

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1994 OF 2017

Kalpana Haribhau Katore,
Age 37 years, Occ. Service as
Assistant Teacher,
Primary School, Manwat Road,,
Tal. Manwat, District Parbhani

...Petitioner

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, Parbhani

...Respondents

Mr S.B. Solanke, Advocate for Petitioner
Mr S.K. Tambe, AGP for Respondent Nos. 1 to 3
Mr Sachin Joshi, Advocate for Respondent No. 4

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 15th MARCH, 2021

ORDER :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

2. We have heard Mr Solanke, the learned counsel for the

petitioner, Mr Joshi, the learned counsel for respondent No. 4 and the learned Assistant Government Pleader.

3. Mr Solanke, the learned counsel submits that as the petitioner is appointed prior to 01.11.2005, the petitioner would be governed by the old pension scheme of 1982.

4. Mr Joshi, the learned counsel submits that though the petitioner was appointed under the appointment order dated 26.10.2005, she was expected to join on 16.11.2005 as Shikshan Sevak. Her service from 15.11.2005 to 15.11.2008 will be termed as Shikshan Sevak.

5. In view of that, she would be governed by Defined Contributory Pension Scheme (DCPS) .

6. It is not disputed that the petitioner is appointed by the local bodies after conducting the selection process and the appointment order is issued to her on 26th October, 2005. She was directed to join the duties on 16th November, 2005, as during the interregnum there was Diwali Vacations and on the opening day of the Diwali Vacations, she was directed to join the duties.

7. Sub-rule 2 of Rule 2 of the Maharashtra civil Services (Pension) Rules, 1982 provides that these Rules shall not apply to the government servants, who are recruited on or after 1st November, 2005. the emphasis is on the word "recruited". Under the notification dated 31st October, 2005, viz. Introducing the scheme of DCPS, it is specifically stated in clause 2 that the scheme will apply to those employees, who were appointed after

1st November, 2005. clause 4-A of the said scheme also specifically provides that the scheme will apply to those who are appointed after 1st November, 2005.

8. In the present case, undisputedly the petitioner is appointed under the valid appointment order dated 26th October, 2005. Sub-rule 2 of Rule 2 of the Maharashtra Civil Services (Pension) Rules, 1982, so also, clause 2 and Clause 4 of the DCPS scheme introduced under notification dated 31st October, 2005 are unambiguous. When the provisions are unambiguous, literal interpretation is the rule.

9. The petitioner having been appointed prior to 1st November, 2005, she would be governed by the Old Pension Scheme, 1982 and not by the DCPS scheme introduced under notification dated 31st October, 2005.

10. In the light of above, the writ petition is allowed. The petitioner 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.

[SHRIKANT D. KULKARNI, J.]

[S.V. GANGAPURWALA, J.]

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