

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

WRIT PETITION NO.5463 OF 2021

Prabha d/o Dattatraya Vadane,
Age : 59 Years, Occu.: Retired servant,
R/o.: Manik Nagar, Manik Chowk,
Osmanabad, Dist. Osmanabad. PETITIONER

Versus

1. The State of Maharashtra,
Through the Chief Secretary
General Administration Dept.
Maharashtra State,
Mantralaya, Mumbai-32
2. The State of Maharashtra,
Through the Secretary
Maharashtra State
Mantralaya, Mumbai-32
3. The Secretary,
Government of Maharashtra,
School Education & Sports Department,
Mantralaya, Mumbai-32
4. The Director of Education,
Secondary and Higher Secondary,
Pune
5. The Divisional Deputy Director of
Education, Latur
6. The Senior Accounts officer,
PR-8, Office of Accountant General-2,
Maharashtra, Pension Branch office,

Old Building, Nagpur

7. The Education officer (Secondary)
Zilla Parishad, Osmanabad
8. The Principal,
Shripatrao Bhosale Junior College,
Osmanabad

..... RESPONDENTS

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Advocate for Petitioner : Mr. N. L. Jadhav
AGP for Respondent Nos.1 to 7: Ms. V. N. Patil Jadhav

....

**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 23 JUNE 2022.

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ORAL JUDGMENT : (PER : C. V. BHADANG, J.) :

Rule. Rule made returnable forthwith. Learned AGP for the respondents-State waives service. Heard finally by consent of the parties.

2. By this petition, the petitioner is challenging the order dated 7 January 2021 passed by the respondent Senior Accounts Officer, AG-Nagpur, thereby cancelling the pensionary benefits sanctioned / granted to the petitioner, on the ground that the continuous appointment of the

petitioner can be considered from 10 June 2007 i.e. after the introduction of the new Defined Contributory Pension Scheme (DCPS).

3. We have heard the learned counsel for the parties. Perused record.

4. The petitioner was appointed as a part time Junior Lecturer in the respondent college on 1 June 1998. On 10 June 2005, she was appointed permanently on the post of Junior Lecturer on probation. The petitioner eventually retired from service on 31 July 2019. The respondent management sent a proposal for her pensionary benefits, which were sanctioned on 4 October 2019. However, subsequently by the impugned order / communication, the approval granted to the pensionary benefits, has been cancelled for the reason as aforesaid.

5. The learned counsel for the petitioner placing reliance on the decision of the Full Bench of this Court in *Deshmukh Dilipkumar Bhagwan and others vs. The State of Maharashtra and others, 2019 (3) Mh.L.J. 903* and decision of the Division Bench of this Court in *Shri Purushottam Harishchandra Shirsekar and another vs. The State of Maharashtra, in Writ Petition No. 2528 of 2021* decided on 25 August 2021 has submitted that once the appointment of the petitioner was

prior to the cut off date i.e. 1 November 2005, she was entitled to the pensionary benefits as per the old pension scheme, as the college was receiving 100% grant in aid. The learned counsel has taken to the conclusions drawn by the Full Bench in order to submit that the respondent authorities were not justified in cancelling the pensionary benefits already sanctioned that too without affording any opportunity to the petitioner. The learned counsel has then referred to the observations of the Division Bench of this Court in para 20 of the judgment in *Purushottam Harishchandra Shirsekar* (supra) in order to submit, that this court, has refused to accept the contention on behalf of the State that in order to be entitled to old pension scheme, the post on which the employee is appointed must be a full time, fully aided post.

6. The learned AGP placing reliance on the decision of this court in *Homraj Hansaram Bisen and others vs. State of Maharashtra and others*, 2013 (2) Mh.L.J. 401, has submitted that apart from the requirement of the employee being appointed prior to 1 November 2005 it has also to be shown that the employee was working on a post which was receiving 100% grant in aid. In other words, it is submitted that the test for the concerned employee to be entitled to the pensionary benefits is that,

prior to the cut off date the employee was receiving 100% salary from the public exchequer. It is submitted that the concerned division where the petitioner was working, was brought on 100% grant in aid from 6 March 2007.

7. We have given our anxious consideration to the rival contentions and submissions made. It can be seen from the record that the petitioner was appointed as a Junior Lecturer on a part time basis on 1 June 1998 and she was appointed on the said post on probation on 10 June 2005, which is prior to the cut off date of 1 November 2005.

8. The Full Bench of this Court in ***Deshmukh Dilipkumar Bhagwan*** (supra) has answered question Nos.1 to 3 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 colleges 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 1-11-2005 in aided recognized primary, secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1-11-2005 would be governed by the DCP scheme.

Question No.3 :

Similar will be the situation of the employees who were appointed prior to 1-11-2005 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 1-11-2005 but which became 100% aided before 29-11-2010 would also be governed by the DCP scheme".

9. The Division bench of this Court in the case of ***Purushottam Harishchandra Shirsekar*** (supra) has held thus in para 20 of the judgment :

"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 school, 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)*.

(Emphasis supplied)

10. Although the impugned order, is now sought to be supported on the basis of the contention that the concerned division / post where the petitioner was working, was not receiving 100% grant in aid, that is not the reason set out in the impugned communication / order by the respondent authorities. We also find that initially after approving the pensionary benefits, the same came to be cancelled without any notice to the petitioner. In that view of the matter, we find that it would be appropriate, if the respondent No.6 reconsiders the matter in the light of the applicable provisions and the decision of the Full bench of this Court in *Deshmukh Dilipkumar Bhagwan (supra)*.

11. In the result, the petition is partly allowed. The impugned order / communication is hereby set aside. Respondent No.6 shall reconsider the matter of the authorization of pensionary benefits to the petitioner on its own merits and in accordance with the applicable provisions and in view of the decision of the Full Bench in *Deshmukh Dilipkumar*

Bhagwan (supra), as early as possible and preferably within a period of three months from today.

The proposal shall however not be rejected for the reason that the petitioner's employment was on a part time basis.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.

VS Maind/-