

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

WRIT PETITION NO.9542 OF 2021

Anil Popat Chobhe
Age : 49 years, Occu : Service,
R/o. Central Bank Colony, Sangamner Road,
Shrirampur, Dist. Ahmednagar .. Petitioner

Versus

1. The State of Maharashtra
through Secretary,
Department of School Education,
Mantralaya, Mumbai.
2. Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. Superintendent,
Pay & PF Unit (Secondary),
Ahmednagar
4. Hind Seva Mandal,
Through its Secretary,
Borkar Nagar, Sarda College Complex,
Ahmednagar
5. K.J. Somaiyya High School,
Through Head Master,
Shrirampur, Dist. Ahmednagar .. Respondents

...

AND

WRIT PETITION NO.9566 OF 2021

Santoshsingh Tulshiramsingh Solay
Age : 46 years, Occu : Service,
R/o. Laxmiaai Road, Morage Vasti,
Shrirampur .. Petitioner

Versus

1. The State of Maharashtra
through Secretary,
Department of School Education,
Mantralaya, Mumbai.
2. Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. Superintendent,
Pay & PF Unit (Secondary),
Ahmednagar
4. Hind Seva Mandal,
Through its Secretary,
Borkar Nagar, Sarda College Complex,
Ahmednagar
5. K.J. Somaiyya High School,
Through Head Master,
Shrirampur, Dist. Ahmednagar

.. Respondents

...

AND

WRIT PETITION NO.9583 OF 2021

Anant Laxman Joshi
Age : 49 years, Occu : Service,
R/o. K.J. Somaiya High School,
Jijamata Chowk, Shrirampur,
Dist. Ahmednagar

.. Petitioner

Versus

1. The State of Maharashtra
through Secretary,
Department of School Education,
Mantralaya, Mumbai.
2. Education Officer (Secondary),
Zilla Parishad, Ahmednagar.

3. Superintendent,
Pay & PF Unit (Secondary),
Ahmednagar
4. Hind Seva Mandal,
Through its Secretary,
Borkar Nagar, Sarda College Complex,
Ahmednagar
5. K.J. Somaiyya High School,
Through Head Master,
Shrirampur, Dist. Ahmednagar .. Respondents

...
AND

WRIT PETITION NO.9584 OF 2021

Dnyaneshwar Namdeo Lakade
Age : 45 years, Occu : Service,
R/o. Wangi, Tal. Shrirampur,
Dist. Ahmednagar .. Petitioner

Versus

1. The State of Maharashtra
through Secretary,
Department of School Education,
Mantralaya, Mumbai.
2. Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. Superintendent,
Pay & PF Unit (Secondary),
Ahmednagar
4. Hind Seva Mandal,
Through its Secretary,
Borkar Nagar, Sarda College Complex,
Ahmednagar
5. S.J. Patni High School,

Through Head Master,
Shrirampur, Dist. Ahmednagar

.. Respondents

...

AND

WRIT PETITION NO.7002 OF 2022

Smt. Asha Ravindra Jagtap
Age : 58 years, Occu : Nil (retired),
R/o.1-2, Manjiri Apartment, Shreya Nagar,
Opposite Panat Hospital, New Osmanpura,
Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai
2. The Deputy Director of Education,
Aurangabad Region, Aurangabad
3. The Superintendent,
Pay & Provident Fund Unit
(Higher Secondary Education),
Chelipura, Aurangabad
4. Marathwada Shikshan Prasarak Mandal,
Deogiri College Campus, Station Road,
Aurangabad.
5. The Principal,
Deogiri College, Station Road,
Aurangabad

.. Respondents

...

