

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3783 OF 2016

1. Satappa s/o Shrihari Patil,
Age 33 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, V. M. Talewadi,
Tal. Radhanagari, Dist. Kolhapur.
2. Ranjit s/o Vitthal Jathar,
Age 31 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, K.V. M. Thikpurli,
Tal. Radhanagari, Dist. Kolhapur.
3. Satish s/o Vilas Dhavare,
Age 33 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, V. M. Aini,
Tal. Radhanagari, Dist. Kolhapur.
4. Santosh s/o Shrihari Veder,
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, V. M. Galgale,
Tal. Kagal, Dist. Kolhapur.
5. Nilesh s/o Shripati Powar,
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, V. M. Amroli,
Tal. Chandgad, Dist. Kolhapur.
6. Appaji Namdeo Redekar,
Age 34 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, V. M. Rajgoli (Kd),
Tal. Chandgad, Dist. Kolhapur.
7. Deegambar s/o Kantilal Alande,
Age 32 years, Occ. Service as an

Assistant Teacher, Zilla Parishad
Primary School, K.V. M. Chandur,
Tal. Hatkangale, Dist. Kolhapur.

8. Sujata Krishna Rane @
Sujata Krishna Rane,
Age 33 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, V. M. Anaf (Bu),
Tal. Bhudargal, Dist. Kolhapur.
9. Vidhya Vijayendra Bhosale @
Vidhya Bajirao Patil,
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, V. M. Sidhanerli,
Tal. Kagal, Dist. Kolhapur.
10. Bharat s/o Pandurang Shete,
Age 33 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, Paritwadi,
Tal. Maral, Dist. Pune.
11. Popat s/o Bhau Naykodi,
Age 31 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, Tambe Mala No.2,
Tal. Junnar, Dist. Pune.
12. Rajendra s/o Ananda Pawar,
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, Dhamadaki,
Tal. Igatpuri, Dist. Nashik.
13. Jaywant s/o Damodhar More,
Age 31 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, Vidyanagar,
Tal. Murbad, Dist. Thane.

... 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, Kolhapur.
5. The C.E.O. Zilla Parishad, Pune.
6. The C.E.O. Zilla Parishad, Nashik.
7. The C.E.O. Zilla Parishad, Thane.

... Respondents

**WITH
WRIT PETITION NO. 1013 OF 2019**

Amruta w/o Santosh Nikam @
Amruta d/o Jayprakash Gole,
Age 33 years, Occ. Service as
Assistant Teacher, Zilla Parishad
Primary School, Tarale (Girls),
Tal. Patan, Dist. Satara.

... 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, Satara.

... Respondents

**WITH
WRIT PETITION NO. 3759 OF 2016**

1. Ram S/o Shankarrao Chalkapure,
Age 31 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Palashi,
Tal. Patan, District Satara.
2. Uttam S/o Yashwant Kamble,
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Paneri,
Tal. Patan, District Satara.
3. Pavankumar S/o Nagesh More
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Natoshi,
Tal. Patan, District Satara.
4. Dadasaheb S/o Shivaji Karkar
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Panwan,
Tal. Maan, District Satara.
5. Sudhakar S/o Shivaji More
Age 34 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Rakhonde Wasti,
Mhaswad, Tal. Maan, District Satara.

6. Balu S/o Jagannath Londhe,
Age 34 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Devati,
Tal. Maan, District Satara.
7. Rajaram S/o Sandipan Galande
Age 33 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Karkhel,
Tal. Maan, District Satara.
8. Sachin S/o Kundlik Desai
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Matre Wasti,
Tal. Patan, District Satara.
9. Satappa S/o Chandrakant Birambole
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Ninaiwadi,
Tal. Patan, District Satara.
10. Rupesh S/o Baban Jadhav
Age 33 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Chirambe,
Tal. Patan, District Satara.
11. Varsha Krishnarao Bamane
Age 31 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Vihe No.1,
Tal. Patan, District Satara.
12. Khanderao Nagnath Kale
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Gadhavali,
Tal. Mahabaleshwar, District Satara.

13. Narayan S/o Ishwar Patil
Age 39 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Ahir,
Tal. Mahabaleshwar, District Satara.
14. Pramod S/o Sonyabapu Wani,
Age 35 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Walane,
Tal. Mahabaleshwar, District Satara.
15. Ajay S/o Shivaj Kakade
Age 33 years, Occ. Service as an
Assistant Teacher, Zilla Parishad,
Primary School, Bibi,
Tal. Patan, District Satara.
16. Arvindkumar S/o Dhondiram Sawant,
Age 33 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, Chaugulewadi,
Tal. Patan, District Satara.
17. Surekha Bandu Patil,
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, Navasarwadi,
Tal. Patan, District Satara.
18. Santosh S/o Balasaheb Todmal,
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, Kalkutwadi,
Tal. Patan, District Satara.
19. Anilkumar S/o Shahuraj Manale,
Age 32 years, Occ. Service as an
Assistant Teacher, Zilla Parishad
Primary School, Maingadewadi,
Tal. Patan, District Satara.

