

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

WRIT PETITION NO. 5770 OF 2021

Gorakshanath s/o Bhaga Hodgar

..Petitioner

Versus

The State of Maharashtra,
through its Secretary,
Finance Department, Mantralaya,
Mumbai and ors.

..Respondents

Mr H.P. Jadhav, Advocate h/f Mr G.B. Kadlag, Advocate for petitioner
Mr S.B. Yawalkar, Addl.G.P. for respondent-State

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

DATE : 5th April 2021

PER COURT :

1. Heard learned Advocate Mr Jadhav holding for Mr Kadlag for petitioner.
2. Learned Advocate for petitioner submits that the petitioner is appointed on 25.8.2005 i.e. prior to 1.11.2005. As such, is governed by the old pension scheme and not D.C.P. Scheme. Learned Advocate relies on the judgment of the Full Bench of this Court in Writ Petition No. 8387 of 2013 with connected petitions decided under judgment and order dated 30.4.2019.
3. We have heard learned A.G.P. also.
4. The Full Bench of this Court in the above judgment in paragraph 34 and 37 observed thus :

"34. It is true that the service put in by an employee of a recognized private school during the time when such school was not receiving grant, would also count towards the qualifying service for pension when such employee retires from a school which receives grant. This was also the context of G.R. dated 8.4.2018

noted earlier. This, however, would not mean that the employee appointed in a school can claim to be governed by the pension scheme till the school starts receiving 100% grant.

37. 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.

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."

5. The petitioner was appointed on 25.8.2005. The same was not 100% grant-in-aid. He was on grant-in-aid of 60% in September 2006 and the petitioner was appointed on 100% grant-in-aid in March 2008. Question no.3 decided above by the Full Bench is applicable in the present case. The petitioner would be governed by the D.C.P. Scheme.

6. In light of that, no relief can be granted.
7. Writ Petition disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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