

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

WRIT PETITION NO. 12009 OF 2021

1. Sonali Sanjay Patil,
Age 36 years, Occu. Service as
Assistant Teacher, Zilla Parishad
Primary School, Khordadgaon,
Tal. & District Dhule.
 2. Shaikh Shaheen Younus,
Age 38 years, Occu. Service as
Assistant Teacher, Zilla Parishad
Primary School, Peth Beed,
Tal. & District Beed.
 3. Kalinda Shankarrao Digre,
Age 37 years, Occu. Service as
Assistant Teacher, Zilla Parishad
Primary School, Indira Nagar,
Alur, Tal. Omerga,
District Osmanabad.
- .. Petitioners

Versus

1. State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai – 32.
2. The Principal Secretary,
Department of Education (Primary),
Maharashtra State,
Mantralaya, Mumbai- 32.
3. The Principal Secretary,
Rural Development Department,
Maharashtra State,
Mantralaya, Mumbai- 32.

4. The Chief Executive Officer,
Zilla Parishad, Satara.
5. The Chief Executive Officer,
Zilla Parishad, Dhule.
6. The Chief Executive Officer,
Zilla Parishad, Beed.
7. The Chief Executive Officer,
Zilla Parishad, Osmanabad. .. Respondents

Shri Shrikrashna B. Solanke, Advocate for the Petitioners.

Shri A. S. Shinde, A.G.P. for the Respondent Nos. 1 to 3.

Shri N. N. Desale, Advocate for Respondent No 5.

Shri A. R. Tapse, Advocate h/f Shri P. D. Suryawanshi, Advocate
for the Respondent No. 6.

The Respondent No. 4 is served.

**AND
WRIT PETITION NO. 13097 OF 2021**

Rajshree Vishwanath Holkar,
Age 37 years, Occu. Service as
Assistant Teacher, Zilla Parishad
Primary School, Sandarwan
Tal. & District Beed. .. Petitioner

Versus

1. State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai – 32.
2. The Principal Secretary,
Department of Education (Primary),
Maharashtra State,
Mantralaya, Mumbai- 32.
3. The Principal Secretary,

Rural Development Department,
Maharashtra State,
Mantralaya, Mumbai- 32.

4. The Chief Executive Officer,
Zilla Parishad, Beed.

5. The Chief Executive Officer,
Zilla Parishad, Jalna.

.. Respondents

Shri Shrikrashna B. Solanke, Advocate for the Petitioners.

Shri K. N. Lokhande, A.G.P. for the Respondent Nos. 1 to 3.

Shri A. R. Tapse, Advocate h/f Shri P. D. Suryawanshi, Advocate
for the Respondent No. 4.

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

DATE : 06.10.2022.

ORAL JUDGMENT (*Per Sandeep V. Marne, J.*) :

. Heard. Rule. Rule is made returnable forthwith. Learned Assistant Government Pleaders Mr. Shinde and Mr. Lokhande waive service for respondent nos. 1 to 3 in respective writ petitions. Learned advocate Mr. Ashok Tapse holding for Mr. P. D. Suryawanshi, learned advocate waives service for respondent No. 6 in Writ Petition No. 12009 of 2021 and for the respondent No. 4 in Writ Petition No. 13097 of 2021. Learned advocate Mr. Desale waives service for respondent No. 5 in Writ Petition No. 12009 of 2021. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. The petitioners have filed these petition seeking a declaration that they are entitled to be governed by the benefits

of Old Pension Scheme envisaged under the provisions of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as the 'Rules of 1982'), Maharashtra Civil Services (Commutation of Pension) Rules, 1984 (in short 'Rules of 1984') and General Provident Fund Scheme.

