



MP-3126-19

1/3

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

WRIT PETITION NO.3126 OF 2019

Varsha Shivdas Bhange,
Aged 50 years, Occu-Service,
R/o Plot No.8, Niwara Society,
Shingane Lay Out, Gorewada Road,
Nagpur

... Petitioner

-vs-

1. State of Maharashtra
Through its Secretary,
Department of Education,
Mantralaya, Mumbai-32

Corrected as per
Court's order dated
25/08/2023.

2. The Education Officer, (See.) (Primary)
Zilla Parishad, Nagpur.

3. The Superintendent,
Pay & Provident Fund Unit (Pri.)
Zilla Parishad, Nagpur

4. St. Martin Primary School,
Borgaon, Katol Road, Nagpur,
through its Principal

... Respondents

Shri P. N. Shende, Advocate for petitioners.

Smt S. S. Jachak, Assistant Government Pleader for respondent Nos.1 to 3.

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

DATE : NOVEMBER 15, 2022

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

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

The petitioner claims to be appointed as Assistant Teacher at the respondent No.4-School prior to 01/11/2005. Said school was receiving grant-in-aid from the State exchequer from 02/08/1993. In that backdrop she has sought

to challenge 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 petitioner was being deprived of applicability of the old pension scheme, she has filed the present writ petition seeking a declaration as regards her entitlement to such benefit.

2. While issuing notice on 18/04/2019 this Court had directed the respondents to apply the old pension scheme to the petitioner and open the account of the petitioner with a further direction to deduct monthly payment from her salary. The learned counsel for the petitioner has relied upon the judgment 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. It has been held therein after referring to earlier decisions of this Court 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 get 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 therein and apply benefit of the old pension scheme if found entitled.

3. After hearing the learned counsel for the petitioner as well as learned counsel for the respondents, we find that a similar exercise of examining the case of the petitioner for entitlement under the old pension scheme can be issued. Hence for reasons contained in the decision in *Smt Manasi Sudhir Mane* (supra)

the following order is passed :

- (1) The respondent No.2-Education Officer (Primary) is directed to decide the case of the 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 Education Officer (Primary) that the petitioner is governed by the old pension scheme, the Education Officer (Primary) shall issue necessary directions to not deduct any amount from the salary payable to the petitioner 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 the petitioner if deducted from her salary within four weeks of the date of which such deduction is made.
- (3) In case it is found that the petitioner is governed by the old pension scheme, necessary directions shall be issued by the Education Officer (Primary) to open GPF account in the name of the petitioner within a period of four weeks of such date on which her eligibility is determined if such account is not already opened.
- (4) The petitioner shall appear before the Education Officer (Primary), Zilla Parishad Nagpur on 05/12/2022.

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

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Corrected as per
Court's order dated
25/08/2023.