

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4922 OF 2011

Dnyaneshwar s/o Laxmanrao Kedare
Age: 29 years, Occ. Senior Assistant [Clerk],
Health Department, Zilla Parishad,
Tq. Aurangabad, Dist. Aurangabad ... Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32
2. The Chief Executive Officer,
Zilla Parishad, Aurangabad
3. The Chief Executive Officer
Zilla Parishad, Jalna
4. The Principal Secretary,
Skill Development and Entrepreneurship
Department, Maharashtra State,
Mantralaya, Mumbai
5. The Director,
Vocational Education and Training,
Mumbai ... Respondents

....

Mr. S. B. Solanke, Advocate for Petitioner
Mr. S. G. Karlekar, AGP for Respondent No.1 – State
Mr. V. C. Patil, Advocate h/f Mr. U. B. Bondar, Advocate for
Respondent No.3

....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 11.09.2023

JUDGMENT (Per Y. G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, the matter is heard finally.
2. We have considered the strenuous submissions of both the sides.
3. It is not in dispute that vide order dated 30.10.2005, the Petitioner was selected by the District Selection Committee and appointed on contractual basis to the post of Gramsevak under the establishment of Respondent No.3, the Chief Executive Officer, Zilla Parishad, Jalna, on consolidated salary of Rs.2,500/- plus Rs.100/- traveling allowance. The initial appointment of the Petitioner was for the period of eleven months. However, subsequently, the said appointment was extended time to time. Further, on 27.09.2007, the Petitioner was selected and appointed in pursuance of advertisement

published by the District Selection Committee to the post of Senior Assistant (Clerk) in Class-III cadre under Respondent No.2. Accordingly, the Petitioner tendered his resignation for the post of contractual Gramsevak, through the Block Development Officer, Panchayat Samiti, Badnapur, District Jalna on 28.09.2007. Therefore, the Petitioner, without any gap to his earlier service, joined on 28.09.2007 in pursuance of appointment order dated 27.09.2007 with the Respondent No.2 and since then he is discharging his duties. However, as per condition No.9 of the appointment order dated 27.09.2007, he is held dis-entitled for pensionary benefits and his service would be governed by the new Defined Contribution Pension Scheme [D. C .P .S] brought into force with effect from 01.11.2005.

4. The learned Counsel appearing for the Petitioner canvassed that as per Rule 30 of the Maharashtra Civil Services (Pension) Rules 1982, the qualifying service of the Government servant shall commence from the date he takes charge of the post to which he was firstly appointed either substantively or in an officiating or temporary capacity. Since the Petitioner was initially appointed as a Gramsevak vide order dated 30.10.2005 and continued in service on the substantive post prior to the introduction

of the new pension scheme viz. (D. C. P. S.). Therefore, the Petitioner is entitled for pensionary benefits under the old pension scheme.

5. It has been canvassed on behalf of the Respondents that on 28.07.2007, the Petitioner had tendered resignation of his earlier post of Gramsevak and on the same day he joined with Respondent No.2 as Senior Assistant (Clerk). However, the Petitioner was appointed with the Respondent No.2 in the year 2007 by following the due process of law. Therefore, the appointment of the Petitioner was a fresh appointment. So also, in pursuance of the advertisement, the Petitioner was appointed to the post of Senior Assistant (Clerk) vide appointment order dated 27.09.2007 with Respondent No.2, which is a fresh appointment. Therefore, the Petitioner is not entitled for the pensionary benefits under the old pension scheme. Hence, prayed for dismissal of the Petition.

6. The issue involved in the present Petition is no more *res-integra* and it has been already considered by the co-ordinate Bench of this Court in Writ Petition No.2689 of 2014 **Kishor Asaram Nirwal and others Vs. The State of Maharashtra and others**, decided on 27.08.2018 (Coram: S. V. Gangapurwala as his Lordship then was

and S. M. Gavhane, JJ.), so also in Writ Petition No.5584 of 2012 – **Deepak Dhanajirao Suranje and others Vs. The State of Maharashtra and others**, decided on 28.02.2020 (Coram: Sunil P. Deshmukh and B. U. Debadwar, JJ.), paras 9 and 10 read thus:-

“9. Having regard to the reasons, which went into said order and the situation being almost same, the order and the reasons thereunder would squarely apply in the present matter as well. We, therefore, follow the dictum of said order.

10. The petitioners having been appointed prior to 01st November, 2005, albeit they could not join due to situation not within their control and thus, they would be governed by the Old Pension Scheme, 1982 and not by the DCPS scheme introduced under notification dated 31st October, 2005.”

7. In the case in hand, the Petitioner was initially appointed vide appointment order dated 30.10.2005 and he worked on substantive post. However, subsequently, vide appointment order dated 27.09.2007, the Petitioner was appointed and joined with Respondent No.2 on the post of Senior Assistant (Clerk). The Petitioner tendered his resignation on 28.09.2007 from his previous post and joined with the Respondent No.3 on the same day. Therefore, there is no gap in his service. As per the Government Resolution dated 19.07.2011, the services rendered by the employee on the post of Gramsevak or other post prior to 01.11.2005 on the

contract basis are required to be considered for the pensionary benefits and they would be governed under the old pension scheme provided under the Maharashtra Civil Services (Pension) Rules, 1982 and service of the Petitioner will not be governed under the D. C. P. S. introduced under the notification dated 31.10.2005.

8. In view of the above discussion, **the present petition is allowed.** It is declared that the service of the Petitioner is governed under the old pension scheme contemplated under the Maharashtra Civil Services (Pension) Rules, 1982.

9. Accordingly, Rule is made absolute in terms of prayer clause D-1.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS