

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

WRIT PETITION NO.8425 OF 2016

Shri. Mahesh Anandrao Shinge ...Petitioner
V/s.
State of Maharashtra
Through Secretary & Ors. ...Respondents

**WITH
WRIT PETITION NO.514 OF 2016**

Smt. Vijaya Ravindra Patil ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

Mr. S. A. Rajeshirke, Advocate for Petitioners in both the Writ Petitions.
Mrs. P. J. Gavhane, Advocate for Respondent Nos.1 to 5 in WP/8425/2016
and Respondent Nos.1 to 4 in WP/514/2016.

**CORAM : R. D. DHANUKA, AND
ABHAY AHUJA, JJ.
DATE : 16th SEPTEMBER, 2021.**

PC. :

1. Learned counsel for the Petitioners seeks leave to delete Respondent No.7 in Writ Petition No.8425 of 2016 and Respondent Nos.5 and 6 in Writ Petition No.514 of 2016 from the Petitions. Leave is granted. Amendment to be carried out forthwith. Re-verification is dispensed with.
2. Rule. Rule is made returnable forthwith. By the consent of the learned counsel for the respective parties heard finally.

3. By these Writ Petitions filed under Article 226 of the Constitution of India, Petitioners are seeking directions of this Court to the Respondents to give benefits of Maharashtra Civil Services (Pension) Rules 1982 (MCPS Rules, 1982) and Maharashtra Civil Services (Commutation of Pension) Rules 1984 (MCSCP Rules, 1984) and existing General Provident Fund Scheme to the Petitioners as Government Resolution dated 31st October 2005 and 29th November 2010 and all other Government Resolutions and circulars regarding new Defined Contribution Pension Scheme (DCP Scheme) would not be applicable to the Petitioners.

4. Learned counsel for the Petitioners submits that the Petitioners were initially appointed as Shikshan Sevak on the post of part time teacher and thereafter were appointed on the post of regular full time Assistant Teacher. Approvals were granted by the authority. It is submitted that 50% of the six years service as part time service rendered by Petitioners shall be considered as i.e. three years alongwith the services rendered as full time Assistant Teacher for qualifying service and payment of pension under Old Pension Scheme. Learned counsel for the Petitioners submits that in accordance with the Government Resolution dated 19th July 2011, the Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules 1984 and General Provident Fund Scheme is applicable to teachers who have

rendered service of Shikshan Sevak prior to 1st November 2005.

5. Our attention is invited to the Full Bench decision of this Court in the case of *Deshmukh Dilipkumar Bhagwan and others V/s. State of Maharashtra through its Chief Secretary General Administration Department and others in Writ Petition No.8387 of 2013 dated 30th April 2019*, wherein this Court had considered the issue. The Full Bench of this Court has addressed this issue at paragraph No.37, which is quoted as under:-

“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 college 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 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.

Question No.3:

Similar will be the situation of 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.”

6. In the light of the aforesaid decision, this Court in Writ Petition No.2538 of 2021, following the said full Bench decision has in para No.20 observed as under:-

“20. Thus it is clear that employees such as Petitioner No.1 who were appointed prior to 1st November, 2005 in aided educational institution receiving 100% grant-in-aid as on 1st November, 2005 would be governed by the old pension scheme. This has further been made clear by the Division bench in Deshmukh Dilipkumar Bhagwan (Supra) along with companion matters, decision dated 26th August, 2019 (Coram Pradeep Nandrajog, CJ and Smt. Bharati Dangre, J.). It has been held therein that employees of schools, including colleges of education working against fully aided, i.e. 100% aided post prior to 1st November, 2005, irrespective of the nature of the initial appointment would be governed by the old pension scheme. We do not find any merit in submission of the learned AGP that the employee must not only be appointed prior to 1st November, 2005 but the post against which the employee is appointed must also be a full time fully aided post for making the old pension scheme applicable to such

employee. The impugned order has only referred to a Government Order which it alleges provides for such requirement. However, the said Government Order has neither been produced nor any particulars of the same has been given. Further the Government Order relied upon in the impugned order cannot be contrary to what has been laid down in the decisions of this Court including the decision of the Full Bench in Deshmukh Dilipkumar Bhagwan (Supra).”

7. In the facts of the present case also Petitioners having requisite qualification for the appointment to the post of Assistant Teacher were appointed as such prior to 1st November 2005. The school is also receiving 100% grant-in-aid prior to the said date. The Petitioners continuously worked on the part time post since the initial appointments and later Petitioners were made permanent Assistant Teachers. These facts are not disputed by the learned AGP appearing on behalf of the Respondents. It is submitted that, all schools in which Petitioners are working are receiving 100% grant-in-aid and the MCPS Rules, 1982 and MCSCP Rules, 1984 and existing General Provident Fund Scheme are also applicable to them. The Petitioners are governed by the Maharashtra Employees of Private School (Condition of Service) Regulations Act, 1977 and Rules 1981.

8. The facts of this case and the issues involved herein are similar to the decision of the Full Bench as well as the decision of this Court in Writ Petition No.2538 of 2021.

9. We have therefore, no hesitation in holding that Petitioners are entitled to the benefits of the Pension Scheme prior to 1st November 2005 in accordance with the Maharashtra Civil Services (Pension) Rules, 1982, the Maharashtra Civil Services (Commutation of Pension) Rules 1984 and also eligible for all consequential service benefits under the Old Pension Scheme.

10. It is clarified that if the Respondents have applied the DCP Scheme, in the case of the Petitioners, then the Respondent No.1 is directed to refund the amounts, if any, so deducted, to the Petitioners within a period of four weeks from the date of uploading of this Order.

11. Rule is made absolute in the above terms. Writ Petitions are accordingly disposed. No order as to costs.

(ABHAY AHUJA, J.)

(R. D. DHANUKA, J.)