

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

WRIT PETITION NO.9445 OF 2023

1. Karajagi Kalim Basha }
Age: 47 Years, Occu: Service, }
R/O : Manindargi, Tal : Akkalkot, }
Dist : Solapur, 413 217. }
2. Solapur Social Association Urdu High School }
& Junior College Solapur }
Through Principal /Head Master, }
Mrs. Shabnam Akthar Sayyed, }
Having Regd. Off. At:370-A, }
Muslim PacchaPeth, Solapur-413005. }
3. Solapur Social Association, Solapur }
a Registered Minority Institution }
Through President, }
Dr. Akhlak Ahmed Mohammed Ali Wadwan, }
R/o-130, Siddheshwar Peth, Solapur. }

...Petitioners

Versus

1. State of Maharashtra }
Through its Secretary School Education }
And Sports Department, State of Maharashtra, }
Mantralaya, Mumbai-400 032. }
2. The Secretary, }
Finance Department, State of Maharashtra, }
Mantralay, Mumbai 400 032. }
3. Commissioner of Education, }
Maharashtra State, Central Building, Pune. }
4. Director of Secondary & }
Higher Secondary Education, Maharashtra State, }
Central Building, Pune. }

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| 5. | Deputy Director of Education | } |
| | Pune Region, Pune, 17, Dr. Ambedkar Marg, | } |
| | Pune-01. | } |
| 6. | The Education Officer (Secondary), | } |
| | Zilla Parishad, Solapur. | } |
| 7. | The Superintendent (Secondary) | } |
| | Pay and Provident Fund Unit | } |
| | Squad (Education Department), | } |
| | Solapur, Dist : Solapur. | } |

...Respondents

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Mr. Akil Kupade for the Petitioners.

Mr. S.B. Kalel, AGP for the Respondent-State.

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

DATE : 29TH NOVEMBER, 2023.

ORAL JUDGMENT : (PER : A.S. CHANDURKAR J.)

1. Rule. Rule is made returnable forthwith and heard learned counsel for the parties by consent.

2. The Petitioner no.1 came to be appointed as a part time Shikshan Sevak prior to 01/11/2005. Thereafter he has been upgraded as a full time Assistant Teachers in the year 2011. On this basis, it is urged that the services of the Petitioner no.1 are governed by the Old Pension Scheme. The Petitioners' application in that regard dated 04/05/2023 came to be rejected

by the order dated 18/05/2023 passed by the Education Officer (Secondary) Zilla Parishad, Solapur. Being aggrieved, the Petitioners have challenged the said communication.

3. The learned counsel for the Petitioners submits that the entitlement of the Petitioners to the benefits under the Old Pension Scheme is not doubted in view of the decision of the co-ordinate Bench of this Court in ***Nilesh s/o Namdev Gurav Vs. The State of Maharashtra and Ors.***¹ It has been held therein that even if the initial appointment is as a part time teacher prior to 01/11/2005, the benefit of the Old Pension Scheme would be admissible. He, therefore, submits that rejection of the application dated 04/05/2023 is unwarranted.

4. The learned Assistant Government Pleader for the Respondent-State seeks time to file Affidavit-in-Reply.

5. We have perused the decision in ***Nilesh Namdev Gurav (supra)***. The only reason contained in the impugned communication dated 18/05/2023 is that there are no clear directions issued by the State Government to grant this benefit. We find that it was necessary for the Education Officer (Secondary) to have considered the entitlement of the Petitioner

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no.1 to the benefits under the Old Pension Scheme. Since this has not been done, we are inclined to direct the Education Officer (Secondary) to consider such Application in the light of the decision of this Court in ***Nilesh Namdev Gurav (supra)***.

6. Accordingly, for the aforesaid reasons, the communication dated 18/05/2023 is set aside. The Education Officer (Secondary) is directed to consider the Petitioners' application dated 04/05/2023 in the matter of applicability of the Old Pension Scheme. While doing so, the decision of this Court in ***Nilesh Namdev Gurav (supra)*** shall also be taken into consideration. The necessary decision on the said application be taken within a period of 6 weeks of receiving copy of this order. The application be decided in accordance with law and the decision taken be communicated to the Petitioners.

7. Rule is disposed of with aforesaid directions with no order as to costs.

[FIRDOSH P. POONIWALLA, J.] [A.S. CHANDURKAR, J.]