

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9229 OF 2021

AAS SHIKSHAK SHIKSHAKETTAR KARMACHARI SANGHATHNA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. S.B. Solanke, Advocate for the petitioners.
Mr. P.S. Patil, A.G.P. for respondent Nos. 1 to 3.
Mr. V.C. Patil, Advocate holding for
Mr. U.B. Bondar, Advocate for respondent No. 5.
Mr. P.D. Suryawanshi, Advocate for respondent No. 6.
Mr. R.D. Salve, Advocate for respondent No. 8.
Mr. V.V. Gujar, Advocate for respondent No. 10.
Mr. V.S. Panpatte, Advocate for respondent No. 11.
Mr. A.N. Sabnis, Advocate for respondent No. 12.

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

DATE : **21 JUNE 2022**

ORDER (Per Sandipkumar C. More, J.) :

1. In this petition the petitioners have claimed the reliefs
as per following prayers :-

“(b) This Hon’ble Court may be pleased to issue an appropriate Writ thereby holding that, the petitioners are recruited prior to 1.11.2005 and therefore, they are entitled to get the benefits of old pension scheme i.e. The Maharashtra Civil Service (Pension) Rules 1982 and Maharashtra Civil Services (Commutation of Pension) Rules,

1984 and General Provident Fund Scheme (GPF) and for that purpose issue necessary orders;

- (c) This Hon'ble Court be pleased to issue a Writ of Mandamus, or any other writ, order or directions in the nature of Mandamus thereby directing the Respondent Authorities to extend the benefits to the Petitioners under The Maharashtra Civil Service (Pension) Rules 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and General Provident Fund Scheme (GPF) and further direct them to make contribution towards the said Pension Scheme and General Provident Fund Scheme;*
- (d) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other writ, order or direction in the like nature, thereby directing the Respondent authorities not to enforce and apply the New Pension Scheme i.e. Defined Contribution Pension Scheme to the Petitioners in any manner and/or by any method;*
- (e) Pending the hearing and final disposal of the present Petition, this Hon'ble Court may be pleased to direct the Respondents to extend the benefits of The Maharashtra Civil Service (Pension) Rules 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and existing General Provident Fund Scheme (GPF) to the Petitioners with all benefits payable thereunder;"*

2. A limited issue which is before us, is whether the petitioners are entitled for the benefit of old pension scheme i.e. the Maharashtra Civil Services (Pension) Rules, 1982 and the

Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the General Provident Fund Scheme (GPF). The petitioners have claimed this relief mainly on the ground that their recruitment process was prior to the cut-off date i.e. 01.11.2005.

3. The undisputed facts are as follows :-

(a) An advertisement was published by respondent No.4 Zilla Parishad, Nanded for filling up the posts of Shikshan Sevak on 01.09.2005.

(b) Thereafter on 10.10.2005 a list of selected candidates was published.

(c) Though the date of interviews is not mentioned in the petition, but by way of additional documents sought to be produced under Civil Application No. 9054 of 2022, it has come on record that in the instant matter the interviews were held on 21.11.2005 and 22.11.2005.

(b) The petitioners received their respective appointment orders on 07.12.2005.

4. The petitioners contend that since they were selected for the post of Shikshan Sevak in October 2005 i.e. ahead of the cut-off date, they are eligible for old pension scheme.

5. The learned Counsel for the petitioners also referred Rule 2 (2) of the Maharashtra Civil Services (Commutation of Pension)(Amendment) Rules, 2005 which mandates that “these rules shall not apply to the Government servants who are recruited on or after 01.11.2005”. The learned Counsel for the petitioners also relied upon office memorandum issued by the Government of India, Department of Pension and Pensioner’s Welfare (PW), wherein it is advised that the benefit of pension under the Central Civil Services (Pension) Rules, 1972, cannot be denied to the Government servants since the result of recruitment in form of published select list was declared before 01.01.2004. According to him, the same analogy needs to be applied in case of the petitioners when they are selected before cut-off date of 01.11.2005.

6. In other similar matter bearing Writ Petition No. 12023 of 2021 (Coram : Ravindra V. Ghuge and Sandipkumar C. More, JJ.), this Court has made the following observations.

“7. The learned advocate for the petitioners relies upon *Vijay Kumar Mishra and others vs. High Court of Judicature at Patna and others, AIR 2016 SC 3698*, more specifically paragraph No.24, which reads as under :-

“24. In my view, there lies a subtle distinction between the word “selection” and “appointment” in service jurisprudence. (See :Prafulla Kumar Swain v. Prakash Chandra Misra and others, (1993) Supp. (3) SCC 181). When the framers of the Constitution have used the word “appointed” in Clause (2) of Article 233 for determining the eligibility of a person with reference to his service then it is not possible to read the word “selection” or “recruitment” in its place. In other words, the word “appointed” cannot be read to include the word “selection”, “recruitment” or “recruitment process”.

8. In ***Prafulla Kumar Swain vs. Prakash Chandra Misra and others, (1993) Supp. (3) SCC 181 : (1993) 1 LLJ 749 SC***, the Hon’ble Apex Court, while dealing with the Orissa Forest Service Class II Recruitment Rules, 1959, has held that recruitment is merely an initial process which may eventually lead to appointment. Recruitment in itself does not amount to appointment.

9. We find from the record that the interviews of the eligible candidates were held on 21.11.2005 and 22.11.2005. This connotes that the recruitment process was still incomplete and neither of the petitioners could claim to have been recruited. The results were declared on 21.12.2005 and the list of 159 candidates was published indicating that they have been selected. They were issued with appointment orders on 07.12.2005.

10. The learned AGP and the learned counsel for the Zilla Parishad, therefore, contend that the recruitment process was not completed and in fact, the most important aspect of the

recruitment process took place after 01.11.2005, in the form of interviewing the eligible candidates on 21.11.2005 and 22.11.2005.

11. The learned AGP places reliance upon the definition clause under Rule 9(12) of the Pension Rules, which indicates that “date of first appointment means the date the Government servant assumes the duties of his first post in Government service, or, if this be earlier, the date of his assumption of any duty which is treated, as service counting for pension”.

12. In ***Satyesh Kumar Mishra and others vs. State of UP and others, Writ Petition No.3150/2010*** decided on 01.06.2016, the Lucknow Bench of the Allahabad High Court has concluded that though the advertisement may have been issued earlier, once the appointment orders are issued after the cut off date, the old pension scheme cannot be made applicable. Dealing with “recruitment”, “advertisement”, “selection” and “appointment”, it was held in paragraph 25 as under :-

“25. "Recruitment", "Advertisement", "Selection" and "Appointment" are different concepts under the service jurisprudence. "Recruitment" is the process of generating a pool of capable people to apply for employment in organization. Selection forms integral part of recruitment process, wherein from amongst eligible candidates, choice is made of person or persons capable to do the job as per the requirement. The process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. "Appointment" is made,

after selection process is over, issuance of letter in favour of selected candidates, is an offer to selected candidate to accept the office or position to which he has been selected. On acceptance of the terms and conditions of appointment, the selected candidates on joining has to be accepted as appointed, and he /she would be a new entrant and based on recruitment process, petitioner can not claim that she be brought within the scope and ambit of old pension rules in place of new pension rules. There is no dispute to the fact that process of selection was never altered and the entire selection was undertaken in accordance with the criterion which was laid down at the time of recruitment process. Therefore, assertion of the petitioner that the applicability of New Pension Scheme would amount to change in the terms and conditions of recruitment is untenable.”

13. The learned advocate for the petitioners has laid enormous stress on ***Prafulla Kumar Swain*** (supra) in which, the distinction between recruitment and appointment has been considered by the Hon’ble Apex Court and it has been observed in paragraphs 28 and 29 as under :-

“28. At this stage, we will proceed to decide as to the meaning and effect of the words "recruitment" and "appointment". The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word "appointment" means an actual act of

posting a person to a particular office.”

“29. Recruitment is just an initial process. That may lead to eventual appointment in the service. But, that cannot tantamount to an appointment. No doubt, Rule 5 talks of recruitment to Class II Service. We consider these are two sources of recruitment. Nowhere in the Recruitment Rules of 1959 it is specified that the services of a direct recruit under the Government shall be reckoned from the date of selection in the competitive examination. On the contrary, Regulation 12(c) is very clear that the period of training is not to be reckoned as Government service. It is admitted before us that after the successful completion of training when the appointment order is issued the direct recruits are put on probation. Similar is in the case of the promotees. Both of them undergo probation. Therefore, in the light of these provisions it is not possible for us to accept the contention advanced on behalf of the direct recruits that their seniority must be reckoned from the date of their recruitment.”

14. It is thus, clear that recruitment is just an initial process that MAY lead to eventual appointment in service. But, that cannot tantamount to an appointment. In the notification introducing the Amendment Rules, 2005, Rule 2(2) has been introduced by way of an amendment indicating that the Commutation of Pension Rules, 1984 would not apply to government servants who are recruited on or after 01.11.2005. The term “recruitment” has nowhere been defined in the Pension Rules applicable to the government employees.

15. There is no dispute or contra argument that Marathi language is the official language insofar as the Maharashtra State is concerned. The disentitlement clause from being eligible for the old pension scheme, in the Marathi version is in the Government Resolution dated 31.10.2005, which is at page 385 of the petition paper book. Clause 2(A) of this Government Resolution reads thus:-

“२. (अ) शासनाने आता असा निर्णय घेतला आहे की, शासन सेवेत १ नोव्हेंबर २००५ रोजी किंवा त्यानंतर नियुक्त होणा—या कर्मचा—यांसाठी, सध्या अस्तित्वात असलेल्या निवृत्तीवेतन योजनेऐवजी, केंद्र शासनाच्या धर्तीवर, नवीन “परिभाषित अंशदान निवृत्तीवेतन योजना” " (Defined Contribution Pension Scheme), खाली नमुद केल्यानुसार लागू करण्यात येईल”

16. The Marathi word “नियुक्त” appearing in the Government Resolution dated 31.10.2005 means appointed. The Marathi word “भरती” which includes the recruitment process, which is the process undertaken for selection and appointment of candidates. We are, therefore, of the view that the Marathi version indicating the word “appointment” would lead to the interpretation of the disentitlement clause as being appointed on or after 01.11.2005. Be that as it may, even if the contention of the learned advocate for the petitioners is accepted, the recruitment process ended on 19.12.2005, which is much after the cut off date 01.11.2005”.

7. In the light of the aforesaid observation, it has been made clear that the term “recruitment” and terms “recruitment and appointment” have different meanings and in Marathi version of Government Resolution dated 31.10.2005, it is made clear as to from which date the new pension Defined Contribution Pension

Scheme would come into force. In the instant matter, though the select list of the petitioners was published on 10.10.2005, but their interviews were conducted on 21.11.2005 and 22.11.2005 i.e. after the cut-off date of 01.11.2005. Moreover, the appointment letters of all these petitioners are also of 07.12.2005 i.e. much after the cut-off date. In view of the peculiar facts of this case and the aforesaid observations of this Court in the earlier petition, it is evident that the petitioners are not entitled for the benefit of old pension scheme. The petition, therefore, fails and the same is accordingly dismissed. On dismissal of the main petition, the pending Civil Application also stands disposed of.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.