

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4207 OF 2021

Prakash Dadarao Mhaske ...Petitioner

V/s.

The State of Maharashtra & Ors. ...Respondents

Mr. S. S. Kanetkar, for the Petitioner.

Mrs. S. S. Bhende, A.G.P. for the Respondent / State.

Mr. Rahul P. Kasbekar i/b. Mr. Surel S. Shah, for the Respondent
Nos.5 & 6.

**CORAM : A. S. CHANDURKAR AND
G. A. SANAP, JJ.**

DATE : 28 April 2022

P.C.

. Rule. Rule made returnable forthwith. Heard the learned
counsel for the parties.

2. The petitioner being duly qualified to hold the post of
Assistant Teacher, was appointed as such by respondent No.5-
management on 6 September 1997. Though the initial
appointment was as a Part time Assistant Teacher, by subsequent

order dated 20 July 1998, the petitioner was appointed as a Full Time Teacher. The appointment of the petitioner was duly approved by the Education Officer on 31 May 1999. Since the services of the petitioner were being shown on a non-aided section of the school, he raised a grievance and ultimately the Education Officer (Secondary) by the communication dated 6 May 2003 directed the Head Master to re-appoint the petitioner on an aided section of the school. This was followed by another communication dated 6 October 2003 issued to the management. On 27 January 2004, the services of the petitioner alongwith others were approved on the aided section of the school. The petitioner has since superannuated and has thereafter sought pension in accordance with the old pension scheme. By the impugned communication dated 29 April 2021, the respondent No.4 has returned the proposal for release of pensionary benefits on the ground that the petitioner had rendered services on a partly aided section of the school. The said communication is under challenge in this writ petition.

3. The learned counsel for the petitioner submits that the various documents placed on record including the order of appointment dated 8 October 1997 issued by the management indicated that the petitioner was appointed to teach Classes 8 to 10 which were aided sections in the school. This position was clear from the communication dated 6 May 2003 and 6 October

2003 issued by the Education Officer. When the initial appointment of the petitioner was prior to 1 October 2005 and the school was receiving 100% grant coupled with the fact that the petitioner rendered services on the aided section of the school, there was no reason to deny the petitioner benefit of the old pension scheme. In that regard, reliance was placed on the judgment of the Full Bench in *Deshmukh Dilipkumar Bhagwan and Ors. Vs. State of Maharashtra and Ors.*¹. It was thus prayed that the petitioner was entitled to pensionary benefit as per the old pension scheme.

4. The learned Assistant Government Pleader for the respondent Nos.3 & 4, relied upon the affidavit-in-reply and submitted that the petitioner's appointment was on 7th standard which was not receiving 100% grant prior to 1 November 2005. It was not disputed that the school was getting 100% grant prior to 1 November 2005. Since the petitioner was teaching the 7th standard and that section was not receiving 100% grant-in-aid, the petitioner was not entitled to the benefit of the old pension scheme.

The learned counsel for the respondent Nos.5 & 6 referred to the orders of appointment issued to the petitioner as well as communication dated 11 March 2021 issued by the Head Master. In that communication, while admitting that the entire service of the petitioner was rendered in the aided section of the school, it

¹2019(3) Mh.L.J. 903

was stated that while serving in the 7th standard section, the said section was receiving grant-in-aid to the extent of 40% in 2003-2004 and 60% in 2004-2005.

5. On hearing the learned counsel for the parties, we find that the Education Officer (Secondary) by the communication dated 6 May 2003 and 6 October 2003 has clearly observed that the petitioner was entitled to serve on the aided section of the school in question. By those communications, the Head Master as well as the management were directed to take appropriate steps in that regard. The order of appointment of the petitioner dated 8 October 1997 also indicates service being rendered in Classes 8 to 10 of the school. The Education Officer (Secondary) has in para 3 of his affidavit stated that the school was getting 100% grant-in-aid prior to 1 November 2005. When this position was admitted on record, there would be no reason to rely upon that portion of the letter dated 11 March 2021 issued by the Head Master stating that services was rendered by the petitioner in 7th standard class which was partly aided. This communication ignores the directions issued by the Education Officer far back on 6 May 2003 and 6 October 2003.

6. We find that the judgment of the Full Bench in *Deshmukh Dilipkumar Bhagwan* (supra) clearly supports the case of the petitioner and the petitioner would be entitled to benefit under

the old pension scheme. Hence, for the aforesaid reasons, the impugned communication dated 29 April 2021 is set aside. It is directed that the services of the petitioner would be governed by the old pension scheme. The respondent Nos.3 and 4 shall take all necessary steps to ensure that the petitioner gets such benefit within a period of three months from the production of this order. Rule is made absolute in the aforesaid terms. No costs.

(G. A. SANAP, J.)

(A. S. CHANDURKAR, J.)