

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

WRIT PETITION NO.12142 OF 2022

Ramesh Ananda Jadhav
Age-58, Occupation-Retired Teacher
R/o. At & Post Nave Chavare,
Tal: Hatkananagale, Kolhapur 416 112

... Petitioner

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1. The State of Maharashtra
Through its Secretary, School Education &
Sports, Mantralaya, Mumbai 400 032.
2. The Director of Education (Education)
Maharashtra State, Central Building,
Pune 411 001.
3. The Deputy Director of Education
Kolhapur Region, Kolhapur/Chairman,
Grievance Redressal Committee, having his
Office at Hattimahal Road, Kolhapur.
4. The Superintendent, Pay & Provident Fund
Unit (Secondary), Hattimahal Road, Kolhapur.
5. Education Officer (Secondary),
Zilla Parishad Satara, Satara -415 002
6. The Principal,
Kisan Veer Mahavidyalay, Wai Tal. Wai
Satara 412 803.
7. Janata Shikshan Sanstha through its
Secretary, Wai, Taluka Wai, Satara 412 803. ... Respondents

Mr. C. G. Gavnekar a/w. Mr. Ashutosh Gavnekar & Mr. Rohit Parab for the Petitioner.

Mr. R. P. Kadam, AGP for Respondent Nos 1 to 5.

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

DATE : 14TH DECEMBER 2023

Judgment (Per Firdosh P. Pooniwalla J.):

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. By the present Petition, the Petitioner is challenging an Order dated 8th August 2022 passed by Respondent No.3 whereby Respondent No.3 has held that, as per the Government Resolution dated 31st October 2005 and the Government Letter dated 21st December 2018, for being eligible for pension it is essential to be employed continuously on a 100 % grant post prior to 1st November 2005, and therefore the Petitioner was not entitled to pension and his proposal was rejected.
3. The Petitioner has, from 13th June 1988 to 31st May 2022, discharged duties as a Teacher in various Secondary Schools and Junior Colleges, the particulars of which are as below:-

Sr. No.	Name of the School/College	Post	Duration	Granted or not		
1	Shivaji High School, Bavachi, Tal Walva, Sangli	Full Time Assistant Teacher	13/06/1988 to 09/12/1988	100%		
2	Shramik Vidyalay, Banage, Tal Kagal, Kolhapur	Full time Assistant Teacher	24/06/1989 to 29/06/1991	100%		
3	Junior College of Science, Arts & Commerce, Rahimatpur, Koregaon, Satara	Full Time Teacher in Junior College	01/07/1991 to 21/11/1992	100%		
4	Bhogavati Mahavidyalay, Kurukali, Karveer, Kolhapur	Full time Teacher in Junior College	23/11/1992 to 19/06/1993	100%		
5	Junior College of Science, Arts & Commerce, Rahimatpur, Koregaon, Satara	Full Time Teacher in Junior College	21/06/1993 to 01/02/2000	100%		
6	Kisan Veer Mahavidyalay, Wai, District Satara	Full time Teacher in Junior College	02/02/2000 to 31/05/2022	Stages of Grant		
				Academic Year	Percentage of grant to division	Percentage of grant to individual work load
				1999-00	00%	48%
				2000-01	00%	00%
				2001-02	00%	00%
				2002-03	00%	00%
				2003-04	20%	12%
				2004-05	40%	24%
				2005-06	60%	37%
				2006-07	80%	72%
				2007-08	100%	92%
2008-09	100%	100%				

4. The said details of employment of the Petitioner clearly show that the Petitioner was, prior to 1st November 2005, employed in various Secondary Schools and Junior Colleges which were receiving 100% grant-in-aid.

5. As the Petitioner was to retire from Respondent No.6- College on 31st May 2022, Respondent No.6 submitted his Pension Proposal to Respondent No.5-Education Officer (Secondary) Zilla Parishad, Satara, with a request to forward the same to Respondent No.3-Deputy Director of Education. The said Proposal was forwarded by Respondent No.3 along with a covering letter dated 21st December, 2021.