3. The petitioners came to be appointed on the post of Shikshan Sevaks vide letter dated 26.10.2005. However, on account of Diwali Vacation in the school, the appointment orders were made effective from 11.11.2005 in Writ Petition No. 12009 of 2021 and 16.11.2005 in Writ Petition No. 13097 of 2021. Unfortunately for the petitioners, new Defined Contributory Pension Scheme came to be introduced by the State Government vide Government Resolution dated 31.10.2005 effective after 10.11.2005 and 16.11.2005 respectively. Since the petitioners joined the posts of Shikshan Sevak on 11.11.2005 and 16.11.2005, Defined Contributory Pension Scheme has been made applicable to them.

4. It is the case of the petitioners that since their recruitment was done by way of appointment order dated 26.10.2005, they should be governed by the Old Pension Scheme. The issue is no more *res-integra* and is covered by decisions of this Court in **Kishor Asaram Nirwal and Others Vs. The State of Maharashtra & Others**, Writ Petition No. 2689 of 2014 decided on 27.08.2018 and **Balasaheb Subrao Kale & Others Vs. State of Maharashtra & Others**, Writ Petition No. 4115 of 2016 decided on 30.11.2018.

5. Mr. Shinde and Mr. Lokhande learned Assistant Government Pleaders appearing for the State Government have invited our attention to the Division Bench decision of this Court in **Satappa and Ors. Vs. State of Maharashtra & Ors. [2022 (3) Mh.L.J. 642]**. They submit that in that decision as well, this Court has taken the same view that if the appointment order is issued prior to 01.11.2005, while date of joining is after 01.11.2005, the employee concerned would be governed by the provisions of the Old Pension Scheme. They, however, invite our attention to para – 35 of the judgment, in which this Court took into consideration the provisions of Sub rule - 12 of Rule 9 of the MCS (Pension) Rules, 1982. They would submit that under that Rule, the date of first appointment would be the date when the government servant assumes the duties of his post in the Government service. They also rely upon the provisions of Rule-30 of the Rules of 1982 under which qualifying service of a government servant commences from the date he / she takes charge of the post to which his / her first appointment is made. Relying on these provisions Mr. Shinde and Mr. Lokhande would contend that since the petitioners joined the services on 11.11.2005 and 16.11.2005, those dates should be treated as their dates of first appointment for the purpose of application of a particular pension scheme.

6. We are not convinced with the submissions of Mr. Shinde and Mr. Lokhande, They are right in submitting that for the purpose of counting of qualifying service, the date of joining by the petitioners i. e. 11.11.2005 and 16.11.2005 would be relevant.

However, in our opinion, for the purpose of determining applicability of a particular pension scheme, the date of joining would have no relation. The petitioners have been appointed by letter dated 26.10.2005 and these dates in our opinion would determine the entitlement to a particular pension scheme.

7. We may observe here that the Government of India, Department of Pension and PW has issued Office Memorandum dated 17.02.2020 directing that Government Servants who were petitioner would be governed by the provisions of the Pension Scheme envisaged under the Rules of 1982, Rules of 1984 and General Provident Fund Scheme.

7. We may observe here that the Government of India, Department of Pension and PW has issued Office Memorandum dated 17.02.2020 directing that the Government servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against the vacancies occurring before 01.01.2004 are covered under the National Pension System on joining service on or after 01.01.2004, may be given a **one time option** to be covered under the CCS (Pension) Rules, 1972. Thus, the Central Government has now formulated a scheme, where the Government servants whose selection process is complete prior to the date of coming into effect of the Defined Contributory Pension Scheme have been given option to switch over to the Old Pension Scheme. The case of the petitioners, in our opinion, stands on much better footings. Their selection was not only complete prior to the coming into effect of the Defined

Contributory Pension Scheme, but they were issued appointment orders on 26.10.2005. We, therefore, do not think that this is an appropriate case to defer from the consistent view taken by this Court.

8. The Writ Petitions are allowed. It is declared that the petitioners would be governed by the provisions of the Pension Scheme envisaged under the Rules of 1982, Rules of 1984 and General Provident Fund Scheme.

9. Rule is made absolute in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Oct. 22