

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

WRIT PETITION NO. 14731 OF 2021

1. Bharat S/o Manchakrao Gurle,
Age; 40 years Occ; Service,
At Zilla Parishad Primary School,
Telsamukh, Tal. Parali (V),
District Beed.
2. Shivaji S/o Bhaurao Perke,
Age; 45 years, Occ; Service,
At Zilla Parishad Primary School,
Padoli, Tq. Parali (V),
District; Beed.
3. Madhav S/o Shankarrao Papulwar,
Age; 40 years, Occ; Service,
At Zilla Parishad C.P.S.
Pohner, Tal. Parali (V),
District; Beed.
4. Laxman S/o; Lalba Redewar,
Age; 39 years, Occ; Service,
At Zilla Parishad Primary School,
Margadevi Tanda, Tal. Majalgaon,
District; Beed.
5. Janardhan S/o Vishwanath Pente,
Age; 42 years, Occ; Service,
At Zilla Parishad Primary School,
Babhalgaon, Tal. Majalgaon,
District; Beed.
6. Mathura Vitthalrao Shetwad,
Age; 38 years, Occ; Service,
At Zilla Parishad Primary School,
Ghanal Tanda, Tal. Parali (V),
District; Beed.
7. Ashish S/o Pandharinath Govindwar,
Age; 39 years, Occ; Service,
At Zilla Parishad Primary School,
Nathra, Tal. Parali (V),

District; Beed.

8. Nandu Gangaram Aalure,
Age; 40 years, Occ; Service,
At Zilla Parishad Primarly School
Wantakli Tanda, Tal. Parali (V),
District : Beed.
9. Narayan S/o Tukaram Rudre,
Age; 42 years, Occ; Service,
At Zilla Parishad Primary School,
Tonde Wasti, Tal. Dharur,
District; Beed.
10. Laxmibai Manikrao Govindwar,
Age; 38 years, Occ; Service,
At Zilla Parishad Girls Primary School,
Gangamasla, Tal. Majalgaon,
District; Beed.
11. Umakant Hanumantrao Akulwar,
Age; 45 years, Occ; Service,
At Zilla Parishad Secondary School,
Dharur, Tal . Dharur, Dist. Beed.
12. Sanjay Kakasaheb Thakur,
Age; 42 years, Occ; Service,
AT Zilla Parishad Primary School,
Anandwadi, Tal. Georai,
District; Beed.
13. Tarachand Dattatraya Kaware,
Age; 39 years, Occ.: Service,
At Zilla Parishad Primary School,
More Wasti, Tal. Georai,
District; Beed.

...PETITIONER

V E R S U S

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.

...RESPONDENTS

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Advocate for the petitioner : Mr. S.B.Solanke
AGP for the Respondent Nos.1 to 3-State : Mr. A.S.Shinde
Advocate for Respondent No. 4 : Mr. R.R.Tapse h/f Mr. P.P. Suryawanshi
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 06.10.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule, made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

2. By the present petition, petitioners seek a declaration that they are governed by the provisions of old pension scheme envisaged under the Maharashtra Civil Service (Pension) Rules, 1982 and the Maharashtra Civil Services (Commutation of Pension) Rules 1984 and General Provident Fund Scheme.

3. Petitioners participated in the recruitment process for appointment on the post of Shikshan Sevak conducted by the Zilla Parishad, Beed vide advertisement dated 17.05.2003. Appointment orders came to be issued in their favour on various dates in the year 2003. However, since they belong to reserved categories, their joining was withheld on account of non-submission of validity certificates. All the petitioners except petitioner No. 6 were later issued validity certificates and all of them joined their respective posts on 01.11.2005. So far as petitioner No. 6 is concerned his validity was rejected and he was required to litigate by approaching this Court. On remand of the matter to the Scrutiny Committee, the validity certificate has been issued in favour of the petitioner No. 6 as well, after which he has joined the post of Shikshan Sevak.

4. The State Government introduced Defined Contributory Pension Scheme which came into effect on 01.11.2005. The common thread all binds all the petitioners is that they were selected for appointment and were issued appointment orders prior to 01.11.2005 and they had joined services after 01.11.2005. On account of their joining the posts after 01.11.2005, the Defined Contribution Pension Scheme has been made applicable to them, which is their grouse for filing the present petition. They pray for applicability of the Old Pension Scheme on the strength of appointment orders being issued in their favour prior to 01.11.2005.

5. The issue is no more *res integra* and is covered by the decision of this Court in Writ Petition No. 13702 of 2021 in **Gangu Murlidhar Zade Vs. State of Maharashtra and others** decided on _____.

The relevant portion of the judgment reads thus:

“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."

6. The only distinction between the case of **Gangu Zade** (supra) and the present petition is that the joining date in **Gangu Zade** (supra) was specified in his appointment order to be after 01.11.2005. He had no option to join service prior to 01.11.2005. As against this, all the petitioners were issued appointment orders in the year 2003 itself and they could have joined services well before 01.11.2005 if they were in possession of validity certificates. The short issue therefore is whether they should be denied the benefit arising out of the appointment orders issued in their favour in the year 2003 only because their joining was delayed for non-issuance of validity certificate in time by the Scrutiny Committees.

7. We find that the petitioners cannot be faulted for delay in deciding their caste/tribe claims. The right to appointment had been created in their favour in the year 2003 itself, but the same could not be fructified before 01-11-2005 due to non-decision of their caste/tribe claims. Undisputedly their caste/tribe claims came to be upheld later. The process the joining was delayed and the Defined Contribution Pension Scheme came into force in the meantime w.e.f. 01.11.2005.

8. The Division Bench of Delhi High Court in **Dr. Davinder Singh Brar Vs. Union of India and Ors.**, Writ Petition (C) No. 756 of 2020 decided on 28.01.2020 has held that if the selection process is initiated prior to introduction of Defined Contribution Pension Scheme and if the selection was finalised before coming into effect of the Defined Contribution Pension Scheme, the candidate would still be eligible to be governed by the provisions of old pension scheme. Special Leave Petition filed by the Union of India challenging the decision of Delhi High Court in **Dr. Davinder Singh** (supra) has been dismissed vide order dated 04.02.2021.

9. In **Gangu Zade** (supra) this Court has also referred the provisions of the Office Memorandum dated 07.02.2020, by which the Central Government has brought every employee whose results were declared on or before coming into force of the Defined Contribution Pension Scheme onto the Old Pension Scheme envisaged under the Central Civil Services (Pension) Rules 1972. We find that the case of the petitioners before us stand on much better footing. Here the recruitment process was not only finalized prior to 01.11.2005 but they were issued appointment orders. Therefore, we are of the view that the petitioners would be governed by the provisions of the pension scheme in vogue prior to 01.11.2005.

10. Mr. Shinde learned AGP for State Government has opposed the petition relying on the provisions of Sub Rule 12 of Rule 9 and Rule

30 of the Maharashtra Civil Service (Pension) Rules, 1982. However, these contentions were also raised on behalf of the State Government while deciding the case of **Gangu Zade** (Supra) and the same has been considered and rejected.

11. We are, therefore, allow the present petition by issuing declaration that all the petitioners would be governed by the provisions of the pension scheme envisaged under the Maharashtra Civil Service (Pension) Rules, 1982; the Maharashtra Civil Services (Commutation of Pension) Rules 1984 and General Provident Fund Scheme.

12. Rule is made absolute.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE