

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

927 WRIT PETITION NO.8476 OF 2018

SHAHAJI SHANKARRAO KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Patil Jayant R.
AGP for Respondents-State : Mr. S. G. Sangle.
Advocate for Respondent No.4 : Mr. R. K. Ashtekar.
Advocate for Respondent No.5 : Mr. G. N. Patil.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 26.10.2021

PER COURT :-

1. The learned advocate for the petitioner has put forth prayer clauses "C, D, DD and DE" as under :

"C. By issuing writ of mandamus or any other appropriate, writ order or directions in the like nature, the respondent No.4 and 5 may kindly be directed to forward the necessary documents of the petitioner relating to his pension and other pensionary and post retiral benefits to the respondent No.3 within stipulated period."

"D. By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, the respondent No.3 may kindly be directed to take necessary action in respect of proposal of petitioner regarding the pension and other benefits within stipulated period."

"DD. By issuing writ of certiorari or any other appropriate writ, order or directions in the like nature, the order dated 22/28.04.2015 passed by respondent No.3 thereby rejecting the proposal for pension may kindly be quashed and set aside and the respondent No.3 may kindly be directed to grant approval to the services of petitioner from 10.06.1989 to 22.11.2005."

"DE. By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, the respondent No.3 may kindly be directed to grant the proposal for pension and other post retiral benefits of the petitioner within stipulated period."

2. The learned advocate for the petitioner draws our attention to paragraph Nos.13, 14 and 15 of the affidavit-in-reply filed by Mr. Ankush Bhagwat Shingade, Superintendent, Class II, Office of the Education Officer (Secondary), Zilla Parishad, Latur, wherein it is stated as under :

"13. I say and submit that, the salary of the Petitioner was paid for the period during which he has worked in the school which are permitted to run the school on grant in aid basis. I say and submit that, the Petitioner had worked in the grant in aid school for the period which are as under :

<i>Sr. No.</i>	<i>Particulars of Service</i>	<i>Period of Service</i>
<i>a.</i>	<i>On No Grant-in-aid Basis.</i>	<i>1 year 1 month 00 days</i>
<i>b.</i>	<i>On Grant-in-aid basis.</i>	<i>8 years 11 months and 8 days.</i>
	<i>Total service period.</i>	<i>10 years 00 months and 8 days."</i>

"14. I say and submit that, as per the orders of this Hon'ble High Court and taking into consideration the service rendered by the Petitioner on no-grant-in aid basis, total service period of the Petitioner comes 10 years and 8 days, which is applicable for grant of pension to the Petitioner"

"15. I say and submit that, the appointment of the Petitioner as junior clerk is after 1st November, 2005 and therefore, as per the Government decision; the old pension scheme is not applicable to the Petitioner. I say and submit that, the Petitioner is eligible to get the D.C.PS. (Defined Contributory Pension Scheme) of which the order dated 19th March, 2020 was also issued and communicated to the petitioner. At the costs of repetition it is submitted the appointment date of the Petitioner is 23/11/2005 therefore he is not entitled for old pension, as his appointment is after the date of 1st November, 2005."

3. He, therefore, submits that his grievance as regards the pension does not survive, though there is some dispute as regards the type of pension viz. the old pension scheme or the Defined Contributory Pension Scheme which would be applicable.

4. In view of the statements made by the competent authority in paragraph Nos.13 and 14, this petition is disposed off.

5. We expect the competent authority to take a decision as regards the applicability of the pension scheme, on or before

31.12.2021. In the event, the petitioner is aggrieved as regards the applicability of the D.C.P.S., he would be at liberty to seek redressal of his grievance as against the said dispute.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-