

(1)

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

902 WRIT PETITION NO.1016 OF 2022

**GANESH DNYANDEO SABLE
VERSUS
STATE OF MAHARASHTRA AND OTHERS**

**WITH
904 WRIT PETITION NO.1247 OF 2022**

**MAHADEV BHIMRAO RAUT
VERSUS
STATE OF MAHARASHTRA AND OTHERS**

....

Mr S. A. Nagarsoge, Advocate for petitioners;
Mr S. B. Yawalkar, A.G.P. for respondent Nos.1 to 4
Mr P. D. Suryawanshi, Advocate for respondent No.5 in
WP/1247/2022

**CORAM : RAVINDRA V. GHUGE
AND
ANIL L. PANSARE, JJ.**

DATE : 20th July, 2022

PER COURT:

1. In both these petitions, the petitioners are identically placed.

In the first petition, the petitioner has put forth prayer clause (B) and (C), which read as under :-

“B) By issuing writ of mandamus or any other appropriate writ or order or direction in the like nature it may be held that the petitioner is entitled to get the benefit of old pension scheme i.e., Maharashtra Civil Services (Pension) Rule 1982 and Maharashtra Civil Services (Commutation of Pension) Rule 1984 and

(2)

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

C) By issuing writ of mandamus or any other appropriate writ or order or direction in the like nature the respondent authorities may kindly be direct to extend the benefit to the petitioner under the Maharashtra Civil Services (Pension) Rule 1982 and Maharashtra Civil Services (Commutation of Pension) Rule 1984 and General Provident Fund Scheme (GPF) and further direct them to make contribution towards the same pension scheme and General Provision Fund Scheme.”

2. Identical prayer clauses have been set out in the second writ petition.

WRIT PETITION NO.1016 OF 2022

3. In the first petition, the petitioner Shri. Ganesh Dnyandeo Sable responded to an advertisement dated 01/09/2005 that was published for filling up the post of “Shikshan Sevak”. The petitioner initially was recruited as a “Shikshan Sevak” against a permanent vacant post of an “Assistant Teacher” pursuant to the final selection list published on 10/10/2005. By the appointment order dated 30/11/2005, the petitioner was inducted in service as a “Shikshan Sevak”.

WRIT PETITION NO.1247 OF 2022

4. In the second petition, the petitioner Mahadev Bhimrao Raut responded to the advertisement dated 01/09/2005 and applied for the post of “Shikshan Sevak”. The final selection list was published on 10/10/2005. By the appointment order dated 30/11/2005, he was appointed on 30/11/2005.

5. The grievance of both the petitioners is, that they should be granted the benefits of the old pension scheme under the Maharashtra Civil Services (Pension) Rules, 1982. The issue raised before us is, as to whether the petitioners would be entitled to the benefits of the old pension scheme in the light of the Government Resolution dated 31/10/2005. The dates of the advertisement, selection and the actual appointment orders, are undisputed.

6. The contention of the petitioners is, that as the select list was published prior to the cut-off date, which is 01/11/2005, though their appointment orders have been issued after the cut-off date and they have joined subsequently, it should be presumed that their selection, prior to the issuance of the appointment orders and their joining should be the deemed date of entering into

(4)

employment. Alternatively, it is canvassed that, as the selection process was completed prior to the cut-off date, the delay caused in issuing the appointment orders, should not be attributed to the petitioners. It is not their fault that, though they were selected prior to the cut-off date, their appointment orders were issued subsequently.

7. The learned A.G.P. submits that, there can be no laches attributed to the conduct of the Zilla Parishad or the State. It is in the course of the selection process, that various stages have to be cleared. One of the stages is to conduct the selection process. The next stage would be the declaration of the result. Thereafter, the select list is to be published and the actual appointments of the candidates from amongst the select list would follow the issuance of the appointment orders. It cannot be presumed that the Zilla Parishad or the State have deliberately delayed the matter, so as to deprive the petitioners of the benefits of the old pension scheme, keeping in view that the Government Resolution dated 31/10/2005 indicated the cut-off date as 01/11/2005. As such, it was not a design by the State or the Zilla Parishad to deprive the petitioners of any benefits.

