

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

WRIT PETITION NO.13702 OF 2021

Gangu Murlidhar Zade,
Age : 40 years, Occu : Service as
Graduate Teacher, Zilla Parishad
Primary School, Malegaon, Tal. Kaij,
Dist. Beed.

.. Petitioner

Versus

1. State of Maharashtra
Through its Secretary,
Finance Department,
Mantralaya, Mumbai.
2. State of Maharashtra
Through its Secretary,
Department of Education (Primary),
Mantralaya, Mumbai.
3. State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.
4. The Chief Executive Officer,
Zilla Parishad, Beed.
5. The Chief Executive Officer,
Zilla Parishad, Jalna.

.. Respondents

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Advocate for Petitioner : Mr. Shikrashna B. Solanke
AGP for Respondent / State : Mrs. R.P. Gour
Advocate for Respondent No.4 : Mr. Ashok Tapse h/f.
Mr. P.D. Suryawanshi
Advocate for Respondent No.5 : Mr. Rushikesh R. Shinde h/f.
Mr. S.S. Tope

...

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

DATE : 06-09-2022

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

. Heard. Rule. Rule is made returnable forthwith. Learned AGP Mrs. R.P. Gour waives service for respondent nos.1 to 3. Learned Advocate Mr. Ashok Tapse h/f. learned Advocate Mr. P.D. Suryawanshi waives service for respondent no.4. Learned Advocate Mr. Rushikesh R. Shinde h/f. learned Advocate Mr. S.S. Tope waives service for respondent no.5. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner has filed this petition seeking a declaration that she is 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 petitioner came to be appointed on the post of Shikshan Sevak vide letter dated 26.10.2005. However, on account

of Diwali Vacation in the school, the appointment order was made effective from 16.11.2005. Unfortunately for the petitioner, new Defined Contributory Pension Scheme came to be introduced by the State Government vide Government Resolution dated 31.10.2005 effective from 01.11.2005. Since the petitioner joined the post of Shikshan Sevak on 16.11.2005, Defined Contributory Pension Scheme has been made applicable to her.

4. It is the case of the petitioner that since her recruitment was done by way of appointment order dated 26.10.2005, she 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. Mrs. Kaur, learned AGP appearing for the State Government has 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]. She submits 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. She, however, invites 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. She 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. She also relies 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 Mrs. Gaur would contend that since the petitioner joined the service on 16.11.2005, that date should be treated as her date of first appointment for the purpose of application of a particular pension scheme.

6. We are not convinced with the submissions of Mrs. Gaur. She is right in submitting that for the purpose of counting of qualifying service, the date of joining by the petitioner i.e. 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 petitioner has been

appointed by letter dated 26.10.2005 and this date 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 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 and 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 petitioner, in our opinion, stands on much better footings. Her selection was not only complete prior to the coming into effect of the Defined Contributory Pension Scheme, but she was issued appointment order 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 Petition is allowed. It is declared that the

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.

9. Rule is made absolute.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)