

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

WRIT PETITION NO. 4307 OF 2022

Savita Mothabhau Kapadnis and Ors. ... Petitioners
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

***with
WRIT PETITION NO. 4304 OF 2022***

Manoj Shantaram Bhangare and Ors. ... Petitioners
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

***with
WRIT PETITION NO. 4308 OF 2022***

Laxmi Atmaram Mali and Ors. ... Petitioners
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

***with
WRIT PETITION NO. 4310 OF 2022***

Shrinivas Chakrapani Shinde ... Petitioner
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

with

WRIT PETITION NO. 4306 OF 2022

Zunzar Sachin Nandkumar and Ors. ... Petitioners
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

with
WRIT PETITION NO. 4321 OF 2022

Deepali Sahebrao Bachhav and Ors. ... Petitioners
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

with
WRIT PETITION NO. 4302 OF 2022

Vishal Shivaji Desai and Ors. ... Petitioners
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

with
WRIT PETITION NO. 4305 OF 2022

Ajay Raman Walekar ... Petitioner
V/s.
The State of Maharashtra,
Ministry of Finance and Ors. ... Respondents

with
WRIT PETITION NO. 9169 OF 2022

Anjali Jayprakash Kolapkar

... Petitioner

V/s.

The State of Maharashtra,
Ministry of Finance and Ors.

... Respondents

with

WRIT PETITION NO. 4311 OF 2022

Manish Dilip Gaikwad and Anr.

... Petitioners

V/s.

The State of Maharashtra,
Ministry of Finance and Ors.

... Respondents

Mr. Suresh S. Pakale, Senior Advocate with Mr. Nilesh Desai, Ms. Padmaja Malgaonkar i/b. S.M. Katkar for the Petitioners in WP 4305/2022, 9169/2022, 4311/2022

Mr. Anand S. Kulkarni for Respondent Nos. 10 and 11 in WP 4306/2022 and for Respondent Nos. 5 and 6 in WP 4302/2022

Mr. M.V. Thorat for Zilla Parishad Sangh in WP 4307/2022 and WP 4304/2022

Mr. Vivek B. Rane i/b. Mr. Ashwin Kapadnis for Respondent No.5 in WP 4304/2022, WP 4308/2022, WP 4310/2022 and WP 4321/2022

Mr. Shivram A. Gawade i/b. Mr. Deepak R. More for Respondent Nos. 13 and 14 – PCMC in WP 4304/2022

Mr. Shrishail Sakhare for Respondent Nos. 5 and 6 in WP 4308/22

Mr. Harvinder Kaur i/b. Abhijit Adagule for Respondent Nos. 7 and 8 in WP 4302/2022

Ms. Anjali S. Kolapkar with Ashish Gaikwad for Respondent No.1 in WP 4308/2022

Mr. Rohit Sakhdeo with Nitesh Rangari for Respondent Nos. 7 and 8 in WP 4307/2022, WP 4304/2022, WP 4308/2022 and WP 4306/2022

Mr. Abhijit Joshi with Aditya A. Joshi for Respondent – UOI in WP Nos. 4305/2022, 4311/2022 and 9169/2022

Mr. Ajit Savagave with Mr. Shantaram R. Dheple for Respondent Nos. 7,8,11,12,15 and 16 in WP 4308/2022, for Respondent No.8 in WP 4310/2022 and for Respondent Nos.7 and 8 in WP 4321/2022

Mr. Abhijeet Devkhile for Respondent No.17 in WP 4308/2022, for Respondent No.15 in WP 1893/2020, for Respondent No.9 in WP 4304/2022, for Respondent No.13 in WP 4306/2022 and for Respondent No.7 in WP 4311/2022

Mr. Abhijit P. Kulkarni with Sweta Shah for Respondent Nos. 11 and 12 in WP 4304/2022, for Respondent Nos. 9 and 10 in WP 4311/2022 and for Respondent Nos. 4 to 9

Ms. Chaitrali Deshmukh for Respondent No.13 in WP 1893/2020

Mr. B.V. Samant, AGP for Respondent – State in WP Nos. 4310/2022, 4307/2022, 4321/2022, 4311/2022 and 4306/2022,

Mr. R.P. Kadam, AGP for Respondent – State in WP Nos. 4308/2022, 4304/2022, 4305/2022, 9169/2022 and 4302/2022

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

DATE : 11 AUGUST 2023

P.C. :-

Leave to amend is granted in Writ Petition No. 4302 of 2022. Amendment to be carried out forthwith. The additional Court fee to be paid within 5 working days.

2. The Petitioners in these Petitions are initially appointed as Shikshan Sevaks pursuant to advertisements issued by the Respondent – Zilla Parishads. They underwent selection process and came to be appointed as Shikshan Sevaks. They have prayed for a direction to the Respondents to extend the benefit of Old Pension Scheme under the provisions of the Maharashtra Civil Services (Pension) Rules 1982 and the General Provident Fund Scheme. They are resisting the application of “Defined Contributory Pension Scheme” (DCPS). As to whether the Petitioners would be governed by the Old Pension Scheme or the DCPS, the cut-off date of 1 November 2005 is of relevance. It is the stand of the Respondents that for those who are appointed prior to 1 November 2005, they alone would get the benefit of the Old Pension Scheme and those appointed after 1 November 2005 would be governed by DCPS. The Petitioners in these Petitions assert that their recruitment process had commenced prior to 1 November 2005, however, they they were actually appointed after the cut-off date of 1 November 2005.

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/cla./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 1 st 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. After following the decision rendered in the case of *Khillari Rajendra Eknath* and the decision of the Nagpur Bench in the case of *Rahul Laxmikant Kontamwar*, we have passed a separate order today in Writ Petition No. 1893 of 2022 in the case of *Palghar Zilla Gramsevak Sanghatana v/s. State of Maharashtra and Ors.*, making the position of law applicable in the cases of Gramsevak working in the Zilla Parishads.

10. Nothing is shown as of today as to whether any distinction can be made in the case of Shikshan Sevak, the Gram Sevak and the staff working on the establishment of this Court. Further, some of the Petitioners before the Division Bench of this Court, Bench at Nagpur in the case of *Rahul Laxmikant Kontamwar* were Assistant Teachers and there is a reference in the Judgment to

Assistant Teachers who were Petitioners in Writ Petition No. 3729 of 2018. Those Petitioners applied for the post of Shikshan Sevak prior to 1 November 2005 but were appointed after 1 November 2005. Therefore, *prima facie* we do not find that there is any distinction that can be made between the Shikshan Sevak and the other category of employees who were Petitioners in the above-mentioned decisions.

11. The learned AGP sought to contend that there could be a distinction between the Shikshan Sevak / Assistant Teachers working in the Zilla Parishad School and the Aided Private Schools. However, none of the Petitioners before us are Shikshan Sevak/Assistant Teacher employed in aided private schools and the distinction sought to be drawn by the learned AGP would be of little relevance to the present case.

12. Resultantly, we direct the Respondent – Chief Executive Officers of the concerned Zilla Parishads to examine the case of each of the Petitioner in the light of the law laid down in the above mentioned three decisions by verifying whether the recruitment process in their cases had commenced prior to 1 November 2005. In the event the Zilla Parishads come to the conclusion that the law can be made applicable even to these Petitioners, they shall proceed to grant the benefits of Old Pension Scheme to the Petitioners within a period of four weeks.

13. In case the Chief Executive Officers of Respondent – Zilla Parishads, upon examination, find 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 Petitioner.

14. With the above directions, the Writ Petitions are disposed of.

SANDEEP V. MARNE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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Date: 2023.08.21
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