Petitioner

Versus

- 1] The State of Maharashtra
Through the Department of
School Education & Sports &
And Finance Department, Mantralaya,
Mumbai.
- 2] The Education Officer (Secondary),
Zilla Parishad, Osmanabad.

- 3] Ransamrat Krida Mandal,
Kallam, Yermala, Taluka Kallam,
District Osmanabad,
Through its Secretary.
- 4] Savitribai Phule Vidyalaya, Kallam,
Taluka Kallam, District Osmanabad,
through its Headmaster Respondents

...
Shri. Santosh S. Jadhavar, Advocate for the petitioner
Smt. D. S. Jape, AGP for respondent/State
Shri. P. G. Tambade, Advocate for respondents No. 3 & 4
...

**CORAM : SUNIL P. DESHMUKH
AND
B.U. DEBADWAR, JJ.**

DATE : 5th February, 2020

ORAL JUDGMENT [Per Sunil P. Deshmukh, J.] :

1. Rule. Rule made returnable forthwith and heard finally with consent of the learned counsel appearing for the parties.

2. There is no dispute on the factual aspect that respondent No. 4 – School had been receiving 100% grant-in-aid & petitioners were appointed in respondent no. 4 – School as part-time librarians in 1998 & 1999, respectively. There is no dispute on another relevant factual aspect that the schools in which petitioners were appointed as part-time librarians had

student strength of more than 1000 from 1998-1999. In such a case, it appears that the situation would be squarely governed by the Government resolution dated 28-06-1994. According to said Government resolution, the posts of petitioners were required to be upgraded as full time librarians, however, the petitioners were required and continued to work as part-time librarians. Respondent nos.1 and 2 had issued a resolution dated 03-08-2006 purportedly for upgrading the post of part-time librarian to full-time librarian in respect of 924 schools, in which, the name of respondent no. 4 schools did not figure. Respondents purportedly had upgraded petitioners' appointments to full-time librarian taking into account Government resolution dated 03-08-2006 and purport to claim that their appointments are fresh appointments and thus would be governed by Defined Contribution Pension Scheme (in short "DCP Scheme") under Government Resolution dated 31-10-2005.

3. It would be pertinent to refer to that there is no dispute on that the petitioners were appointed in 1998 and 1999 and their appointments as part-time librarians had been approved. Further that the students strength in the said schools while petitioners had been appointed was more than 1000 each. In the circumstances, they were legitimately to be given

appointment as full-time librarians. It is not the case that the petitioners were not qualified to hold the post of full-time librarian. Further, it is also not the case that the schools where they were serving were not receiving 100% grant-in-aid. Having regard to aforesaid, the position emerges that the petitioners were entitled to the post of full time librarians since the date on which the students strength had been 1000 and above and further that they were employees of the schools receiving 100% grant-in-aid.

4. As such, having regard to various decisions of this Court, and particularly, the full bench judgment of this court in the case of *Deshmukh Dilipkumar Bhagwan and others vs. State of Maharashtra and otehrs* [2019 (3) Mh.L.J. 903], whereunder following questions were framed and those were answered by the court, the petitioners are entitled to get the benefit of 1994 resolution.

Q. 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?

Ans : 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.

Q. 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 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?

Ans : 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.

Q. 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?

Ans : 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 view of aforesaid, the petitioners would be entitled to reliefs claimed under prayer clauses 'B' and 'C'. *Albeit*, we

deem it appropriate to follow the decision referred to and relied on in writ petition no. 10426 of 2015 dated 22nd February, 2019, that the petitioners would not get difference of salary from the date of initial appointment to the date of 2006 resolution.

6. We clarify that though the petitioners may not get the monetary benefit for the period 1998 to 2006, however, the period from 1998 to 2006 would be considered for continuity in service and all other benefits, accordingly.

7. Rule is made absolute in above terms. No costs.

[B.U. DEBADWAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE