

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 1893 OF 2020

Palghar Zilla Gramsevak Sanghatana
Through President Suhit Manik Gharat ... Petitioner
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

with

WRIT PETITION NO. 3746 OF 2023

Gramsevak Sangharsh Samitee
Through its Secretary ... Petitioner
V/s.
The State of Maharashtra,
Through its Chief Secretary and Ors. ... Respondents

Mr. Suresh S. Pakale, Senior Advocate with Padmaja Malgaonkar i/b.
S.M. Katkar for the Petitioner in WP 1893/2020
Mr. Milind Deshmukh with Mr. Shailesh Chavan and Mr. Prasanna
Shahane for the Petitioner in WP 3746/2023
Ms. Anjali S. Kolapkar with Mr. Ashish S. Gaikwad for Respondent
No.6 in WP 1893/2020
Mr. Ashok Misal for Respondent No.11 in WP No. 1893/2020 and
for Respondent No.4 in WP 3746/2023
Dr. Uday Warunjikar with Jenish D. Jain for Respondent No. 3 –
UOI in WP 3746/2023
Mr. Prashant Dahat with Raj Kamble, Mr. Manoj Jadhav and Mr. D.
Bhosale for Respondent No.5 in WP 1893/2020
Ms. Chaitrali Deshmukh with Mr. Sarfaraj J. Shaikh for Respondent
No.13 in WP 1893/2020
Mr. B.V. Samant, AGP with Mr. R.P. Kadam, AGP for the
Respondent – State in WP Nos. 1893/2020 & 3746/2023

***CORAM : NITIN JAMDAR &
SANDEEP V. MARNE, JJ.***

DATE : 11 AUGUST 2023

P.C. :-

These Petitions are filed by an association of Gramsevak. Though these Writ Petitions initially sought relief against only three Zilla Parishads, the other Zilla Parishads in the State of Maharashtra are impleaded as party Respondents by amending the Petitions. The Petitioner - Association on behalf of its members, seek a direction to the Respondents to extend the benefit of application of Old Pension Scheme under the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and with further directions not to apply the “Defined Contributory Pension Scheme” (DCPS) to its members. The stand taken by the Respondents is that the Old Pension Scheme as per Rules of 1982 would be applicable to only those Gramsevak who are appointed before 1 November 2005 and those who are appointed after 1 November 2005, would be governed by the DCPS.

2. The learned Counsel for the Petitioners have drawn our attention to the chart annexed to the Petitions giving the details of the order of recruitment and appointment of each of the Gramsevak. By way of an amendment, the names of more Gramsevak are sought

to be included in the chart so that these Gramsevakhs do not have to file an independent Petition. With a view to avoid multiplicity of litigation, we permit amendment. Amendment to be carried out within six working days.

3. A question arose before this Court as to what is the position if the recruitment process is initiated prior to 1 November 2005 and the appointments are given subsequently, which is the fact situation in the present Petitions. The Division Bench of this Court in the case of *Khillari Rajendra Eknath and Ors. vs. The State of Maharashtra and Ors. in Writ Petition No. 2270 of 2021* decided on 28 April 2023, took note of provisions of Office Memorandum dated 3 March 2023 issued by the Central Government which directed application of Old Pension Scheme to all Central Government Servants in whose case recruitment process was initiated before coming into force of DCPS, though the actual appointments took place after DCPS came into force. This Court held in paragraphs 22 and 23 as under :-

“22. The Central Government took note of various judicial pronouncements as well as representations received from the affected employees whose appointments were made against posts/vacancies advertised/notified for recruitment prior to notification of the DCPS. The GOI, Ministry of Personnel, Public Grievances and Pensions issued Office Memorandum dated 03.03.2023 directing as under :

“4. The matter has been examined in consultation with the Department of Financial Services, Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has now been decided that, in all cases where the Central Government civil employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment, prior to the date of notification for National Pension System i.e. 22.12.2003 and is covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS (Pension) Rules, 1972 (now 2021). This option may be exercised by the concerned Government servants latest by 31.08.2023.

5. Those Government servants who are eligible to exercise option in accordance with para-4 above, but who do not exercise this option by the stipulated date, shall continue to be covered by the National Pension System.

6. The option once exercised shall be final.

7. The matter regarding coverage under the CCS (Pension) Rules, 1972 (now 2021), based on the option exercised by the Government servant, shall be placed before the Appointing Authority of the posts for which such option is being exercised for consideration, in accordance with these instructions. In case the Government servant fulfills the conditions for coverage under the CCS (Pension) Rules, 1972 (now 2021), in accordance with these instructions, necessary order in this regard shall be issued latest by 31 st October, 2021. The NPS account of such Government servants, shall, consequently, be closed w.e.f. 31 st December, 2023.

8. *The Government servants who exercise option to switch over to the pension scheme under CCS (Pension) Rules, 1972 (now 2021), shall be required to subscribe to the General Provident Fund (GPF). Regarding account of the corpus in the NPS account of the Government servant, Controller General of Accounts (CGA) has furnished the following clarification vide letter No.1(7)(2)/2010/cia./TA III/390 dated 14.11.2019 & I.D. Note No.TA-3-6/3/2020-TA-III/cs-4308/450 dated 23.12.2022;*

i. Adjustment of Employees' contribution in Accounts : Amount may be credited to individual's GPF account and the account may be recasted permitted up-to-date interest (Authority-FR-16 & Rule 11 of GPF Rules).

ii. Adjustment of Government contribution under NPS in Accounts : To be accounted for as (-)Dr. to object head 70-Deduct Recoveries under Major Head 2071- Pension and other Retirement benefit-Minor Head 911-Deduct Recoveries of over payment (GAR 35 and para 3.10 of List of Major and Minor Heads of Accounts).

iii. Adjustment of increased value of subscription on account of appreciation of investments – May be accounted for by crediting the amount to Govt. account under M.H. 0071 – Contribution towards Pension and Other Retirement Benefits 800-Other Receipts (Note under the above Head in LMMHA)."

23. *Thus, so far as employees of the Central Government are concerned, they have been given an option to opt for Old Pension Scheme in case they have been appointed*

against a post or vacancy advertised for recruitment prior to the date of Notification of DCPS. We have already observed above that, the State Government has adopted the DCPS formulated by the Central Government vide Notifications dated 22.12.2003 and 30.12.2003 by way of issuance of the G.R. dated 31.10.2005. The recitals to the G.R. make it amply clear that the State Government has essentially followed the Scheme formulated by the Government of India. Therefore, we see no reason why the State Government should not follow the provisions of Office Memorandum dated 03.03.2023 as well. If the State Government adopts the provisions of the Office Memorandum dated 03.03.2023, petitioners who are appointed against the posts advertised before 01.11.2005 would be governed by the provisions of the Old Pension Scheme. We are therefore of the considered view that since the State Government has adopted the Scheme formulated by the Central Government for Defined Contributory Pension Scheme, the changes effected to the Scheme by the Central Government (based on judicial pronouncements) should also be made applicable to the Officers and employees of the State Government inter alia would consequently apply to the Officers and members of the staff of the High Court as well.”

