

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

WRIT PETITION NO.1288 OF 2019

1. Mohammad Sajid A. Wahid
Aged 50 years, Occu. Service
2. S. K. Javed Shaikh Hasan,
Aged 46 years, Occu. Service
3. Abdul Saleem Abdul Hakeem
Aged 42 years, Occu. Service
4. Seema Farhat Khan
Aged 45 years, Occu. Service
5. Rafat Shaheen
Aged 43 years, Occu. Service

All the petitioners are R/o C/o
M.M. Rabbani Highschool and Jr. College,
Kamthee, Tah. Kamthee,
Dist. 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 (Primary)
Zilla Parishad, Nagpur
4. M. M. Rabbani Highschool and Jr.
College, Kamthree, Tah. Kamthee,
Dist. 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.

Each petitioner claims to be appointed as Junior College Teacher at the respondent No.4 Junior College prior to 01/11/2005. Said Junior College was receiving grant-in-aid from the State exchequer from 2003. Since the academic Session 2007 it started receiving 100% grant-in-aid. The appointments of the petitioners came to duly approved and hence it is the case of the petitioners that they are entitled to benefit of the old pension scheme. In that backdrop they have 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 petitioners were being deprived of applicability of the old pension scheme, they have filed the present writ petition seeking a declaration as regards their entitlement to such benefit.

2. While issuing notice on 15/02/2019 this Court had directed the respondents to apply the old pension scheme to the petitioners and open their respective accounts with a further direction to deduct monthly payment from their salary. The learned counsel for the petitioners 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 petitioners as well as learned counsel for the respondents, we find that a similar exercise of examining the case of each 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-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 05/12/2022.

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

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Asmita