8. In **Satappa s/o Shrihari Patil and others Vs. State of Maharashtra and others, 2022 (3) Mh.L.J. 642**, the Government Resolution dated 31/10/2005 has been considered. The new pension scheme, which is known as the “Defined Contribution Pension Scheme” was introduced w.e.f. 01/11/2005. Accordingly, the Notification was issued to add Rule 2(2) to the Maharashtra Civil Services (Pension) Rules, 1982. This Court, then concluded that though the selection process commenced earlier, the actual joining dates of the candidates, were after the cut-off date. Yet, this Court granted reliefs to the petitioners for the fact that their selection as well as their appointment orders were issued prior to 31/10/2005. The appointment orders were issued to the petitioners in Satappa (supra), on 26/10/2005. They were given joining time and they joined after 01/11/2005. As it was beyond their control and since their selection and appointment was confirmed prior to the cut-off date, this Court granted the benefit to such employees.

9. In the present cases, we find that the appointment orders issued to the petitioners were much after the cut-off date. In **Vijay Kumar Mishra and others Vs. High Court of Judicature at Patna and others, AIR 2016 SC 3698**, it was concluded in

paragraph No.24 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”.

10. In **Prafulla Kumar Swain Vs. Prakash Chandra Misra and others, (1993) Supp. (3) SCC 181**, the Hon’ble Supreme Court dealt with the Orissa Forest Services Class-II Recruitment Rules, 1959 and concluded that the recruitment process is merely an initial process, which may eventually lead to appointments. Selection does not by itself amount to an appointment.

11. It was further held in Prafulla Kumar Swain (supra) in paragraph Nos.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.”

12. It is, thus, apparent that the recruitment process is purely a mode of selection, through which, every competing candidate has to pass. Selection does not amount to an appointment as selection does not create any right in an individual to claim appointment.

13. In **Dnyaneshwar Balasaheb Sonawane and others Vs. State of Maharashtra and others**, this Court, [one of us being a member of the Bench (Ravindra V. Ghuge, J.)] delivered an order on 10/06/2022, interpreting the meaning of Clause 2(A) of the

Government Resolution dated 31/10/2005 in paragraph Nos.14 to

16, as under :-

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 कि, शासन सेवेत १ नोव्हेंबर २००५ रोजी किंवा त्यानंतर नियुक्त होणाऱ्या कर्मचाऱ्यांसाठी, सध्या अस्तित्वात असलेल्या निवृत्तीवेतन योजनेऐवजी, केंद्र शासनाच्या धर्तीवर, नवीन "परिभाषित अंशदान निवृत्तीवेतन योजना" (Defined Contribution Pension Scheme), खाली नमूद केल्यानुसार, लागू करण्यात येईल."

16. *The Marathi word "नियुक्त" appearing in the Government Resolution dated 31.10.2005 means appointed. The Marathi word "नियुक्त" does not mean recruitment or process of recruitment. The word "recruitment" in Marathi means "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*

(9)

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.”

14. The learned A.G.P. relies upon **U. P. Bhumi Sudhar Nigam Ltd. Vs. Shiv Narain Gupta 1994 Supp. (2) Supreme Court Cases 541**, wherein the Hon’ble Apex Court has concluded that, selection of a candidate does not create a right of appointment. Until an appointment order is issued, a selected candidate would only remain in the select list.

15. In view of the above, we are unable to accept the contention of the learned Advocate for the petitioners. Moreover, it is not that the petitioners are being deprived of the pensionary benefits. They would now be entitled for the Defined Contributory Pension Scheme, which takes care of their livelihood, post retirement.

16. We, therefore, do not find any merit in these petitions and the same are dismissed.

17. No costs.

(ANIL L. PANSARE, J.)

(RAVINDRA V. GHUGE, J.)

sjk