

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

WRIT PETITION NO. 12358 OF 2017

Kalidas Shivram Dhanwate	Petitioner
v/s.	
The State of Maharashtra and ors.	 Respondents

Mr. Ashok B. Tajane for the Petitioner.
Ms. S.S. Bhende, AGP for Respondent Nos.1 to 6.
Mr. Vijay Killedar for Respondent Nos.7 and 8.
Ms. Rekha Musale for Respondent Nos.9 and 10.

**CORAM: S.C. GUPTE &
SURENDRA P. TAVADE, JJ.**

DATED : 11 FEBRUARY, 2021.

P. C. :-

. The subject matter of the controversy in the present petition concerns applicability of the Old Pension Scheme i.e., the Pension and Gratuity Scheme, to the Petitioner who was appointed prior to the cut off date of 01/11/2005, but the School, in which he was working, started receiving 100% grant-in-aid after 01/11/2005. On that basis, his application for pension was rejected and not forwarded by the Superintendent of Pay and Provident Fund Unit (Primary), Zilla Parishad, Solapur to the Auditor General, Mumbai. This order is challenged by the petitioner both on merits and also on the ground of want of authority on the part of the Superintendent to reject the petitioner's pension proposal.

2. The very issue, namely, whether employees who were appointed prior to 01/11/2005 in aided recognized primary, secondary and higher secondary schools as well as colleges, which were receiving less than 100% grant-in-aid as on 01/11/2005, are entitled to the benefit of Old Pension Scheme under the Pension and Commutation of Pension Rules or whether they would be governed by the New Pension Scheme under the GR of 2005, was referred by a Division Bench of this Court to a Full Bench for decision. The Full Bench, in its judgment delivered in the case of ***Deshmukh D. Bhagwan v/s. State of Maharashtra 2019(4) Bom.C.R. 460***, decided the issue holding that such employees would be governed by the DCP scheme i.e., the New Pension Scheme effective from 01/11/2005 and not the Old Scheme, i.e., the Pension and Gratuity Scheme. Various petitions filed after the Full Bench delivered its judgment, have accordingly been disposed of directing the authorities to observe the decision of the Full Bench. The Division Bench of our Court deciding those matters has observed that the order passed by the Court whilst disposing of the petitions would automatically stand modified depending upon the view taken by the Supreme Court.

3. We, accordingly, dispose of this petition in the same terms. It is accordingly ordered that the writ petition is disposed of by holding

that the petitioner was not entitled to participate in the Old Pension Scheme but is to be governed by the New Pension Scheme, i.e. the DCP Scheme, for the reasons stated by the Full Bench of this Court in ***Deshmukh D. Bhagwan*** (supra). We, however, make it clear that in the event the Supreme Court decides the issue in favour of the SLP petitioners, the Superintendent of Pay and Provident Fund Unit (Primary), Zilla Parishad, Solapur shall forward the proposal of the present petitioner to the Auditor General, Mumbai for processing it further.

Preeti H.
Jayani

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(SURENDRA P. TAVADE, J.)

(S.C. GUPTE, J.)