Mr. Sharad V. Natu, Advocate for the petitioners in WP Nos.9542 of 2021, 9566 of 2021, 9583 of 2021 & 9584 of 2021

Mr. Chandrakant K. Shinde, Advocate for the petitioner in WP No.7002 of 2022

Mr. A.S. Shinde, AGP for Respondent-State in WP No.9542 of 2021

Smt. Vaishali N. Patil – Jadhav, AGP for Respondent-State in WP No.9566 of 2021

Smt. R.P. Gour, AGP for Respondent-State in WP No.9583 of 2021

Smt. M.A. Deshpande, AGP for Respondent-State in WP No.9584 of 2021 and in WP No.7002 of 2022

Mr. B.B. Bhise, advocate for respondent nos.4 & 5 in WP No.7002 of 2022

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 18-08-2022
PRONOUNCED ON : 24-08-2022**

JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

. Heard. Rule. Rule is made returnable forthwith.
Mr. A.S. Shinde, Mrs. Vaishali N. Patil – Jadhav, Mrs. R.P. Gour, Mrs. M.A. Deshpande, learned Assistant / Additional Government Pleaders waive service for the respondent - State. At the joint request of learned advocate for the petitioners and the learned AGPs, the matters are heard finally at the admission stage.

2. The common issue that arises for our consideration in these five petitions is, whether the teachers appointed in aided schools on part-time basis prior to 01.11.2005 and approved as full time teachers after 01.11.2005 are entitled to be governed by the pension scheme under the Maharashtra Civil Services (Pension)

Rules, 1982 or whether they would be governed by the Defined Contributory Pension Scheme introduced by the State Government vide the Government Resolution dated 31.10.2005 ?

3. At the outset, we must indicate that this issue is no more *res integra* and has been covered by numerous decisions of this Court. Ordinarily, we would have followed those decisions instead of rendering this lengthy judgment. However, in view of extensive submissions made before us by the learned Additional / Assistant Government Pleaders urging us to take a view different than the one taken in those decisions, we have embarked upon the exercise of reconsidering the issue.

4. Though the facts of each case are not really relevant, it would be necessary to state few particulars about the service of each petitioner, which are tabulated herein below:

WP No.	Name	Date of Appointment as	Date of Appointment as Full-time Assistant teacher	Date of Approval
9542/21	Anil Popat Chobhe	10/06/1999 Part-time Assistant teacher	13/09/2010	21/12/2010
9566/21	Santoshsing Tulshiramsing Solay	10/06/2005 Part-time Shikshan Sevak	31/08/2010	22/10/2010
9583/21	Anant Laxman Joshi	10/06/1999 Part-time Assistant teacher	13/09/2010	21/12/2010
9584/21	Dnyaneshwar Namdeo Lakde	10/06/2005 Part-time Shikshan Sevak	30/10/2014	16/03/2020

5. In Writ Petition No.7002 of 2022 the petitioner therein was initially appointed as a part-time trained graduate teacher and her brief service particulars are as under:

WP No.	Name	Date of appointment as	Date of appointment	Date of appointment on full time basis	Date of approval
7002 of 2022	Asha Ravindra Jagtap	Part-time teacher in mathematics at Deogiri Junior College, Aurangabad.	12-07-1995	15-06-2010 (as teacher in mathematics in Deogiri Junior College, Aurangabad)	05.03.2011 w.e.f. 15.06.2010

6. The Government of Maharashtra introduced Defined Contributory Pension Scheme by issuance of Government Resolution dated 31.10.2005, which is applicable to employees appointed on or after 01.11.2005. Under the scheme, employee is required to contribute prescribed percentage of salary on monthly basis and the government also contributes the prescribed percentage towards pension fund. Pension and other benefits are to be paid through the pension fund so generated and invested. In respect of employees appointed on or before 31.10.2005 pension scheme as envisaged under the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as the 'Rules of 1982') is applicable. Thus, the date of entry into service determines applicability of particular pension scheme.

7. As can be seen from the particulars of each petitioner, they entered into service prior to 01.11.2005, albeit on part-time basis. Each of them has been converted as full-time employee on or after 01.11.2005. Therefore, the issue before us is, whether to consider the date of entry on part-time basis or the date of conversion on full-time basis as the relevant date for the purpose of applicability of the particular pension scheme.

