

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

WRIT PETITION NO. 8990 OF 2021

Smt. Manasi Sudhir Mane @ Aruna Yashwant Patil	...	Petitioner
Versus		
The State of Maharashtra and Ors.	...	Respondents

**WITH
WRIT PETITION NO. 4743 OF 2019**

Sanjay Eknath Mhatre	...	Petitioner
Versus		
The State of Maharashtra and Ors.	...	Respondents

**WITH
WRIT PETITION NO. 2742 OF 2021**

Dnyaneshwar Yadavrao Kale	...	Petitioner
Versus		
The State of Maharashtra and Ors.	...	Respondents

**WITH
WRIT PETITION NO.8994 OF 2021**

Balasaheb s/o Trimbak Shinde	...	Petitioner
Versus		
The State of Maharashtra and Ors.	...	Respondents

**WITH
WRIT PETITION NO.9242 OF 2021**

Dhiraj s/o Rajaram Savkar	...	Petitioner
Versus		
The State of Maharashtra and Ors.	...	Respondents

**WITH
WRIT PETITION (STAMP) NO.24536 OF 2021**

Ramesh s/o. Appasaheb Sawnat	...	Petitioner
Versus		
The State of Maharashtra and Ors.	...	Respondents

WITH
WRIT PETITION (STAMP) NO.24538 OF 2021

Vilas s/o Prabhakar Bhosale ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.24539 OF 2021

Smt. Ujawala Shridhar Bhosale ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.24542 OF 2021

Smt. Swati Jitendra Kulkarni ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.24827 OF 2021

Abhimanyu s/o Rangnath Mane ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.25497 OF 2021

Santosh s/o Pandurang Chaudhari ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.902 OF 2022

Smt. Swati Dhananjay Shelar
@ Swati Babanrao Raskar ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.996 OF 2022

Chandrakant Madhukar Pachange ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2052 OF 2022

Jagannath s/o Govind Autade ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO. 2120 OF 2022

Jitendra s/o Kautik Desale ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2122 OF 2022

Rajendra s/o Narhari Ghadage ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2125 OF 2022

Sanjay s/o Yashwant Dudhal ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2126 OF 2022

Prakash s/o Dasharath Jadhav ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2127 OF 2022

Ajinath s/o Narayan Shinde ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2128 OF 2022

Pradip s/o Babanrao Borawake ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2129 OF 2022

Sudam s/o Narayan Bhadane ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2130 OF 2022

Ramesh s/o Pundlik Sonkar ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2131 OF 2022

Mahendra s/o Shantilal Shewale ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2132 OF 2022

Shamrao s/o Pandurang Patil ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2133 OF 2022

Vasudeo s/o Ningappa Washikar ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2134 OF 2022

Tukaram s/o Mahadev Guruv ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2135 OF 2022

Santosh s/o Maruti Salvi ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2136 OF 2022

Rajkumar s/o Dnyanoba Mudhe ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2137 OF 2022

Pandharinath Parashram Sangamnere ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2144 OF 2022

Smt. Vaishali Pandurang Wagh ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2147 OF 2022

Prashant Mahadev Chopade ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2148 OF 2022

Vardhaman s/o Bhimrao Bhilawade ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2149 OF 2022

Kashinath s/o Siddanna Chalgeri ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2150 OF 2022

Ashok s/o Appaso Gurav ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2151 OF 2022

Shashank s/o Shripatrao Kondekar ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2153 OF 2022

Sunil s/o Jaywant Jitkar ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2154 OF 2022

Rajkumar s/o Onkar Jagtap ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2155 OF 2022

Smt. Arundhati Vinay Chavan ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2162 OF 2022

Smt. Vandana Balkrushna Shigwan
@ Rutuja Rajendra Londhe ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2163 OF 2022

Vijaykumar s/o Laxman Pawar ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.2166 OF 2022

Smt. Shubhangi Mahendrashing
Jadhav @ Shinde ... Petitioner

Versus
The State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO.2167 OF 2022**

