

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

WRIT PETITION NO.1954 OF 2019

1. Tahmina Niyazi Nawab
W/o Waseem Ahmad,
Aged 45 years, Occu. Service

2. Rasheda Anjum
W/o Ishteyaque Ahmed,
Aged 44 years, Occu. Service

Both the petitioners are R/o C/o
Majeedia Highschool and Jr. College,
Mominpura, Nagpur

... Petitioners

-vs-

1. State of Maharashtra
Through its Secretary,
Department of Education,
Mantralaya, Mumbai-32
2. Deputy Director of Education,
Nagpur Division, Nagpur
3. The Superintendent,
Pay & Provident Fund Unit (H.S.)
Zilla Parishad, Nagpur

4. Majeedia Highschool and
Jr. College, Mominpura, Nagpur
Through its Principal

... Respondents

Shri P. N. Shende, Advocate for petitioners.

D. P. Thakare, Additional Government Pleader for respondent Nos.1 to 3.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.

DATE : October 20, 2022

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

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The petitioners were appointed as Junior College Lecturers prior to 01/11/2005. According to the petitioners, the respondent No.4-College was entitled to get grant-in-aid from 2003. The appointment of the petitioner No.1 came to be approved from 01/08/2003 while the approval to the appointment of petitioner No.2 was refused. The petitioners seek benefit of the old pension scheme and have thus challenged the Government Resolution dated 29/11/2010 which requires service on an aided post prior to the cut-off date which is 01/11/2005. Since the petitioners have been deprived of the benefit of the aforesaid old pension scheme, the present writ petition has been filed.

2. It is submitted that the Division Bench of this Court in Writ Petition No.8990/2021 (*Smt Manasi Sudhir Mane @ Aruna Yashwant Patil vs. The State of Maharashtra and ors. with connected writ petitions*) decided 11/04/2022 has after referring to various decisions of his Court held that if an employee had been appointed prior to 01/11/2005 on an un-aided post but the school has been receiving 100% grant-in-aid prior to 01/11/2005, such employee would be entitled to the benefit of the old pension scheme as per Government Resolution dated 19/07/2011. Thereafter directions were issued to examine the case of each petitioner and apply benefit of the old pension scheme if the said petitioners are found entitled.

3. After hearing the learned counsel for the petitioners as well as the learned Additional Government Pleader, we find that a similar exercise of examining the case of each petitioner for entitlement under the old pension scheme can be

undertaken. Hence for reasons contained in the decision in *Smt Manasi Sudhir Mane* (supra) the following order is passed :

- (1) The respondent No.2-Deputy Director of Education is directed to decide the case of each petitioner regarding applicability of the old pension scheme as per Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Computation of Pension) Rules, 1984 and General Provident Fund Scheme by keeping in view the law laid down by this Court in its various judgments including the judgment in *Smt Manasi Sudhir Mane* (supra).
- (2) If it is so found by the Deputy Director of Education that the petitioners are governed by the old pension scheme, the Deputy Director of Education shall issue necessary directions to not deduct any amount from the salary payable to the petitioners governed by the old pension scheme for the purposes of its applying to the DCPS or NPS and shall also issue necessary directions for refunding of these amounts to those petitioners from whose salary same are deducted within four weeks of the date of which such deduction is made.
- (3) In case it is found that the petitioners are governed by the old pension scheme, necessary directions shall be issued by the Deputy Director of Education to open GPF accounts in the name of the petitioners who are found eligible for the same within a period of four weeks of such date on which their eligibility is determined if such accounts are not already opened.
- (4) The petitioners shall appear before the Deputy Director of Education, Nagpur on 14/11/2022.

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

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)