8. As pointed out earlier, the issue is no more *res integra* and has been covered by numerous judgments rendered by this Court. Rather than referring to each of them, we would make reference to the judgment in the case of **Nilesh Namdev Gurav and Others Vs. The State of Maharashtra and Others, Writ Petition No.4748 of 2019 decided on 01.10.2021**. Since this issue has been considered in detail in **Nilesh Namdev Gurav** (supra), we proceed to reproduce paragraphs 6 to 17 thereof as under:

“6. The Petitioners' case is that they have been appointed prior to 1st November 2005 to part-time posts. Almost all of the Petitioners are Teaching employees (Assistant Teachers). One of the Petitioners is a Non-Teaching employee. All Petitioners are employed in fully aided schools and thus, they have claimed that they are entitled to the old pension scheme and for the Respondents to extend the benefits of the old pension scheme to the Petitioners.

7. Mr. Kantneshwarkar, the learned Counsel appearing for the Petitioners in these Petitions has submitted that the issue arising in these Petitions have been covered in several decisions of this Court and which include the following :-

(1) Jyoti Prakash Chougule Vs. State of Maharashtra & Ors.1 (2) Shalini w/o Asaram Akkarbote Vs. The State of Maharashtra & Ors.2 (3) Smt. Darshana wd/o Adikrao Gaikwad Vs. State of Maharashtra & Ors.3 (4) Smt. Prema Narsinha Herkal Vs. State of Maharashtra & Ors.4 (5) Smt. Kalpana Jagatrao Dahiwalé Vs. The State of Maharashtra & Ors.5 (6) Smt. Vina Vinayak Upasani Vs. State of Maharashtra & Ors.6 (7) Deshmukh Dilipkumar Bhagwan & Ors. Vs. State of Maharashtra7 (8) Shri Purushottam Harishchandra Shirsekar Vs. The State of Maharashtra & Ors.8 (9) Renuka Chandrabhan Umredkar Vs. State of Maharashtra & Ors.9.

8. He has submitted that this Court has consistently held that the services of employees of education institutions is to be counted from the first date of appointment irrespective of whether it is on a part-time or full time post. Where such appointment is prior to 1st November 2005, then the old pensions scheme would be made applicable to such employee. The only additional condition imposed by the Full Bench in case of Deshmukh Dilipkumar Bhagwan (supra) is that the employees appointed prior to 1st November 2005 must be employed in aided education institutions, receiving 100% grant-in-aid prior to 1st November 2005 to be granted the old pension scheme. He has accordingly, submitted that the Petitioners in these Petitions who are employees of the educational institutions were appointed on the part-time posts in fully aided education institutions prior to 1st November 2005 and thus, following the above referred decisions, they would be entitled to the benefits of the old pension scheme.

9. The learned Counsel for the Petitioners has submitted that this position is also clear from the

Government Resolution dated 31st October 2005 under Clause 4, titled applicability of the scheme, that the new pension scheme is made applicable to employees of the educational institutions who are recruited on or after 1st November 2005 in the services of the recognized and aided educational institutions. There is no distinction made between full time and part-time employees in the services of such aided educational institutions. He has accordingly, submitted that in the present case the Petitioners' educational institutions where the Petitioners were appointed, were receiving 100% grant-in-aid prior to 1st November 2005. The Petitioners having been appointed as employees prior to 1st November 2005 in such fully aided educational institutions, they would be entitled to the benefit of the old pension scheme i.e. the scheme prevailing prior to 1st November 2005 in accordance with the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Communication of Pension) Rules, 1984 and General Provident Fund shall be made applicable to the Petitioners.

10. Learned AGP appearing for the Respondents has referred to the Affidavit in Reply filed on behalf of the Respondent No. 5 in Writ Petition No. 4748 of 2019 and the Affidavit in Reply filed on behalf of the Respondent No. 5 in Writ Petition No. 4749 of 2019, both dated 6th September 2021 as well as the Charts annexed to the said Affidavits. He has submitted that the Petitioners having been appointed prior to 1st November 2005 on part-time basis in fully aided schools would not be entitled to pensionary benefits as per the old pensionary scheme. Learned AGP has submitted that the Petitioners came to be appointed on full time posts only after 1st November 2005 and they would thus, be entitled to the revised "Defined Contribution Pension Scheme" (new pension scheme) and as per the provisions of the Government Resolution dated 29th October 2010, the relevant dates of the appointment for full time posts are to be taken into consideration.

11. Learned AGP has further submitted that as per Rule 19 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, it is made clear that full time employees in aided schools are entitled to pensionary benefits. Accordingly, those employees appointed on full time basis on fixed honorarium per month prior to 1st November 2005 and in continuous appointment and subsequently appointed in regular pay-scale are held eligible for the old pension scheme. He has relied upon the decision of the Nagpur Bench of this Court in Writ Petition No. 1574 of 2017, dated 4th January 2020 in this context. He has submitted that the Petitioners are not entitled to the old pension scheme. They are entitled to the revised DCP Scheme introduced with effect from 1st November 2005.

12. Having considered these submissions, it is to be noted that the Petitioners were appointed as employees on part-time posts in education institutions which were fully aided educational institutions i.e. receiving 100% grant-in-aid prior to 1st November 2005.

13. We are of the view that the issue arising in these Petitions is no longer *res integra*. There has been a consistent stand taken by this Court in the decisions referred to and relied upon by the learned Counsel for the Petitioners that the service of the employees of educational institutions is to be counted from the first date of appointment irrespective of whether it is on part-time or full time basis. This stand has been made clear by this Division Bench in Renuka Chandrabhan Umredkar (supra), wherein the Government Resolution dated 31st October 2005 as well as the Full Bench decision of this Court in case of Deshmukh Dilipkumar Bhagwan (supra) and prior decision of Division Bench of this Court in case of Shri Purushottam Harishchandra Shirsekar (supra) amongst other decisions were considered. This Court had upon considering the Government Resolution dated 31st October 2005 and in particular Clause 4 thereof observed that as per Government Resolution, employees recruited on or after 1st November 2005 in

the services of the recognized aided educational institutions, the new pension scheme i.e. DCP Scheme has been made applicable.

14. The Full Bench decision of this Court in the case of Deshmukh Dilipkumar Bhagwan (supra) had held that employees appointed prior to 1st November 2005 in aided educational institution and receiving 100% grant-in-aid prior to 1st November 2005 shall be governed by the old pension scheme. It was held that since employees in that matter had been appointed prior to 1st November 2005 and occupied a part time fully aided post i.e. receiving 100% grant-in-aid from the State Government, the old pension scheme would be made applicable to such employees. This decision has been followed in the subsequent decision in Shri Purushottam Harishchandra Shirsekar (supra) wherein this Division Bench held that the Petitioner had been appointed as part time Shikshan Sevak on 11th September 2001 on the post which was a sanctioned aided post in the school. The Petitioner's services were granted approval by the Education Officer and the services continued. The employee was thereafter, appointed as part time teacher and upgraded to full time teacher in the said school on 15th June 2015 which post was a sanctioned aided post. It was accordingly, held that the Petitioner would be entitled to the benefits of the old pension scheme and the relevant date of the service of the employee is to be counted from the first date of appointment irrespective of whether it is on a part-time or full time posts.

15. The Division Bench in the recent decision in Renuka Chandrabhan Umredkar (supra) after referring to the above referred decisions held that the Respondent-State could not overlook the fact that the Petitioner therein was appointed as part-time Librarian on aided post in 100% aided school and the said appointment was duly approved by the Education Officer. The Respondents-State thus, could not refuse to give benefit of 50% of services rendered by the Petitioner therein as part-time Librarian prior to 1st November 2005 for computation of pensionable

services along with the services rendered by the Petitioners on full time basis after 31st October 2005. The entitlement of the Petitioner for pension under the old pension scheme would be on the basis of initial date of appointment as part-time Librarian on aided post and not on the basis of appointment as full time Librarian under DCP Scheme. It has accordingly, been held that the Petitioner would be governed by the old pension scheme and not DCP Scheme introduced on 31st October 2005.

16. We are of the view that the present case of all the Petitioners are similar as to the Petitioners in the above referred decisions as they were appointed prior to 1st November 2005 in fully aided education institutions albeit on part-time basis. It is clear from the Affidavit in Reply of Respondent No. 5 filed in Writ Petition No. 4748 of 2019 and Writ Petition No. 4749 of 2019 that the only contention of the Respondents is that the Petitioners were not appointed as full- time employees prior to 1st November 2005 and were appointed as part-time employees and thus, not extended the old pension scheme. However, it has not been disputed that the Petitioners were employees in educational institutions which were fully aided institutions prior to 1st November 2005.