20. Megha Yashavant Patil,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Chinchewadi,
Tal.Patan, District Satara.
21. Mahadev S/o Jalindar Wagh,
Age 31 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Ambewadi,
Tal.Patan, District Satara.
22. Suhas S/o Mahadev Patil,
Age 42 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Kalewadi,
Tal.Patan, District Satara.
23. Vikas S/o Bhanudas Chavan,
Age 42 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Shantinagar,
Tal.Patan, District Satara.
24. Rahul S/o Ramchandra Pitambare,
Age 31 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Dhadamwadi,
Tal.Patan, District Satara.
25. Mahendra S/o Baburao Jadhav,
Age 36 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Shidrukwadi,
Tal.Patan, District Satara.
26. Vaishali Sarjerao Patil,
Age 31 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Morgiri,
Tal.Patan, District Satara.

27. Sandip S/o Babasaheb Todmal,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Kordewadi,
Tal.Patan, District Satara.
28. Dhanaji S/o Vishnu Bhopale,
Age 35 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Tomkane,
Tal.Patan, District Satara.
29. Rupali Vishnu Bhosale,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Gudhe,
Tal.Patan, District Satara.
30. Pathan Rabia Ahmed,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Janainagar,
Tal.Maan, District Satara.
31. Chhaya Kerba Patil,
Age 33 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Yeradwadi,
Tal.Patan, District Satara.
32. Bagban Jabinbanu Umrli,
Age 31 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Pethsivapur,
Tal.Patan, District Satara.
33. Shailja Ganesh Desai,
Age 31 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Aadadev-2,
Tal.Patan, District Satara.

34. Vishwajit S/o Baburao Sathe,
Age 35 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Vatambe,
Tal.Javali, District Satara (deleted).
35. Raju S/o Ramesh Shelke,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Patanemachi,
Tal.Javali, District Satara.
36. Nivrutti S/o Vitthal Bendre ,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Mardmure,
Tal.Javali, District Satara(deleted).
37. Rupali Vitthal Salunkhe,
Age 35 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Bhaldarwadi,
Tal.Javali, District Satara.
38. Annasaheb S/o Laxman Dighe,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Nanel,
Tal.Patan, District Satara (deleted).
39. Santosh S/o Hindurao Shelar,
Age 33 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Nanel,
Tal.Patan, District Satara.

... 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, Satara.

... Respondents

**WITH
WRIT PETITION (STAMP) NO. 27155 OF 2018**

1. Nivrutti S/o Vitthal Bendre,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Mardmure,
Tal.Javali, District Satara.
2. Annasaheb S/o Laxman Dighe,
Age 32 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Nanel,
Tal.Patan, District Satara.
3. Vishwajit S/o Baburao Sathe,
Age 35 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Vatambe,
Tal.Javali, District Satara.
4. Popat S/o Bhau Naykodi,
Age 31 years, Occ.Service as an
Assistant Teacher, Zilla Parishad
Primary School, Tambe Mala No.2,
Tal.Junnar, District Pune.

...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, Satara.
5. The Chief Executive Officer,
Zilla Parishad, Pune.

...Respondents

**WITH
WRIT PETITION NO. 1014 OF 2019**

1. Sushma Jaywant Sul
Age 34 years, Occu: Service as
Assistant Teacher, Zilla Parishad
Primary School, Kharghar,
Tal. Panvel, Dist. Raigad.
2. Sandyarani Balwant Bhosale,
Age 34 years, Occu: Service as
Assistant Teacher, Zilla Parishad
Primary School, Devad,
Tal. Panvel, Dist. Raigad.

...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, Satara.
5. The Chief Executive Officer,
Zilla Parishad, Alibaug,
Tal and Dist. Raigad-Alibaug

...Respondents

Mr. Shrikrishna B. Solanke a/w Mr. Govind B. Solanke for the Petitioners in all Writ Petitions.

Mr. A. I. Patel, Addl. Govt. Pleader a/w Ms. P.J. Gavhane, AGP for the State-Respondent Nos.1 and 3 in all Writ Petitions.

Mr. Ramesh D. Rane for the Respondent No.4-C.E.O., Z.P., Kolhapur in WP/3783/16.

Mr. Shankar P. Thorat for the Respondent No.7-Z.P., Thane in WP/3783/16.

Mr. Ashutosh Gavnekar i/by Mr.C.G. Gavnekar for the Respondent No.5 in WP/1014/19.

Dr. U. P. Warunjikar a/w Mr. Sumit Kate for the Respondent No.4 in WP/1013/19, WP/3759/16, WP/1014/19 and WPST/27155/18.

**CORAM: R. D. DHANUKA AND
R. I. CHAGLA, JJ.**

**RESERVE DATE : 2nd SEPTEMBER, 2021
PRONOUNCE DATE : 1st OCTOBER, 2021**

JUDGMENT (Per R.D. Dhanuka, J.) :-

. Rule. Learned counsel for the respondents waives service. By consent of parties this batch of petitions were heard together and are being disposed of by a common order.

2. Learned counsel for the parties jointly state that the facts and questions of law involved in these petitions are similar and thus the judgment of this Court in Writ Petition No. 3783 of 2016 would apply in the other writ petitions which were heard along with Writ Petition No. 3783 of 2016. Statement is accepted. The parties have addressed this Court in the Writ Petition No. 3783 of 2016 and partly also in Writ Petition No. 1013 of 2019. We will summarize the facts in Writ Petition No. 3783 of 2016.

3. By these petitions filed under Article 226 of the Constitution of India, the petitioners have prayed for a declaration that the petitioners are recruited prior to 1st November, 2005 and therefore are entitled to get the benefits of pension scheme under Maharashtra Civil Services (Pension) Rules, 1982 [for short 'the said MCS (Pension) Rules) or Old Pension Scheme] and the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 (for short 'the said MCS (Commutation of Pension) Rules) and General Provident Fund Scheme (for short 'the said GPF Scheme') and for other reliefs.