Smt. Nirmala Bharatrao Pawar ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO.2168 OF 2022**

Ilai s/o Rasul Nadaf ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO.2237 OF 2022**

Babasaheb s/o Shankar Magdum ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO.2238 OF 2022**

Suhas s/o Kailas Nawagire ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO.2239 OF 2022**

Maruti s/o Namdeo Potalkar ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO.3474 OF 2022**

Sharad s/o Narayan Nalawade ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO.3770 OF 2022**

Smt. Sarita Mahadev Gurav
@ Sarita Chandrakant Gurav ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.3943 OF 2022
Balasaheb s/o Shankar Gurav ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.4055 OF 2022
Satish Maruti Yadav ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION (STAMP) NO.4062 OF 2022
Sanjay Vithoba Sawant ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.4283 OF 2022
Navnath s/o Laxman Gaikwad ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

....

Mr. Prashant Katneshwarkar, i/b. Mr. Arvind G. Ambetkar with Mr. Ketan D. Pote and Deepak Pote, for the Petitioners in all the Petitions.

Smt. P. N. Diwan, AGP, for State in Sr. Nos.3, 5, 16 to 42, 44 to 51 and 55 on today's board.

Mr. V.M. Mali, AGP, for State in 4, 6 to 11, 13 to 15 and 52 to 54 on today's board.

....

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 11th APRIL, 2022.

P.C. :

Heard.

2 Rule. Rule made returnable forthwith. Heard finally by consent.

3 The Petitioners in all these Petitions are claiming to be appointed well before 1st November, 2005 and therefore, it is their contention that all of them are governed by the old pension scheme and not by the new pension scheme which is called as Defined Contribution Pension Scheme 2005 which came to be effected from 1st November, 2005.

4 All the Petitioners in these Petitions were appointed either as *Shikshan Sevak* or Assistant Teachers or Librarians on part time basis before 1st November, 2005 and they were made as full time *Shikshan Sevak* or Assistant Teachers or Librarians after 1st November, 2005. All these Petitioners also claim that they were appointed as part timers on such posts as *Shikshan Sevak* or Assistant Teachers or Librarians in school or junior college which

received 100% grant-in-aid before 1st November, 2005.

5 On the basis of the above referred facts, the contention of the Petitioners is that all of them have been governed by old pension scheme covered by “Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Computation of Pensions) Rules-1984 and General Provident Fund Scheme” which are applicable to the Petitioners as all of them have been appointed prior to 1st November, 2005. The Petitioners are also claiming a direction to be issued to the Respondents to extend the benefits of the old pension scheme to them and not to deduct any amount from the salary of each of the Petitioners by applying the Defined Contribution Pension Scheme (“DCPS” for short) or National Pension Scheme (“NPS” for short). The Petitioners in whose cases there have been deductions made from their salary towards DCPS or NPS, are also claiming that in case of the Petitioners from whose salary the amounts have been deducted for making contribution to the DCPS or NPS, the respondents may be directed to refund the amounts so deducted.

6 The Petitioners are also claiming that they be allotted the

General Provident Fund Account (“GPF” for short) from the date on which they became eligible for the same and also praying for issuance of directions to the respondents for deducting on monthly basis the amounts from their monthly salary for the purpose of remitting the same to GPF accounts of the Petitioners.

7 Learned Counsel for the Petitioners has produced before us a Chart which is taken on record and marked ‘A’ for identification, a copy of which has been furnished to the respective learned AGPs. This Chart provides a bird’s eye view in respect of relevant facts, such as names of the Petitioners, dates of appointment and posts, dates on which appointment on full time basis was made and the post to which it was made and the year when 100% grant-in-aid was received by the concerned institute. The information contained in Chart ‘A’ is consistent with the averments made by these Petitioners in each of the Petitions. However, since the Government would require to verify the correctness of facts governing case of each of the Petitioners, the Education Officer i.e. Respondent No.3 would have to be given that opportunity before he takes his decision in respect of each of the Petitioners. It is only the result of such verification which would show in a