17. It is noted that Respondents have in the Charts annexed to the said Affidavits singled out the case of Petitioner No. 6 in Writ Petition No. 4748 of 2019 by stating that he was an employee on unaided post. However, it is clear from the Government Resolution dated 19th July 2011 that what is to be taken into consideration is whether the educational institution is a fully aided educational institution, receiving 100% aid from the Government Resolution and not whether particular post is aided or not.”

9. Mr. S.V. Natu and Mr. C.K. Shinde, learned Counsels appearing for petitioners submitted that the petitioners were

appointed in 100% aided schools, though on part-time basis. Their salaries were borne by the Government. Therefore, their entry in service on part-time basis would be relevant for determining applicability of a particular pension scheme. They urged before us to follow the decision in **Nilesh Namdev Gurav** (supra). Additionally, Mr. Natu also placed reliance on the judgment in the case of **Smt. Darshana Adikrao Gaikwad Vs. State of Maharashtra and Others** decided by Nagpur Bench of this Court in Writ Petition No.5421 of 2017 on 09-07-2018. He particularly relied on para - 4 of the judgment, which reads thus:

“4. We have gone through the Government Resolution dated 31-10-2005 and we do not find that Clause 4(b) therein makes any distinction between the Part Time and Full Time employees. It states that the decision contained in the said Government Resolution shall *mutatis-mutandis* apply to the employees who are recruited on or before 1-11-2005, to whom the existing Pension Scheme or General Provident Fund Scheme would be applicable. Undisputedly, the husband of the petitioner was recruited on 1-7-1998 as a Part Time Librarian and we find that the stand of the respondents is that Clause 4(b) contains the recruitment as a Full Time employee as on 1-11-2005, is artificial and it is not borne out from the said Government Resolution.”

Mr. Natu, therefore, submitted that there is no difference between part-time and full-time employees for the purpose of determining the relevant date of entry into service for application of a particular

pension scheme.

10. Per contra, the learned Additional / Assistant Government Pleaders strenuously contended before us that part-time employees are not governed by the provisions of the Rules of 1982. Therefore, their date of entry on part-time basis would not be relevant for the purpose of applicability of a particular scheme. We would summarize the submissions made by them as under:

- (a) Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (in short 'Rules of 1981') provides for pension only to employees working on full time basis and therefore, date of entry into service on part-time basis is irrelevant.
- (b) In **Homraj Hansaram Bisen & Ors Vs. State of Maharashtra & Ors, 2013 (6) Bom.C.R. 670** this Court has held that only employees covered by Rule-19 are eligible for pension.
- (c) Correct interpretation of the Full Bench Decision of this Court in **Deshmukh Dilipkumar Bhagwan and others Vs. State of Maharashtra and others decided on 30.04.2019** would imply that only full time employees appointed prior to 01.11.2005 in

aided schools which were receiving grant-in-aid are entitled to pension under the old pension scheme.

- (d) The provisions of Sub-rule (2) of Rule 2 of the Rules of 1982 cannot be applied to the petitioners as they are deemed to have been recruited only after 01.11.2005.

11. Now, we proceed to deal with each of the submissions advanced by the learned Additional / Assistant Government Pleaders before us.

12. The learned AGPs laid great emphasis on Rule-19 of the Rules of 1981. We must make it clear that the provisions of Rule 19 were brought to the notice of this Court by the State Government while deciding the case of **Nilesh Namdev Gurav** (supra). However, they submitted that no findings have been recorded with regard to effect of Rule 19 in **Nilesh Namdev Gurav** (supra). Therefore, we proceed to deal with the submissions about Rule 19 which reads thus:

“19. Pension.- An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after the 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above mentioned

respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools.”

13. On careful reading of Rule 19, it is clear that the Rule essentially deals with entitlement to pension. It determines which class of employees are entitled to pension. Any class of employees, who are not covered by Rule-19, are not entitled to pension. To put it in other words, Rule-19 does not provide any assistance for determining applicability of particular pension scheme.

