

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16017 OF 2023

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| 1. Chandrakant Shantilal Newale, | |
| Age : 57 years, Occ.: Service, | |
| R/at Sankalp Niwas, Annabhau Sathe Nagar, | |
| Mohol, Tal. Mohol, Dist. Solapur 413213. | |
| 2. The Headmaster, | |
| Netaji Prashala and Science Junior College, | |
| Mohol, Tal. Mohol, Dist. Solapur. | |
| 3. The President / Secretary, | |
| Netaji Prashala and Science Junior College, | |
| Mohol, Tal. Mohol, Dist. Solapur. | .. Petitioners |

Versus

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| 1. The State of Maharashtra, | |
| Through the Department of School Education | |
| and Sports, Mantralaya, Mumbai 400 032. | |
| 2. Deputy Director of Education, | |
| Pune Division, Pune. | |
| 3. The Education Officer (Secondary), | |
| Zilla Parishad, Solapur. | |
| 4. The Superintendent (Secondary), | |
| Pay and Provident Fund Unit, Solapur, | |
| Dist. Solapur. | |
| 5. The Accountant General, | |
| Office at Mumbai. | .. Respondents |

Mr. Vivek V. Salunke for the Petitioners.

Mr. N.C. Walimbe, Addl. G.P., with Ms. A.A. Purav, AGP for the Respondent-State.

CORAM : A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ

DATE : 22ND DECEMBER, 2023.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. RULE. Rule made returnable forthwith and heard learned counsel for the parties. Learned AGP waives notice for the respondents.

2. The petitioner no.1 came to be appointed on the post of “Assistant Teacher”, initially on clock-hour basis, on 12th June 2001. The said appointment was at the petitioner no.2-School, that was receiving 100% grant, but the 1st petitioner’s appointment was in an unaided Division. Subsequently, on 12th June 2006, the 1st petitioner was posted at an aided Division of the said school and his appointment was also duly approved. He worked as full-time “Assistant Teacher” till 31st May 2022 and thereafter, on 1st June 2022, he was promoted to the post of “Supervisor”. The 1st petitioner superannuated on 31st January 2023. In the pension papers, the 1st petitioner sought grant of pensionary benefits under the Old Pension Scheme.

3. On 15th November 2022, the 4th respondent addressed a communication to the 2nd petitioner-Head Master of the School, stating therein that since the initial appointment of the 1st petitioner was on an unaided post and that as he started discharging duties on an aided post from 12th June 2006, he would not be entitled to benefit under the Old Pension Scheme. The Head Master was asked to clarify the aforesaid position. Being aggrieved, the said communication has been challenged.

4. After hearing learned counsel for the parties and after perusing the documents on record, we find that this Court has held in Writ Petition (Stamp)

No.9011 of 2017 (*Sister Ansela D'Mello & Anr. Vs. The State of Maharashtra, Through School Education Department & Ors.*), decided on 16th April 2019, that even if initially service is rendered on a post that was not receiving grant but the school in question was receiving grant-in-aid, such benefit could be granted. The 4th respondent has not taken into consideration this aspect of the matter. In the facts of the case, we find that the issue with regard to the entitlement of the 1st petitioner to benefit of the Old Pension Scheme can be considered by the respondent no.3-Education Officer (Secondary), Zilla Parishad, Solapur.

5. Accordingly, the Writ Petition is disposed of by passing the following order :-

- (i) The respondent no.3-Education Officer (Secondary) shall verify the case of the 1st petitioner and determine whether he is entitled to the benefit of the Old Pension Scheme, keeping in view the law laid down by this Court in its various Judgments including the one referred to in paragraph no.4 above.
- (ii) If it is found that the 1st petitioner is entitled to benefit under the Old Pension Scheme, necessary steps shall be taken in that regard within a period of four weeks of the date on which such eligibility is determined.
- (iii) To facilitate consideration of this aspect, the 1st petitioner shall appear before the respondent no.3-Education Officer

(Secondary) on 15th January 2024 and submit all relevant documents in that regard. The 1st petitioner shall serve a copy of this order on the Education Officer (Secondary) prior to the date of appearance.

(iv) A decision on the 1st petitioner's entitlement be taken within a period of eight weeks of submission of the 1st petitioner's proposal in the office of the Education Officer (Secondary).

6. Rule is disposed of in the aforesaid terms with no order as to costs.

[FIRDOSH P. POONTIWALLA, J.]

[A.S. CHANDURKAR, J.]