4. It is the case of the petitioners that they came to be appointed as Shikshan Sevak vide appointment order dated 26th October, 2005 issued by the Zilla Parishad, Satara on probation. The petitioners are working as Assistant Teachers with their respective schools mentioned in the clause title. Petitioner nos. 10 and 11 came to be transferred to the Zilla Parishad, Pune, Petitioner No.12 came to be transferred to Zilla Parishad, Nashik and the petitioner no.13 came to be transferred to the Zilla Parishad, Thane by way of Inter District Transfers and are working with their respective schools.

5. On 27th March, 2003, the State of Maharashtra issued a Government Resolution providing that the Shikshan Sevak would be appointed against the sanctioned post of Assistant Teachers in the respective establishments (schools). The expenses towards the Shikshan Sevak is actually the expenses of the sanctioned post of Assistant Teacher and the same is shown and accounted against the same head as it is shown and sanction every year. It is further provided in the said Resolution that the Shikshan Sevak would be appointed in the sanctioned post of Assistant Teacher. It also prescribes the qualification, duties, responsibilities, remuneration, evaluation and supervision of the work of Shikshan Sevak, procedure for confirmation as

an Assistant Teacher on completion of three years probation period and committee for selection of Shikshan Sevak, etc. Annexure 'B' to the said Government Resolution prescribes the form of appointment order. It is provided in the said form that their services as a Shikshan Sevak would be recognized and counted for pension pay and other retirement benefits.

6. It is the case of the petitioner that the benefits of the said MCS (Pension) Rules and the said MCS (Commutation of Pension) Rules and the Maharashtra Zilla Parishad General Provident Fund Rules are thus applicable to the Assistant Teachers. It is the case of the petitioners that the Shikshan Sevak are appointed against the vacant and permanent post of Primary Teachers. Their salary and charges are paid out of the fund created under the Act for the Primary Teachers and the expenses are also shown as expenses of Primary Teachers appointed in District Service Class-III. On their recruitment as Shikshan Sevak and entering into the District Services Class III, the terms and conditions of their service relating to leave, retirement, pension (including gratuity and family pension) are regulated under the provisions of the Maharashtra Zilla Parishad District Services Rules, 1968. Clause 6 of the said rules provides that the provision of the MCS (Pension) Rules, 1982 as amended from time to time are applicable to

the Zilla Parishad employees. The provisions of the Provident Fund Scheme apply in relation to Provident Fund to Zilla Parishad employees.

7. It is the case of the petitioner that all the full time employees recruited by the Zilla Parishads are entitled to receive pension for the services rendered by them and the pensionary benefits as provided under the said MCS (Pension) Rules, the said MCS (Commutation of Pension) Rules and also the existing General Provident Fund Scheme.

8. On 31st October, 2005, the State of Maharashtra issued a Government Resolution providing that the Government servant who are recruited on or after 1st November, 2005 would be governed by the new pension scheme namely Defined Contribution Pension Scheme (for short 'DCP Scheme'). It was provided that the consequential amendment would be made in the said MCS (Pension) Rules. The procedure and the mechanism in respect of the new pension scheme was provided under the said Government Resolution dated 31st October, 2005. On 31st October, 2005, the Department of Finance, Maharashtra State issued a notification and added to Rule 2 of the said MCS (Pension) Rules providing that 'these Rules shall not apply to the Government Servants who are recruited on or after 1st November, 2005'.

9. The learned counsel for the petitioners invited our attention to various Government Resolutions annexed to the writ petition, copy of the appointment order of one of the petitioner, sanction granted by the Education Officer and the Government Notification dated 31st October, 2005. It is submitted by the learned counsel that all the petitioners were recruited before 31st October, 2005. In view of the amendment to the said MCS (Pension) Rules, the provisions of the said MCS Rules shall apply to the Government servants who are recruited on or before 1st November, 2005. Since the petitioners were recruited prior to 1st November, 2005, petitioners are entitled to the benefits of old pension scheme under the said MCS (Pension) Rules. The Zilla Parishad thus cannot force the petitioners to open accounts under the said DCP Scheme. He submits that in case of some of the petitioners, the respondents have opened the accounts and have started deducting the amount illegally under the said DCP Scheme. He submits that the said DCP Scheme cannot be made applicable to the petitioners by the respondents in any circumstances.

10. It is submitted that none of the appointment orders of the petitioners for the post of Shikshan Sevak contemplate that the petitioners would be governed by the pension scheme to be introduced in future. He submitted

that the petitioners have joined the respective schools on the respective dates as mentioned in the letter of appointment. Insofar the pension scheme is concerned, the date of appointment would be relevant and not when the petitioner reported on duty. He submits that the word 'recruitment' while amending the said MCS (Pension) Rules, 1982 connotes enlistment, acceptance, selection or approval for appointment or not actual appointment or posting in service. He submits that the petitioners were thus recruited much before 1st November, 2005 and therefore the old pension scheme was applicable to each of them.

11. Learned counsel for the petitioners invited our attention to Rules 2(2) of the said MCS (Pension) (Second Amendment) Rules, 2005 and would submit that it is clearly provided that these rules shall not apply to the Government servants who are recruited on or after 1st November, 2005. Learned counsel invited our attention to the averments made in paragraph 4 and grounds VIII of the writ petition. He invited our attention to the order of appointment dated 26th October, 2005 and would submit that the Zilla Parishad had already recruited the petitioners by the said letter and had directed the petitioners to remain present during the period between 10th November, 2005 and 14th November, 2005 in the respective schools. He

submits that the petitioners joined the duties during the said period between 10th November, 2005 and 14th November, 2005 as directed in the said letter. It is the case of the petitioners that prior to the said cut-off date i.e. 1st November, 2005 prescribed in the Government Resolution dated 31st October, 2005, the petitioner were already issued appointment letters though actual date of joining may be after 1st November, 2005.

12. Learned counsel strongly placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Prafulla Kumar Swain v/s. Prakash Chandra Misra and Ors., 1993 Supp. (3) SCC 181*** and would submit that in the said judgment the Hon'ble Supreme Court has clarified the difference between 'Recruitment' and 'Appointment'. It is held that the term 'Recruitment' a clearly signifies enlistment, acceptance, selection or approval or appointment. This is not actual appointment or posting a person to a particular office.

13. Learned counsel for the petitioners placed reliance on the judgment delivered on 27th August, 2018 by the Aurangabad Bench of this Court in Writ Petition No. 2689 of 2014 in case of ***Kishor Asaram Nirwal and Ors. v/s. The State of Maharashtra and Ors.*** and would submit that this Court

has clearly held in the said judgment that the Government servants whose appointment were issued prior to 31st October, 2005 would be governed by the old pension scheme. He relied upon paragraphs 2 to 11 of the said judgment. He submits that the date of recruitment of the petitioners is required to be considered to ascertain as to which pension scheme is required to be applicable to them. The petitioners are not claiming any benefits in respect of continuity in service or seniority based on their date of recruitment.

14. Learned counsel for the petitioners placed reliance on the judgment delivered on 28th February, 2020 by the Aurangabad Bench of this Court in case of ***Deepak s/o Dhanajirao Suranje and Ors. v/s. State of Maharashtra and Ors.*** in Writ Petition No. 5584 of 2012 and more particularly in paragraphs 6 to 10 in support of his aforesaid submissions.

15. Mr.Ramesh Rane, learned counsel for the respondent no.4 i.e. the Chief Executive Officer of Zilla Parishad, Kolhapur in Writ Petition No. 3783 of 2016 on the other hand invited our attention to the letter of appointment dated 26th October, 2005 issued by the Zilla Parishad and would submit that the said letter specifically directed the petitioner to join

the duties between 10th November, 2005 and 14th November, 2005. He submits that the petitioners had infact joined the services as Shikshan Sevak during the period between 10th November, 2005 and 14th November, 2005 with Satara Zilla Parishad and subsequently transferred to Kolhapur Zilla Parishad as assistant teacher having already completed three years of probation period. He submits that the petitioners having been recruited on or after 1st November, 2005, DCP Scheme is applicable to them and not the old pension scheme.

16. It is submitted by the learned counsel that the said letter of appointment itself would clearly indicate that the petitioners were required to submit an undertaking at the time of joining during the period between 10th November, 2005 and 14th November, 2005. Since the joining date was after 1st November, 2005, the petitioners are not eligible for the pension under the old pension scheme. He invited our attention to the order dated 6th April, 2017 passed by this Court refusing to grant interim relief after observing that in the cases where interim reliefs have been granted, the petitioners had taken their charge of their respective posts prior to 1st November, 2005. In this case, the respective dates fixed for the petitioners to report to duty are after 1st November, 2005.

17. It is submitted by the learned counsel that the petitioners have received salary and other benefits only after the date of joining i.e. between 10th November, 2005 and 14th November, 2005. He submits that the petitioners themselves have agreed not to claim any promotion or other seniority on the basis of letter dated 26th October, 2005. Learned counsel submits that the judgment of Full Bench of this Court in case of ***Deshmukh Dilipkumar Bhagwan & Ors. vs. The State of Maharashtra & Ors. in Writ Petition No. 8387 of 2013*** and other companion matters (2019) 4 BCR 460 would apply not only to the employees of the private school but also would apply to the employees working in the school run by the Zilla Parishad, both being at par.

18. Mr.S.P.Thorat, learned counsel for the respondent no.7 i.e. Zilla Parishad, Thane in Writ Petition No.3783 of 2016 adopted the submissions made by Mr.Rane, learned counsel for the respondent no.4 and would submit that the appointment of the petitioners would come into effect only after furnishing undertaking by the petitioners. None of the petitioners have annexed copy of such undertaking filed with the Zilla Parishad while reporting on duty during the period between 10th November, 2005 and 14th November, 2005.

19. It is submitted by the learned counsel that under the provisions of Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 an appeal is maintainable under section 14 (1)(a) if the employees are aggrieved by the order passed by the Zilla Parishad denying or varying his advantage, pay, allowances, pension or other conditions of service as regulated by any rules or reduces or withholds the pension or denies the maximum pension admissible under the rules.

20. Dr.Warunjikar, learned counsel for the respondent no.4 i.e. the Chief Executive Officer, Zilla Parishad, Kolhapur distinguishes the judgment of the Aurangabad Bench in case of ***Kishor Nirmal*** (supra) relied upon by the learned counsel for the petitioners. He relied upon paragraphs 8 and 9 of the said judgment and would submit that the facts before the Aurangabad Bench in the said judgment were totally different. He submits that earlier judgments of this Court taking different view were not cited. The relevant provisions of the Act were neither brought to the notice of this Court nor were discussed in the said judgment. He submits that the said order passed by the Aurangabad Bench in case of ***Kishor Nirmal*** (supra) has no precedentiary value. The Aurangabad Bench has not decided any ratio in the said judgment.

21. In support of this judgment, learned counsel placed reliance on the judgment of Hon'ble Supreme Court in case of ***Inderjit Singh Sodhi and others vs. Chairman, Punjab State Electricity Board and another, (2021) 1 SCC 198***, judgment in case of ***State of Orissa vs. Mohd. Illiyas, 2006(1) SCC 275*** and in particular paragraph 52, judgment in case of ***Natural Resources Allocation, In Re, 2012 (10) SCC 1***.

22. Learned counsel strongly placed reliance on the judgment of Full Bench of this Court in case of ***Deshmukh Dilipkumar Bhagwan & Ors.*** (supra) and in particular paragraphs 16, 27, 35 and 37 and would submit that only those schools and colleges of education which are receiving 100% grant in aid can be termed as the aided institutions and will be entitled to receive pensionary benefits. He submits that the Full Bench in the said judgment has held that the employees who were appointed prior to 1st November, 2005 in aided recognized primary, secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1st November, 2005 would be governed by the DCP scheme. The employees who were appointed prior to 1st November, 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 1st

November, 2005 but which became 100% aided before 29th November, 2010 would also be governed by the DCP scheme. He submits that the petitioners are not entitled to the pensionary benefits under the old scheme in view of the view taken by the Full Bench of this Court in case of ***Deshmukh Dilipkumar Bhagwan & Ors.*** (supra).

23. It is submitted by the learned counsel that the petitioners who were appointed as a Shikshan Sevak were paid consolidated salaries and were appointed for specific period. The grant-in-aid are increased gradually. He submits that Shikshan Sevak are regularly appointed employees. He submits that the Shikshan Sevak cannot be treated at par with the assistant teacher. The assistant teachers stands on better footing than the Shikshan Sevak. The institutions which are getting 100% grant-in-aid stand on high footing than the institutions giving partial grant-in-aid. He submits that in view of the Full Bench having taken different view than the view taken by the Aurangabad Bench in case of ***Kishor Nirmal*** (supra), the division bench judgment loses its precedentiary value and cannot be relied upon by the petitioners. Even if leave is granted against the said judgment of Full Bench delivered by this Court in case of ***Deshmukh Dilipkumar Bhagwan & Ors.*** (supra) by the Hon'ble Supreme Court, the said judgment continues to apply

as binding precedent upon this Court. He submits that the Shikshan Sevak is appointed as assistant teacher on full time basis. The date of such appointment as assistant teacher would be relevant for the purpose of deciding whether such employee would be entitled to the pension benefit under the old pension scheme or under the DCP scheme. He submits that in this case since the petitioners were appointed as assistant teachers after 1st November, 2005, the petitioners will be entitled to pension benefits only under the said DCP scheme and not under the old pension scheme.

24. Learned counsel invited our attention to paragraph (7) of the written submissions filed by the petitioners and would submit that the petitioners themselves have agreed that they are not claiming any salary or seniority based on their date of recruitment. The petitioners have claimed pension based on the date of recruitment. He submits that the date of joining has to be considered for the purpose of deciding applicability of the pension scheme and not the date of the recruitment. The date of actual working would be relevant. He submits that none of the petitioners have produced the copy of the undertaking/indemnity bond required to be submitted under the said letter of recruitment. He relied upon the judgment of the Hon'ble Supreme Court in case of ***Government of Andhra Pradesh & Ors. vs.***

N.Subbarayudu & Ors., (2008) 14 SCC 702 and in particular paragraphs 5 to 8 and would submit that the cut off date fixed by the authority cannot be interfered with by this Court under Article 226 of the Constitution of India. He placed reliance on the judgment of the Hon'ble Supreme Court in case of **Himachal Road Transport Corporation & Another vs. Himachal Road Transport Corporation Retired Employees Union, (2021) 4 SCC 502** and in particular paragraphs 17 to 26, in case of State of **Punjab and others vs. Amar Nath Goyal and others, (2005) 6 SCC 754** and in particular paragraphs 26, 32 to 34 in support of the submission that the Court cannot interfere with the cut off date fixed by the authority while implementing a pension scheme.

25. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **T.N.Electricity Board vs. R.Veerasingam and others, (1999) 3 SCC 414** and in particular paragraph 15 and would submit that the employees who have joined services prior to 1st November, 2005 and who have joined after 1st November, 2005 fall in separate class and cannot be at par.

26. It is submitted by the learned counsel if this bench does not agree

with the views expressed by the Aurangabad Bench in case of ***Kishor Nirmal*** (supra), the matter may be referred to the larger Bench after formulating the questions of law raised in these petitions.

27. Mr.A.I.Patel, learned Additional Government Pleader for the respondent nos. 1 to 3 in this batch of petitions adopts the arguments advanced by Dr.Warunjikar, learned counsel for the respondent no.4. He submits that clause (9) of sub-clause 12 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 defines the 'date of first appointment' means the date of Government servant assumes the duties of his first post in Government service, or, if this be earlier, the date of his assumption of any duty which is treated, as service counting for pension. He relied upon the sub-clause (13) of the said rules which defines 'day' and sub-clause (14) which defines 'duty' in sub-clause (12) of the said rules.

28. Learned counsel relied upon Rule 30 which specifically provides that the qualifying service of the Government employee shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. He submits that for all purposes including the payment of salaries, increment, promotional

benefit and pensionary benefit, the first date of appointment is relevant. In this case, the appointment order was given on 26th October, 2005. The petitioners however joined duties only between 10th November, 2005 to 14th November, 2005. The first date of joining of their duties should be considered as the date of appointment for all purposes including Rule 30 of the MCS (Pension) Rules, 1982.

29. It is submitted by the learned Additional Government Pleader that the person cannot be said to be the Government Employee until he joins the services. He submits that the date of the letter dated 26th October, 2005 cannot be the basis for claiming that the petitioners are covered by earlier MCS (Pension) Rules, 1982. He submits that since the petitioners joined the services only after 1st November, 2005, the provisions of the DCP Scheme would apply and not the old pension scheme. He relied upon paragraphs 4, 29, 31 and 34 of the Full Bench judgment in case of ***Deshmukh Dilipkumar Bhagwan & Ors.*** (supra) and would submit that it has been specifically observed by the Full Bench that Rule 30 pertains to the commencement of qualifying service and the qualifying service of the Government servant shall commence from the date he takes charge of the post to which he is first appointed.

30. Mr.S.B.Solunke, learned counsel for the petitioners in his rejoinder argument submits that the petitioners who are appointed as Shikshan Sevak are also entitled to the pension. The date of the appointment of the petitioners as assistant teachers after 1st November, 2005 cannot be the basis to deny the pensionable benefits to the petitioner under the old pension scheme. He submits that since all the petitioners in this case in these petitions were appointed by the Zilla Parishad, the judgment of Full Bench delivered by this Court in case of ***Deshmukh Dilipkumar Bhagwan & Ors.*** (supra) relied upon Dr.Warunjikar, in support of the submission that if the school are not fully aided schools on the date of appointment, no pension would be permitted under the old scheme will not apply to the facts of this case.

31. It is submitted that the Zilla Parishad does not get any grant-in-aid from the Government. The school run by the Zilla Parishads are not private schools. He relied upon Rule 9(12) of the MCS Rules and also Rule 2(2) and would submit that the date of recruitment dated 26th October, 2005 would be relevant for the purpose of deciding the applicability of the old pension rules and not the date of joining. For all other purposes, the date of joining would be relevant and not for the purpose of considering the

applicable pension scheme. He submits that in view of the amendment to Rule 2(2) of the MCS Pension Rules, the date of recruitment would be relevant.

REASONS AND CONCLUSION :

32. The question that arises for consideration of this Court is whether the date of letter dated 26th October, 2005 issued by the Zilla Parishads instructing the petitioners to report for duties between 10th November, 2005 and 14th November, 2005 subject to furnishing an undertaking as prescribed would make the petitioners eligible to claim pension under the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 or on the basis of the date of the petitioners reporting on duty during the period between 10th November, 2005 and 14th November, 2005, the Government Resolution dated 31st October, 2005 introducing “Defined Centralized Pension Scheme” (DCP Scheme) would apply.

33. It is not in dispute that each of the petitioners were issued letter dated 26th October, 2005 by the Zilla Parishads instructing them to report on duties between 10th November, 2005 and 14th November, 2005 and to submit an undertaking as prescribed in clause 2 of the letter dated 26th October, 2005. It is not in dispute that each of these petitioners submitted an

undertaking at the time of reporting on duties during the period between 10th November, 2005 and 14th November, 2005 i.e. after 1st November, 2005 when the said DCP Scheme came into force. A perusal of the averments in the petitions and on considering the statement made by the learned counsel for the petitioners, it is clear that the petitioners are not seeking payment of salary, promotion, seniority and other retirement benefits with effect from 26th October, 2005 but are admittedly claiming of such benefits only from the date of joining the duties. It is the case of the petitioners that only for the purposes of pension, the petitioners would be governed by Maharashtra Civil Services (Pension) Rules, 1982 i.e. old pension rules and the date of actual date of joining duties after 1st November, 2005 would not be relevant and accordingly said DCP Scheme would not apply to any of these petitioners.

34. Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 provided that an employee of an aided secondary school and aided junior college of education working on full time basis and retiring on or after 1st April, 1966 and an employee of aided primary school working on full time basis and retiring on or after 1st April, 1979 but who have opted for pension and an employee appointed on or after

the above mentioned respective dates shall be eligible for pension at the rates and in accordance with the Rules and as are sanctioned by the Government specific letter to the employees of private schools. The State Government framed Maharashtra Civil Services (Pension) Rules, 1982. There is no dispute that in these matters that the petitioners are eligible to get the pension. The dispute is as to whether the provisions of Maharashtra Civil Services (Pension) Rules, 1982 would apply or whether the said DCP Scheme would apply to the petitioners or not.

35. Rule 9 (12) of the MCS (Pension) Rules, 1982 defines “Date of First Appointment” means the date when the Government servant assumes the duties of his first post in Government service, or, if this is earlier, the date of his assumption of any duty which is treated, as service counted for pension. Rule 9 (14) defines “Duty” and the period which has be excluded or included during various period spent by the employee before joining time. Rule 9 (18) defines “First Appointment” means the appointment of a person who is not holding any appointment under Government, even though he may have previously held such an appointment. Rule 9 (39) defines “Pensionable Service” means service which qualifies the Government servant performing it to receive a pension from the Consolidated Fund.

36. Rule 9 (51) defines “Substantive pay” means the pay other than special pay, or emoluments classed as pay by Government under sub-clause rule 36(iii) to which a Government servant is entitled on account of post to which he has been appointed substantively or by reasons of his substantive position in a cadre. Rule 30 provides as to when qualifying service commences. It is provided that subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating temporary capacity.

37. A perusal of the Government Resolution dated 31st October, 2005 indicates that the said DCP Scheme replacing the then existing pension scheme would be made applicable to the Government servants which are recruited on or after 1st November, 2005 in the State Government service. Clause 2 of the said Government Resolution provides that the provisions of the existing pension scheme i.e. MCS (Pension) Rules and MCS (Contribution of Pension) Rules and the existing General Provident Fund Scheme would not be applicable to the Government servants, who are recruited on or after 1st November, 2005 in State Government service.

38. The State Government issued the notification on 31st October, 2005 thereby inserting sub rule 2 i.e. these rules would not apply to the Government servants, who are recruited on or after 1st November, 2005.

39. A Full Bench of this Court in case of ***Deshmukh Dilipkumar Bhagwan & Ors. vs. The State of Maharashtra & Ors.*** (supra) considered three questions formulated by the Full Bench and held that in the context of 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 were receiving 100% grant-in-aid can be termed as aided institutions.

40. It is held that employees who were appointed prior to 1st November, 2005 in aided primary school as well as colleges of education which were receiving less than 100% grant-in-aid as on 1st November, 2005 would be governed by DCP Scheme. It is held that the employees who were appointed prior to 1st November, 2005 in aided primary school or secondary as well as colleges of education which were receiving less than 100% grant-in-aid as on 1st November, which become 100% aided before 29th November, 2010

would also be governed by DCP Scheme. There was no issue before the Full Bench of this Court whether the letter of appointment issued prior to 1st November, 2005 however, directing the employee to report their duties after 1st November, 2005 would be governed by the old pension scheme or DCP scheme or not. In this case, all the appointments were made by the Zilla Parishads and thus the issue whether such schools were getting 100% grant-in-aid or not on the date of appointment of an employee for the purpose of applying respective pension scheme does not arise.

41. A Division Bench of Aurangabad Bench of this Court in case of ***Kishor Asaram Nirwal & Ors. vs. The State of Maharashtra & Ors.*** considered the issue whether the petitioners therein who were issued letters of appointment after undertaking the selection process and having been recruited prior to 1st November, 2005 but had been directed to report on duty after 1st November, 2005 would be entitled to the benefits of old pension scheme or DCP Scheme. In the matter at hand before the Aurangabad Bench of this Court, the petitioners were directed to report on duties on 16th November, 2005. The respondents in that matter contended that since the petitioners therein had joined their duties after introduction of DCP Scheme, they were governed by DCP Scheme and not the old pension

scheme.

42. This Court held that there was no dispute that the petitioners were appointed by the local authority after conducting the selection process and the appointment orders were issued to them on 26th October, 2005 and 29th October, 2005. They were directed to join their duties on 16th November, 2005 as there was Diwali Vacation, on the opening day after Diwali Vacation. This Court interpreted sub-rule 2 of rule 2 of the MCS (Pension) Rules which provides that these rules shall not apply to the Government servants which 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 DCP Scheme, 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. This Court accordingly held that undisputedly the petitioners were appointed under the order dated 26th October, 2005 and 29th October, 2005. The provisions of sub-Rule 2 of Rule 2 of the MCS (Pension) Rules as also Clauses 2 and 4 of the DCP Scheme introduced under the notification dated 31st October, 2005 are unambiguous. When the provisions are unambiguous,

literal interpretation is the rule. It is held by the Aurangabad Bench of this Court that the petitioners having been appointed prior to 1st November, 2005, they would be governed by the old pension scheme, 1982 and not by the DCP Scheme.

43. The Hon'ble Supreme Court in case of ***Prafulla Kumar Swain*** (supra) considered the regulation which provided that the appointment to the service to commence only after successful completion of training and thus there was no justification whatsoever to conclude that the date of recruitment could be the relevant date for the purposes of reckoning the seniority. It is held that under regulation 12 considered therein, finally selected candidates are required to undergo two years training. During the period of training a consolidated monthly allowance of Rs.150/- as stipend is paid. Under Regulation 12 (b), employee is required to execute a bond provided for in Appendix A. Regulation 12(c) in unmistakable terms says that the period of training will not count as service under Government. Such service will count only from the date of appointment to the service after successful completion of the course of training.

44. It is held by the Hon'ble Supreme Court that the Court must give full

meaning and effect to the regulation. In that Context the Hon'ble Supreme Court held that the term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly this is not actual appointment or posting in service. In contradistinction the word "appointment" means an actual act of posting a person to a particular office. Recruitment is just an initial process. That may lead to eventual appointment in the service. But that cannot tantamount to appointment. No doubt rule 5 talks of recruitment to Class II service. It is held that these are two sources of recruitment. Nowhere in the Recruitment Rules of 1959 it is specified that the services of a direct recruit under the Government shall be reckoned from the date of selection in the competitive examination. On the contrary, Regulation (c) is very clear that the period of training is not to be reckoned as Government service.

45. The Hon'ble Supreme Court considered that after the successful competition of training when the appointment order was issued the direct recruits are put on probation. Similar was the case of the promotees. In that context, the Hon'ble Supreme Court held that it was not possible to accept the contention advanced on behalf of the direct recruits that their seniority must be reckoned from the date of their recruitment.

46. Rule 5 of Orissa Forest Service Class II provided that the recruitment of Class II shall be made by (A) direct recruitment on the result of competitive examination as per Regulation I Appended to (B) by promotion as per Rule II appended A to that rule governing the promotions to Orissa Forest Service Class II. Rule 9 considered by the Hon'ble Supreme Court in that matter provided that when the officers were recruited by promotion and by direct recruitment during the same year, directly recruited members shall be considered senior to the promoted members irrespective of their dates of promotion. In case of promotion seniority may be determined in accordance with law the positions the promoted officers held in the recommendation of Public Service Commission made according to merit. In case of direct recruitment, seniority may be determined according to the achievements in the examination of the Forest College.

47. In this backdrop, we refer to the letter of appointment dated 26th October, 2005. In the first paragraph of the said letter, it is clearly provided that the petitioners were already appointed as Shikshan Sevak according to the Government Resolution dated 27th February, 2003. However, in clause 2, conditions were provided that the petitioners will have to file an undertaking

and on the basis of such undertaking, the petitioners would be appointed as Shikshan Sevak in any of the primary schools and subject to various conditions. The said appointment was made for a period of three years. The petitioners were asked to report on duties during the period between 10th November, 2005 and 14th November, 2005. It was made clear that the said period would not be extended in any circumstances. The petitioners would be paid fixed amount as Shikshan Sevak.

48. It is not the case of the respondents that after joining the duties by the petitioners, there was any separate letter of appointment issued by the Zilla Parishads. The question that arises for consideration of this Court is whether submission of undertaking or bond by the petitioners was a condition precedent for issuance of letter of appointment or condition subsequent after issuance of letter of appointment. The petitioners were already appointed by the said letter dated 26th October, 2005 subject to the petitioners subsequently submitting an undertaking / bond. The dates for reporting on duty were prescribed in the said letter of appointment dated 26th October, 2005 which were after 1st November, 2005 when the new DCP Scheme came into effect. In our view, the submission of the said undertaking in the format prescribed by the Zilla Parishad was not the condition precedent for

considering the said letter dated 26th October, 2005 as a letter of appointment. The petitioners were appointed after following selection process prior to 1st November, 2005.

49. The petitioners were not required to undergo any training as a condition precedent before appointment as was the case before the Hon'ble Supreme Court in case of ***Prafulla Kumar Swain*** (supra). The Hon'ble Supreme Court in the said judgment has considered specific regulation which provided that for compulsory training which period of training will not be counted as service under Government. The said service will count from the date of appointment to the service after successful completion of the course of training. No such rule or any other provision is pointed out by the respondents under MCS (Pension) Rules or under the MEPS Rules for compliance of any condition precedent before issuing letter of appointment.

50. In our view, the judgment of the Division Bench of this Court in case of ***Kishor Asaram Nirwal & Ors.*** (supra) would apply to the facts of this case. The word "recruitment" has not been defined under the MCS (Pension) Rules. In our view since these petitioners are not appointed after 1st November, 2005, the petitioners would not be governed by DCP Scheme

as sought to be canvassed by the respondents. The word “recruited” has to be given plain interpretation and cannot be construed as appointment coming into effect only from the date of joining duties.

51. The said rule 2(2) of MCS (Pension) Rules does not refer to the word “appointment” or does not prescribe a condition that appointment would come into effect only from the date of reporting on duties and not from the date of appointment letter. The said letter does not indicate the date of joining as the effective date of appointment. Court has to read all the conditions in the letter of appointment harmoniously. It is not the case where there was any delay on the part of the petitioners to report on duties i.e. after joining date prescribed in the letter of appointment. It was specific direction issued in the letter of appointment to join duties during a particular period which in this case coincidentally fell after 1st November, 2005. The petitioners had no choice but to report on duty only during the selected period prescribed in the letter of appointment. In our view, the judgment of the Aurangabad Bench of this Court in case of ***Kishor Asaram Nirwal & Ors.*** (supra) would apply to the facts of this case. We do not propose to take a different view in the matter.

52. We are not inclined to accept the submission made by the learned counsel for the respondents that the judgment of the Aurangabad Bench of this Court cannot be considered as binding precedent on this Court. In our view, the judgments relied upon by Dr.Warunjikar, learned counsel for the respondent no.4 in support of his contention on the issue of precedent would not advance the case of the respondents.

53. In our view, the statement made by the learned counsel for the Zilla Parishad and by the learned AGP that the recruitment in this case would be only from the date the petitioners submitting their undertaking i.e. after 1st November, 2005 has no merit. Since this Court is of the view that the said condition prescribed in the letter of appointment to submit an undertaking is a condition subsequent and not the condition precedent, the date of submission of such undertaking after 1st November, 2005 would not shift the date of appointment.

54. For the reasons aforesaid we pass the following order :-

- (i) The writ petitions are allowed.
- (ii) The provisions of the Maharashtra Civil Services (Pension) Rules,

1982 i.e. old pension scheme would apply to the petitioners and not the DCP

Scheme.

(iii) Rule is made absolute accordingly in aforesaid terms.

(iv) There shall be no order as to costs.

(R.I. CHAGLA, J.)

(R.D. DHANUKA, J.)