

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.682 OF 2017

1. Abdul Ahmed son of Mr Abdul
Rauf, Aged about 44 years,
Occupation Service, Resident of
Rehmatnagar, Ward No.25, Pusad,
District Yavatmal
 2. Afsar Baig son of Sattar Baig
Aged about 34 years,
Occupation – Service, Resident of
Vasant Nagar, Umar Farooque Ward,
Pusad, District Yavatmal
- ... Petitioners

-vs-

1. Education Officer (Primary)
Zilla Parishad, Yavatmal
 2. Head Master, Hazrat Umar
Farooque, Urdu Upper Primary
School, Pusad, District Yavatmal
 3. State of Maharashtra through
Secretary Education and Sports
Department, Mantralaya,
Mumbai 400 032
- ... Respondents

Shri A. Shelat, Advocate for petitioners.
Shri Nalin Majithia, Advocate for respondent No.1.
Ms Tajwar Khan, Assistant Government Pleader for respondent No.3.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.
DATE : NOVEMBER 17, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

By this writ petition the petitioners have sought twin reliefs. The petitioners seek benefit of applicability of the old pension scheme that

was applicable till 01/11/2005. The other relief sought by the petitioners is for modification of the order of approval by which their appointment on the post of 'Clerk' and 'Peon' respectively has been approved subject to paying honorarium.

2. Facts relevant for deciding the present writ petition are that it is the case of the petitioners that being eligible and qualified for appointment on the post of 'Junior Clerk' and 'Peon' respectively, they were issued order of appointment by the Management-respondent No.2 on 11/07/2012 with effect from 01/07/2004. According to the petitioners the said posts were admissible to 100% grant. Initially, the appointment was on probation for a period of two years on honorarium of Rs.2000/- per month. On completion of the period of probation, their appointments were confirmed and since then they are discharging duties. Since the benefit of old pension scheme was not being made applicable to the petitioners, they had sought declaration that their services are governed by the old pension scheme for the reason that the school was made admissible to 100% grant prior to 01/11/2005.

3. On 28/06/2022 after hearing the learned counsel for the parties on the aforesaid prayer, the following order was passed :

*“ One of the reliefs sought by the petitioners is a declaration that their services are governed by the old pension scheme under Maharashtra Civil Services (Pension) Rules, 1982 since the petitioners were employed prior to 01/11/2005. However, in view of the judgment of the Full Bench in Deshmukh Dilipkumar Bhagwan and ors. vs. The State of Maharashtra and ors. **2019 (3) MhLJ 903** that relief now cannot be granted to the petitioners as it is an admitted fact that the respondent No.2-school came on 100/% grant after 01/11/2005. The learned counsel for the petitioners however invited attention to the averments made in paragraph 40 of the writ petition and prayed that the petitioners ought to have been appointed on the post of Junior Clerk and Peon instead of being appointed as Shikshan Sevaks on probation.*

The respondent No.1 shall file affidavit dealing with the averments made in paragraph 40. Stand over three weeks.”

4. From the aforesaid, it is clear that since the school in question came on 100% grant after 01/11/2005, the services of the petitioners would not be governed by the old pension scheme. Hence that relief cannot be granted. The finality of said adjudication is subject to outcome of the proceedings before the Honourable Supreme Court that have been filed by the teaching staff challenging the judgment of the Full Bench of this court in *Deshmukh Dilipkumar Bhagwan and ors. vs. The State of Maharashtra and ors. **2019 (3) MhLJ 903.***

5. Coming to the other relief sought by the petitioners which is

modification of the order of approval dated 18/07/2012, it is submitted by the learned counsel for the petitioners that since they have been appointed on non-teaching posts there was no question of their services being approved on honorarium during the period of probation. The petitioners were liable to be appointed on probation but on the pay-scale that was applicable to the post of 'Clerk' and 'Peon' respectively. In that regard learned counsel has relied upon the provisions of the Bombay Primary Education and Maharashtra Employees of Private Schools (Conditions of Service) Regulation (Amendment) Act, 2007 by which Act the provisions of the aforesaid statutes were amended. Section (24A) was inserted to define "***Shikshan Sevak***" as a member of base teaching cadre appointed on honorarium for being subsequently confirmed as a teacher. It is thus submitted that it is only a member of teaching staff who is liable to be appointed on honorarium and the same would not be applicable to the member of non-teaching staff. It is on that basis that it is prayed that the order of approval be accordingly modified and approval be granted on regular pay-scale.

6. The learned counsel for the Zilla Parishad opposed the aforesaid submission. According to him since the petitioners were appointed on probation they were rightly paid salary in the form of honorarium. For

the period of three years they accepted the same without any grievance. The order of approval having been issued on 18/07/2012, the same has been sought to be belatedly challenged by filing the writ petition on 27/01/2017. It was thus submitted that said relief is not liable to be granted to the petitioners.

7. At the outset it may be stated that since the petitioners have sought a declaration that they are governed by the old pension scheme, the cause of action can be said to be of a continuing nature. Since the writ petition was admitted on 03/01/2019 we have heard the matter on merits. On hearing the learned counsel for the parties, we find that honorarium has been made admissible to a member of the teaching staff in view of the provisions of Sections 2 (24A) and 5 of the Act of 1977 as amended. A member of the base teaching staff is entitled to be appointed on honorarium for eventually being appointed as a teacher after completion of the period of probation. In Section 5(3) also the word used is “honourarium”. This indicates that during the period of probation while serving as ‘Shikshan Sevak’ said member of the teaching staff is entitled to be paid honorarium. The provisions of Section 2(7) and 2(26) of the said Act clarify the aforesaid position. The period of probation of an appointee other than a Shikshan Sevak is two years while that of a Shikshan Sevak now

Assistant Teacher (Probationary) is three years in view of Section 5(2) of the Act of 1977. We therefore find that on being initially appointed on probation, a member of non-teaching staff is entitled to receive pay-scale as prescribed by the Rules of 1981 while being appointed on probation for two years while the appointment of member of teaching staff initially as 'Shikshan Sevak' is on probation for a period of three years on honorarium.

8. Hence for aforesaid reasons the order of approval dated 18/07/2012 is liable to be modified. The approval granted for the period of probation ought to be for a period of two years and the pay-scale would be as prescribed by Schedule-C of the Maharashtra Employees of Private Schools (Conditions of Service) Rules of 1981. To that extent the order of approval is liable to be corrected. However considering the fact that the order of approval is dated 18/07/2012 and the writ petition was filed on 21/01/2017, we do not find that the petitioners are entitled for any actual monetary benefit flowing from correction of the order of approval.

9. Accordingly the following order is passed :

- (i) It is held that the services of the petitioners would be governed by new pension scheme applicable from 01/11/2005 and onwards subject to outcome of the pending proceedings before

the Honourable Supreme Court.

- (ii) The order of approval dated 18/07/2012 is directed to be corrected accordingly in the manner stated in paragraph 8 within a period of four weeks from receipt of copy of this order.

Rule is made partly absolute in aforesaid terms with no order as to costs.

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Asmita