

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

WRIT PETITION NO. 9199 OF 2021

Chitralekha Ratnakarrao Vaidya .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Shrikrashna B. Solanke, Advocate for the Petitioner.

Shri S. B. Pulkundwar, A.G.P. for Respondent Nos. 1 to 3.

Shri S. S. Tope, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 13TH DECEMBER, 2021.

FINAL ORDER :

. It is submitted that the petitioner is appointed under the appointment order dated 26th October, 2005. The learned counsel submits that the petitioner would be governed by Old Pension Scheme - 1982 and not by the Defined Contributory Pension Scheme – 2005, which has been brought into effect from 1st November, 2005. However, the respondents are applying the DCPS scheme to the petitioner. The petitioner is deprived of her right under the old pension scheme only on the ground that in the appointment order the petitioner was directed to report at duty on 16.11.2005. The learned counsel submits that the date of recruitment would be the relevant date to be considered.

2. Mr. Tope, learned advocate for the Zilla Parishad submits

that the petitioner has been recruited and appointment order is issued to her on 26.10.2005, however, as there was Diwali Vacation the petitioner was directed to report to the duty on 16.11.2005. The advertisement was also issued and pursuant to the advertisement the selection process was undertaken, and after undergoing selection process the petitioner has been appointed under the appointment order dated 26.10.2005.

3. The learned Assistant Government Pleader submits that the petitioner has joined her duty after introduction of DCPS, as such is governed by the DCPS and not by the Old Pension Scheme 1982.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

4. 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 26.10.2005. She was directed to join the duties on 16.11.2005, as during the interregnum there was Diwali Vacations and on the opening day of the Diwali Vacations she was directed to join the duties.

5. 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 01.11.2005. 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 01.11.2005. Clause 4 A of the said scheme also specifically provides that the scheme will apply to those who are appointed after 01.11.2005.

6. In the present case, undisputedly the petitioner is appointed under the valid appointment order dated 26.10.2005. Sub rule 2 of Rule 2 of 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.

7. The petitioner having been appointed prior to 01.11.2005, she would be governed by the Old Pension Scheme 1982 and not by the DCPS scheme introduced under notification dated 31st October, 2005.

8. 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.

9. In the light of the above, the writ petition is disposed of.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]