

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8625 OF 2021

TARA RAGHUNATH BADGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Narwade Narayan B.
AGP for Respondents 1 to 3 : Shri S.R. Yadav
Advocate for Respondent 4 : Shri S.B. Solanke

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CORAM : RAVINDRA V. GHUGE
&
S.G. DIGE, JJ.

DATE :- 07th April, 2022

Per Court :-

1. By this Writ Petition, the petitioner has put forth
prayer clauses B and C, which read as under :-

“B) *By issuing the appropriate writ or order in the like nature, the letter/ order dated 29.06.2021 issued by the Ld. Education Officer (Secondary) Zilla Parishad, Beed, bearing Outward No.OT. No.MV-5/KV/ 463/21, No.01295, whereby the family pension proposal of the petitioner is came to be rejected may kindly be quashed and set aside and respondent authorities may kindly be directed to grant the family pension to the present petitioner.*

C) *Pending hearing and final disposal of this Writ Petition, the respondent No.4 Head Master, Rodeshwar Vidyalaya, Dongargan, Taluka Ashti, Dist. Beed, may kindly be directed to re-*

forward the family pension proposal towards the respondent No.2 Education Officer (Secondary), Zilla Parishad, Beed for fresh consideration.”

2. We have considered the strenuous submissions of the learned advocates for the respective sides. We have carefully gone into, practically, each and every document placed on record, to find out whether, any injustice is caused to the petitioner.

3. The petitioner prays for benefit of the old family pension scheme. The Education Officer has held, by the impugned order dated 29.06.2021, that she is not entitled for the old pension scheme as the school in which she was teaching was not 100% grant-in-aid as on 01.11.2005. The school became 100% grant-in-aid in the year 2008-2009.

4. The Education Officer has tendered the affidavit in reply dated 08.10.2021 indicating that if a teacher is appointed to a school having 100% grant-in-aid prior to 01.11.2005, such teacher is eligible for the old family pension scheme. If the school receives 100% grant-in-aid after 01.11.2005, such teacher would be entitled for the Defined Contributory Pension Scheme (DCPS) and not the old pension scheme.

5. The learned AGP points out the judgment delivered by the learned Full Bench of this Court in the matter of

Deshmukh Dilipkumar Bhagwan vs. The State of Maharashtra and others, 2019 (3) Mh.L.J. 903, wherein, the learned Full Bench dealt with the questions referred to it as set out in paragraph 16, which read as under :-

- “16. The Court, therefore, referred the following questions for consideration of the Larger Bench.
1. *Whether only those schools and colleges of education which are receiving 100% aid can be termed as the aided institutions or whether schools and colleges of education receiving less than 100% aid can also be termed as aided institution?*
 2. *Whether the employees who were appointed prior to 1st November 2005 in the aided recognized primary, secondary and higher secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1st November 2005 are entitled to the benefice of Old Pension Scheme under the Pension Rules and the Commutation of Pension Rules or whether they will be governed by the New Pension Scheme under the GR of 2005?*
 3. *Whether the employees who were appointed prior to 1st November 2005 in the aided recognized 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 the date on which the GR of 2010 came into force, are entitled to the benefit of Old Pension Scheme under the Pension Rules and the Commutation of Pension Rules or whether they will be governed by the New Pension Scheme under the GR of 2005?*
6. After considering the material available and the law applicable, the learned Full Bench answered the issues in paragraph 37, which read 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 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.”

7. We find from the record before us that the petitioner initially joined Indira Gandhi Kanya Vidyalaya, Dhamangaon, Taluka Ashti, District Beed, when the school did not have 100% grant-in-aid. It achieved the said status in 1995-1996. She was later on transferred to Jai Bhavani Vidyalaya, Jalgaon, Tq.Ashti, District Beed, in 1998. However, she was terminated by the Management and upon her reinstatement in service, the Management absorbed her in the new divisions in Jai Bhavani Vidyalaya, Jalgaon when the school did not have 100% grant-in-

aid. In 2006-2007, it received 60% grant-in-aid at the 10th standard level as well as 5th standard level. In 2007-2008, it progressed to 80% grant-in-aid. In 2008-2009, it achieved 100% grant-in-aid. This is visible from the order issued by the Education Officer (Secondary), Zilla Parishad, Beed, dated 01.01.2009.

8. What intrigues us is that the petitioner was reinstated in service in such divisions, which did not have 100% grant-in-aid. The petitioner has averred in paragraph 5 that she was compelled to work on the divisions which were without grant-in-aid. Pursuant to her termination, the litigation journey was upto the High Court. She had preferred Writ Petition No.4929/2004 seeking 100% back wages and reinstatement as Headmistress of the Indira Gandhi Kanya Vidyalaya, Dhamangaon. The said petition is pending along with Writ Petition No.4346/2003 filed by the Management for challenging the judgment dated 30.08.2003 delivered by the School Tribunal.

9. Considering the above and in the light of the law laid down by the learned Full Bench in ***Deshmukh Dilipkumar (supra)***, the petitioner, who has retired from Rodeshwar Vidyalaya, Dongargan, Taluka Ashti, District Beed, would not be entitled for the old pension scheme.

10. In view of the above, this Writ Petition is disposed

off. However, in the interest of justice, we deem it appropriate to record that if the petitioner succeeds in Writ Petition Nos.4929/2003 and 4346/2003 pending before the learned Single Judge Bench of this Court and if it is concluded that she deserved reinstatement as Headmistress of Indira Gandhi Kanya Vidyalaya, Dhamangaon, which was 100% grant-in-aid school prior to 01.11.2005 or if she is held to be entitled for reinstatement in the said school even as an Assistant Teacher on which post she was working at the relevant time, she may then be eligible for the old family pension scheme. We leave this issue open.

kps (S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)