certain manner the facts which would govern case of each of the Petitioners which would enable the Education Officer to decide about the entitlement of each of the Petitioner to receive benefits as claimed by them in terms of judgments of this Court in various cases, including those in the case of **Nilesh s/o Namdev Gurav Vs. The state of Maharashtra and Ors.**¹, in the case of **Deshmukh Dilipkumar Bhagwan and Ors. Vs. State of Maharashtra**² and also in the case of **Smt. Darshana wd/o Adikrao Gaikwad Vs. State of Maharashtra and Ors.**³ decided on 30th April, 2019 and 9th July, 2018 respectively.

8 In the case of **Nilesh s/o Namdev Gurav (supra)** after considering all these cases, this Court has held that the Government Resolution dated 31st October, 2005 and in particular Clause 4 thereof lays down that it is only those employees who are recruited on or after 1st November, 2005 in the services of the recognized aided educational institutions who would be governed by the new pension scheme i.e. DCP Scheme. It is further held that those employees appointed prior to 1st November, 2005 in

1 Writ Petition No. 4748 of 2019

2 2019 (3) Mh.L.J. 903

3 Writ Petition No. 5421 of 2017 (Bombay Bench)

aided educational institution and receiving 100% grant-in-aid prior to 1st November, 2005 shall be governed by the old pension scheme. It is further held that those employees, who were appointed prior to 1st November, 2005 and occupied a part time fully aided post receiving 100% grant-in-aid from the State Government, would be governed by the old pension scheme. It is also held, relying upon the decision in the case of **Shri. Purushottam Harishchandra Sirsekar** ⁴, that if school employee is appointed on a post which is a sanctioned aided post on part time basis, he would be governed by the old pension scheme. This Court further held that if school employee had been appointed prior to 1st November, 2005 on un-aided post but the school has been receiving 100% aid since prior to 1st November, 2005, even such employee would be qualified as per the Government Resolution dated 19th July, 2011 to get the benefits of the old pension scheme.

9 In view of above, we find it necessary to relegate the case of each of the Petitioners to the Respondent No.3 or Deputy Director i.e. Respondent No.4, as the case may be, for taking appropriate decision depending upon the outcome of verification and the facts

⁴ Writ Petition No.2538 of 2021 (Bombay Bench)

governing the case of each of the Petitioners.

10 The Petitions are, therefore, partly allowed and following directions are issued.

11 Respondent No.3 or Deputy Director of Respondent No.4, as the case may be, are directed to decide case of each of the Petitioners regarding applicability of the old pension scheme as per Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Computation of Pensions) Rules-1984 and General Provident Fund Scheme by keeping in view law laid down by this Court in its various judgments including the judgments referred to in the body of the judgment.

12 If it is so found by Respondent No.3 or Deputy Director of Respondent No.4, as the case may be, that the Petitioners are governed by old pension scheme, the Respondent No.3 or Respondent No.4, as the case may be, shall issue necessary directions to not deduct any amount from the salary payable to the Petitioners governed by the old pension scheme for the purpose of its applying to the DCPS or NPS, and shall also issue necessary directions for refunding of theses amounts to those petitioners

from whose salary, same are deducted, within four weeks of the date on which such determination is made.

13 In case it is found that the Petitioners are governed by the old pension scheme necessary directions shall be issued by Respondent No.3 or Deputy Director of Respondent No.4, as the case may be, to open GPF accounts in the names of the Petitioners found eligible for same, within four weeks of the date on which their eligibility is determined.

14 Each of the Petitioners to appear before the Respondent No.3 or Deputy Director of Respondent No.4, as the case may be, on 18th April, 2022.

15 Rule is made absolute in above terms. No costs.

16 Petitions stand disposed of accordingly.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]

REKHA
PRAKASH
PATIL

Digitally signed by
REKHA PRAKASH
PATIL
Date: 2022.04.28
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This order is corrected as per Speaking to the Minutes of Order dated 19/04/2022
Rekha Patil

15 of 15