4. This Court further clarified the position of law making a distinction between the phrases “appointment” and “recruitment” and observed thus :-

“27. Sub-Rule (2) of Rule 2 of the M.C.S. (Pension) Rules, 1982 states that these rules would not apply to the Government Servants who are recruited on or after 01.11.2005. Rules 1982 are the beneficial piece of legislation governing the post retiral benefits to a government employee. It has been held time and again

that pension is not a bounty. Rules 1982 are not made applicable to the government servants who are recruited on or after 01.11.2005. Though the amendment to the Rules 1982 by the State Government are based upon the amendment carried out in the Central Civil Services (Pension) Rules, 1972 there is a subtle difference between the two. The Central Civil Services (Pension) Rules, 1972 apply to the Government Servants appointed on or before 31.12.2003, meaning thereby that it would not apply to the government servants appointed on or after 1st day of January, 2004. Whereas under the said M.C.S. (Pension) Rules, 1982, the wordings are 'the Rules shall not apply to government servants who are recruited on or after 01.11.2005'. The phraseology "Recruitment" and "Appointment" are not synonymous. There is a marked distinction between "Recruitment" and "Appointment". Recruitment is a stage prior to appointment. Recruitment is the process which entails selection of candidates. Selection is a process of picking the candidates from the short listed candidates. An appointment means an actual act of posting a person to a particular office."

5. This Court thereafter, proceeded to allow the Writ Petitions observing thus :-

"30. Resultantly, the Writ Petition succeeds. It is declared that Petitioners shall be governed by the provisions of the Old Pension Scheme in vogue prior to 1.11.2005, as well as General Provident Fund Scheme. Petitioners shall not be governed by the provisions of the Defined Contributory Pension Scheme introduced vide G.R. dated 31.10.2005. The Petitioners' contribution to DCPS be credited to their GPF Accounts. The

modalities as suggested in para-8 of the Office Memorandum dated 03.03.2023 issued by the Government of India be adopted while switching over Petitioners from DCPS to Old Pension Scheme.”

6. On the legal position as laid down by the Division Bench of this Court, there is no debate before us. The State Government has not challenged the decision rendered by the Division Bench in the case of *Khillari Rajendra Eknath*.

7. Another Division Bench of this Court, Bench at Nagpur in the case of *Rahul Laxmikant Kontamwar and Ors. vs. The State of Maharashtra and Ors.* in Writ Petition No. 3715 of 2022, following the judgment in *Khillari Rajendra Eknath* has issued the following directions :-

“10. The petitioners’ contribution to DCPS be credited in their GPF Accounts. The Modality adopted by the Government of India while switching over the petitioners from DCPS to Old Pension Rules shall also be adopted by the respondents.”

8. Therefore, we proceed to follow the same course of action as adopted by the Division Benches in these Petitions.

9. We direct the Chief Executive Officers of the Respondent – Zilla Parishad, to examine the case of each of the members of Petitioner - Association within five weeks from the date

the order is uploaded (after amendment is carried out to the Petitions) and if the recruitment process in respect of each of these Gramsevak has commenced before 1 November 2005, then they shall proceed to extend the benefits as were directed to be given by the Division Bench in the cases of *Khillari Rajendra Eknath and Ors. vs. The State of Maharashtra and Ors.* and *Rahul Laxmikant Kontamwar*. In case, the Chief Executive Officer, upon examination, finds that any individual case is not covered by the above mentioned position of law, then a speaking order giving detailed reasons be passed and communicated to the concerned individual Gramsevak.

10. We must observe here that the Division Bench in the case of *Khillari Rajendra Eknath* has issued general directions to the State of Maharashtra for issuance of a Government Resolution similar to the Office Memorandum of the Central Government dated 3 March 2023 directing that all employees whose recruitment process commenced before 1 November 2005 would be governed by the provisions of Old Pension Scheme under the Rules of 1982, notwithstanding their actual appointments taking place after 1 November 2005. We reiterate such a directions as they will prevent needless litigations by similarly placed employees. We expect the State Government to issue necessary Government Resolution within a period of six weeks from today.

11. The order will come into effect since the Petitioners will pay the Court Fee for additional co-Petitioners as per the Draft amendment within a period of one week. This undertaking is given by the learned Counsel for the Petitioners, through the President - Suchit Manik Gharat, is accepted.

12. Writ Petitions are disposed of in the above terms.

SANDEEP V. MARNE, J.

NITIN JAMDAR, J.