14. Great emphasis has been laid by the learned AGPs on the word ‘full-time basis’ appearing in Rule-19. It is contended that since Rule-19 provides for pension only to employees working on full time basis, their entry into service on full time basis would alone be relevant for determining their entitlement to pension. However, as pointed earlier, Rule-19 only determines the class of employees who are entitled to pension. To illustrate, a part time employee of aided school who continues to work on part time basis till his retirement would not be entitled to pension under Rule-19. We have held so in our judgment delivered on 19.08.2022 in **Vijaysingh Ramsingh Patil Vs. State of Maharashtra (W.P. No.7933 of 2021)**. However, once he gets converted on full time basis, he becomes eligible for pension in

accordance with the rules as sanctioned by the government. Once he crosses the first stage of entitlement to pension as per the rules of State Government, the next stage is to decide about his exact entitlement under the rules and policies of the State Government. Thus, Rule-19 does not, in any manner, decide the right of an employee to a particular scheme for pension. Therefore, merely because the words “full time basis” are used in Rule-19, it cannot be inferred that the said Rule would determine applicability of a particular pension scheme to part time or full time employees. There is no dispute in the present cases that all the petitioners are now working on full time basis in aided schools and they are thus governed by the provisions of Rule -19 and they are entitled to pension. Here, Rule – 19 would not provide any assistance for deciding the next issue of applicability of particular scheme of pension to them. We, therefore, reject the submission made on behalf of the State Government that in view of Rule-19 the date of entry in service on full time basis would determine entitlement of the employee for a particular pension scheme.

15. The decision in **Homraj Hansaram Bisen** (supra) has been strenuously pressed urging us to take a view different than the one taken in various past decisions. In particular para - 7 and 8 have

been relied upon by learned AGPs, which are reproduced as under:

“7. Undisputedly, the right to pension of the petitioners who are working in private recognized schools which were admissible to hundred percent grant-in-aid flows from rule 19 of the MEPS Rules, 1981. Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 reads as under:

"19. Pension.

An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above-mentioned respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools."

8. It can thus be seen that the said rule is applicable to employees of aided secondary school, primary school and junior college of education working on full-time basis. Employees covered by rule 19 are eligible for pension at such rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools."

16. It is urged before us that in **Homraj Hansaram Bisen** (supra) it is held by this Court that only full time employees working in aided schools are entitled to pension under Rule-19 and therefore, their date of entry in service on full time basis would alone determine their entitlement to a particular pension scheme.

17. The exact issue that had arisen in **Homraj Hansaram Bisen** (supra), has been captured in para - 3 of the judgment as under:

“3. The question that arises for consideration in the present petition is, as to whether the employees who were appointed in private recognized schools prior to 1st November 2005 and whose services were approved by the Competent Authority but the Schools were not admissible to hundred percent grant-in-aid, would be governed by 1982 Rules or new DCP Scheme.”

18. Thus, the issue in **Homraj Hansaram Bisen** (supra) was entirely different. It was in respect of entitlement to old pension scheme to the employees appointed prior to 01.11.2005 in schools, which were not admissible to 100% grant-in-aid. This Court upheld cut-off date for application of the Defined Contributory Pension Scheme and further held that only employees who are working on 100% aided schools prior to 01.11.2005, would be governed by the provisions of Rules of 1982. In fact, this Court in **Homraj Hansaram Bisen** (supra) has taken into consideration a hypothetical situation in para - 16 of the Judgment where employees are appointed in 1998 and the school starts receiving 100% grant in 2008. In such a situation, this Court wondered as to who would pay the employer's contribution to pension for the period of 10 years between 1998 to 2008 in the light of the fact that the basic responsibility of payment of

salary in an unaided recognized school is on the management. If we apply this illustration to the facts of the present case, in fact the judgment in **Homraj Hansaram Bisen** (supra), far from assisting the State Government, would actually militates against it.

19. Undeniably, the schools where the petitioners were appointed initially on part-time basis were in receipt of 100% grant-in-aid. Thus, right from the dates of their initial appointments on part-time basis, the salary of the petitioners were being borne by the State Government and not by the Management. Therefore, it is the State Government, who would bear the employer's contribution to the pension scheme in respect of the period during which the petitioners worked on part-time basis. Also, it is required to be borne in mind that in various decisions this Court held that only 50% service rendered on part-time basis is to be treated as qualifying service for determining pension. Therefore, the Government would bear proportionate contribution to pension scheme in respect of period where employees worked on part time basis. Therefore, we are of the considered view that even the judgment of this Court in **Homraj Hansaram Bisen** (supra) would not be a fit ground for us to take a departure from consistent view taken by this Court in various decisions in the past.

19. Reliance of the learned AGPs on decision of the Full Bench of this Court in **Deshmukh Dilipkumar Bhagwan** (supra) is also of no avail as the said decision has been considered by this Court in para - 14 of the Judgment in **Nilesh Namdev Gurav** (supra). In fact, the decision in **Deshmukh Dilipkumar Bhagwan** (supra) has been relied upon by this Court is in favour of the petitioners therein. We, therefore, are unable to comprehend as to how the said decision can assist the case of the State Government.

20. The next contention urged before us by the learned AGPs is in respect of the provisions of Sub-rule (2) of Rule 2 of the Rules of 1982. This submission is raised particularly with regard to the petitioners in Writ Petition No.9542 of 2021 (Anil Popat Chobhe) and Writ Petition No.9566 of 2021 (Santoshsingh Tulshiramsingh Solay), wherein the petitioners have admittedly rendered more than 10 years of qualifying service as full time teachers after 01.11.2005. It is urged on behalf of the State Government that since their date of entry into service on full time basis is after 01.11.2005 they would be governed by the provisions of Defined Contributory Pension Scheme and not by the pension scheme under the Rules of 1982. Here, we would like to clarify that since the issue involved in all the petitions is

common, we do not wish to make any distinction between two groups of the petitioners i.e. those who have rendered more than 10 years of service on full time basis and those who have rendered less than 10 years of service on full time basis. The issue here is, whether to treat the date of appointment on part time basis as date of entry into service or not. Since we propose to hold that the date of appointment on part time basis is required to be treated as date of entry into service for the purpose of applicability of the pension scheme, the issue raised by learned AGP by relying on the provisions of Sub-rule (2) of Rule 2 of the Rules of 1982 becomes academic.

21. The Rules of 1982 do take into consideration and govern a situation where earlier service is not pensionable but the employee is later on brought on pensionable establishment by conversion of his posts. Note 1 to Rule 57 of the Rules of 1982 reads thus:

“57. Non-pensionable service.

- (a)
- (b)
- (c)
- (d)
- (e)

Note 1. In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.”

22. Under Note 1, only 50% of the previous continuous service counts for pension. Thus in a situation where earlier service is not pensionable, that service is not rendered futile. Even in respect of part time teachers, their part time services have been held to count towards qualifying service for pension, albeit only 50%. Therefore we do not see any reason why the employee should be completely declined in respect of his part time services or should be treated as a fresh entrant in service upon conversion to full time basis for the purpose of applicability of a particular pension scheme. According to us, the date of his appointment in service on part time basis would become his date of entry in the service for the purpose of applicability of a particular pension scheme.

23. In the result, we are of the considered opinion that the learned AGPs have not been able to make out any case for taking a departure from the consistent view taken by this Court in several decisions. We, therefore, proceed to follow those decisions. This Court has repeatedly taken a view that the teachers appointed prior to 01.11.2005 in fully aided education institutions on part-time basis are required to be governed by the pension scheme under the Rules of 1982.

24. We, therefore, allow the present petitions by making a declaration that the petitioners are entitled to be governed under the old pension scheme under the provisions of Rules of 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and general provident fund by treating their dates of appointments on part-time basis as the dates of entry into service. However, only 50% of the service rendered by them on part-time basis would be counted towards qualifying service for pension. The petitioners would accordingly be entitled to get the consequential benefits.

25. Writ Petitions are accordingly allowed. Parties to bear their own costs. Rule is made absolute accordingly.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)