

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

WRIT PETITION NO.5584 OF 2012

1. Deepak s/o Dhanajirao Suranje
Age : 30 years, Occu : Service as
Assistant Teacher presently
Working with Zilla Parishad
Primary School, Bamkheda,
Post. Kedarkheda, Tal. Bhokardan,
District Jalna.
2. Manmat s/o Ramrao Vhanrao
Age : 29 years, Occu : Service as
Assistant Teacher presently
Working with Zilla Parishad
Primary School, Takli (Hivardi),
Post. Walsa, Tal. Bhokardan,
District Jalna.
3. Rishikesh s/o Gunderao Borde
Age : 29 years, Occu : Service as
Assistant Teacher presently
Working with Zilla Parishad
Primary School, Merkheda,
Post. Kedarkheda, Tal. Bhokardan,
District Jalna.
4. Hemkant s/o Santosh Tirmale
Age : 29 years, Occu : Service as
Assistant Teacher presently
Working with Zilla Parishad
Primary School, Khaparkheda,
Tal. Bhokardan, District Jalna.

.. Petitioners

Versus

1. State of Maharashtra
Through its Secretary,
Finance Department,
Mantralaya, Mumbai – 32.

2. State of Maharashtra,
Through its Secretary,
Department of Education (Primary),
Mantralaya, Mumbai – 32.
3. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.
4. The Chief Executive Officer,
Zilla Parishad, Jalna.
5. Block Education Officer,
Panchayat Samittee, Bhokardan,
District Jalna.
6. The Chief Executive Officer,
Zilla Parishad, Nanded
7. The Chief Executive Officer,
Zilla Parishad, Nashik
8. The Chief Executive Officer,
Zilla Parishad, Nandurbar.

.. Respondents

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Shri S.B. Solanke, Advocate for Petitioners

Shri G.O. Wattamwar, AGP for respondents no.1 to 3

Shri Vaibhav U. Pawar, Advocate, h/f. Shri S.S. Tope,
Advocate for Respondents No.4 and 5

Respondent No.6 – Served.

Shri V.C. Patil h/f. Shri U.B. Bondar, Advocate for Respondent No.7

Advocate for Respondent No.8 : Shri S.U. Choudhari h/f.
Ms V.S. Chaudhari

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

Date : 28-02-2020

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.) :

1. Though respondent no.6 has been served, no appearance has been caused on behalf of respondent no.6.

2. There is no dispute on that, petitioners were appointed by *zilla parishad* as assistant teachers on 26/29.10.2005. The petitioners had to join the service before 01-11-2005, but intervening period being vacation period, they could not join the service immediately before 01-11-2005. Their services have been confirmed on completion of probationary period.

3. While petitioners' services were to be governed by The Maharashtra Civil Service (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and existing General Provident Fund Scheme, they were not getting any benefit. They were on brink of losing the benefits of governance by said rules on account of Government Resolutions/ orders/ instructions dated 31-10-2005, 12-01-2007, 12-09-2007, 30-10-2007, 03-12-2007, 26-02-2008, 01-12-2008, 30-01-2009, 21-05-2010.

4. Learned counsel for the petitioners contends that, the

petitioners cannot be deprived of the benefit of governance by unamended MCSR, 1982, before 2005 referred to *supra*.

5. Learned AGP, however, purports to state that since the petitioners had joined service post 01-11-2005, they would be governed by DCP scheme and not by Old Pension Scheme of 1982.

6. There is no dispute about the factual position that the petitioners were in fact appointed by *Zilla Parishad* after due selection procedure and under orders dated 26-10-2005 and 29-10-2005 and they were directed to join the duties post 01-11-2005 due to intervening Diwali vacation and immediately after reopening they were supposed to join and accordingly petitioners had joined.

7. During the submissions, it emerges that, such a situation had been dealt with by a division bench of this court in a writ petition bearing No.4115 of 2016 and had considered that since Sub-rule 2 of Rule 2 of Maharashtra Civil Services (Pension) Rules, 1982 stipulates that, the rules should not apply to government servants, who are recruited on or after 01-11-2005 and the emphasis is on word "recruited". Correspondingly, notification dated 31-10-2005 introducing DCP

scheme under its clause 2 specifically refers to that the scheme would apply to those employees who are appointed after 01-11-2005. Clause 4-A of said scheme also reiterates that, the scheme would apply to those who are appointed after 01-11-2005.

8. The division bench found that, the provisions are unambiguous and liberal interpretation of the rule is to be had and, thus, declared that the petitioners in said petitions would be governed by Old Pension Scheme, 1982 and not by DCP scheme introduced under notification dated 31-10-2005 and had, thus, allowed the writ petition.

9. Having regard to the reasons, which went into said order and the situation being almost same, the order and the reasons thereunder would squarely apply in the present matter as well. We, therefore, follow the dictum of said order.

10. The petitioners having been appointed prior to 01st November, 2005, albeit they could not join due to situation not within their control and thus, they would be governed by the Old Pension Scheme, 1982 and not by the DCPS scheme introduced under notification dated 31st October, 2005.

11. In the light of above, the writ petition is allowed. The petitioners would be governed by the Old Pension Scheme, 1982 and not by the DCPS scheme. Rule accordingly made absolute in the above terms. No costs.

(**B. U. DEBADWAR, J.)**

(**SUNIL P. DESHMUKH, J.)**

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