

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

WRIT PETITION NO.12621 OF 2022

**TIRUPATI BABURAO TIDKE AND OTHERS
VERSUS
STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHERS**

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Advocate for the Petitioners : Shri Natu Sharad V.
AGP for Respondents 1 to 3/State : Ms.Rashmi P. Gaur

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**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 15th December, 2022

Per Court :-

1. The petitioners pray for grant of old pension scheme. It is submitted that after the oral interviews to the post of Clerks were conducted by the Nanded Waghala City Municipal Corporation, the meeting of the competent committee took place on 12.01.2006 and the appointment orders were issued on 06.05.2006. It is, therefore, strenuously contended that the Government Resolution dated 31.10.2005 would not apply to the cases of the petitioners and they would be entitled to the old pension scheme. Reliance is placed upon the Government Resolution dated 25.02.2019, which was issued by the Revenue and Forest Department, State of Maharashtra, with reference to

some of the employees, who were appointed on 16.01.2006 and 18.09.2006. It is, therefore, canvassed that the Government does have a discretion to be exercised in appropriate cases so as to grant the benefits of old pension scheme to the employees.

2. Having considered the submissions of the learned advocates for the respective sides, we have perused the Government Resolution dated 25.02.2019, which is in connection with the office of the District Collector. What emerges from the narration in the Government Resolution is that incharge clerks (Prati Lipiks) were working in the office of the District Collectors all over the State much prior to 01.11.2005 and all these incharge clerks were doing their work without wages. By orders issued by various District Collectors after 01.11.2005, these incharge clerks were absorbed in employment from the dates they were working. We, therefore, find that the case reflected in the Government Resolution dated 25.02.2019 is with regard to those incharge clerks, who were already taken in employment in the office of the District Collectors. Though the orders were issued in January, 2006, they were absorbed in employment from the dates on which they had joined, which was prior to 31.10.2005. As such, this Government Resolution would not assist the case of the petitioners that the State Government has a discretion to exercise.

3. Insofar as the grievance of the petitioners that the interviews were conducted on 05.06.2004 after the process was initiated in 2003, the appointments occurred only on 08.05.2006. The petitioners cannot be blamed for the same. We are unable to accept this submission for the reason that though the selection process may have commenced prior to 31.10.2005, when the appointment orders have been issued after 31.10.2005, the Government Resolution dated 31.10.2005 making the Defined Contributory Pension Scheme applicable to such appointees, would be the order of day. It is not the case of the petitioners that they were selected and appointed prior to 31.10.2005 and in fortuitous circumstances, they joined after 31.10.2005.

4. It is further canvassed that there was a recruitment drive for the backward classes in view of a major backlog. Written examinations were held on 14.12.2003. Out of 2977 backward class candidates, 469 candidates cleared the written test and that list was published on 27.02.2004 on the notice board. The interviews were, however, held in between 16.01.2006 and 18.01.2006 with regard to the list of 469 candidates, who had passed the written test. We are of the view that when the selection process mandated the written test and interviews, the results being declared of the written test, would not presuppose that the candidates, who passed the written test,

stood selected and appointed. Without their oral interviews, the final merit list was not to be published. After the interviews were held between 16.01.2006 to 18.01.2006, the select list was published. Naturally, the selection process concluded in 2006, which was followed by the issuance of appointment orders.

5. In view of the above, we are unable to entertain this petition and the same is dismissed.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)