6. On receipt of the Pension Proposal from Respondent No.6, the Office of Respondent No.3 addressed a letter dated 11th February 2022 to Respondent No.5 calling upon him to obtain explanation in respect of the queries raised in said letter. The said queries raised by Respondent No.3 were about submitting an Order of Tribunal dated 1st July, 1991, whether continuity of service was granted to the Petitioner, about service certificates from the Principal/Education Officer that the Petitioner had worked in Junior Colleges which were receiving grants, whether break in service of the Petitioner was condoned and clarification with regard to the grants received

by Respondent No.6-College till it received the grant of 100% and explanation as to why the Petitioner was permitted to serve in the said College when it was not receiving grant between 2000 to 2008.

7. On receipt of the said queries, Respondent No.6 sought clarification from the Petitioner in respect of the same. The said clarification was provided by the Petitioner, and by a letter dated 19th March 2022, the same was forwarded by Respondent No.6 to Respondent No.5 with a request to forward the same to Respondent No.3. In the said clarification it was stated that, prior to the Petitioner joining the services of the Respondent No.6- College on 2nd February 2000, he had worked in institutions receiving 100% grant. The Petitioner was paid full salary from 2nd February 2000 till his retirement of 31st May 2022 as per an Order of the School Tribunal. It was further clarified that the Government Resolution dated 31st October 2005 was not applicable to the Petitioner. It was also clarified that short service breaks of the Petitioner had been duly condoned by the concerned Colleges and Authorities. It was further clarified that the Petitioner was permitted to open GPF account and hence it was claimed that the Petitioner was given continuity of service, senior grade pay scale and all increments from time to time. In these circumstances, Respondent No.6 requested

Respondent No.3 to sanction the Pension Proposal of the Petitioner.

8. Since no decision was taken on the Pension Proposal of the Petitioner, submitted by Respondent No.6, the Petitioner addressed a letter dated 20th July 2022 to the Grievance Committee-Deputy Director of Education, Kolhapur Region, complaining about the delay in deciding the Proposal. Pursuant to the said representation, Respondent No.3 fixed a hearing in his office on 8th August 2022.

9. By the impugned Order dated 8th August 2022, Respondent No.3 held that, as per the Government Resolution dated 31st October 2005 and the Government Letter dated 21st December 2018, for being eligible for pension it is essential to be employed continuously on a 100 % grant post prior to 1st November 2005, and therefore the Petitioner was not entitled to pension and his proposal was rejected.

10. We are unable to agree with the reasons given by Respondent No.3 for rejecting the Pension Proposal of the Petitioner. The law in this regard is well settled by various decisions of this Court. It would be appropriate to refer to one such decision of this Court in the case of ***Nilesh***

Namdeo Gurav Vs. The State of Maharashtra & Ors.¹ Paragraph 12 to 16 of the said judgment read as under:-

12. Having considered these submissions, it is to be noted that the Petitioners were appointed as employees on part-time posts in education institutions which were fully aided educational institutions i.e. receiving 100% grant-in-aid prior to 1st November 2005.

*13. We are of the view that the issue arising in these Petitions is no longer res integra. There has been a consistent stand taken by this Court in the decisions referred to and relied upon by the learned Counsel for the Petitioners that the service of the employees of educational institutions is to be counted from the first date of appointment irrespective of whether it is on part-time or full time basis. This stand has been made clear by this Division Bench in **Renuka Chandrabhan Umredkar** (supra), wherein the Government Resolution dated 31st October 2005 as well as the Full Bench decision of this Court in case of **Deshmukh Dilipkumar Bhagwan** (supra) and prior decision of Division Bench of this Court in case of **Shri Purushottam Harishchandra Shirsekar** (supra) amongst other decisions were considered. This Court had upon considering the Government Resolution dated 31st October 2005 and in particular Clause 4 thereof observed that as per Government Resolution, employees recruited on or after 1st November 2005 in the services of the recognized aided educational institutions, the new pension scheme i.e. DCP Scheme has been made applicable.*

*14. The Full Bench decision of this Court in the case of **Deshmukh Dilipkumar Bhagwan** (supra) had held that employees appointed prior to 1st November 2005 in aided educational institution and receiving 100% grant-in-aid prior to 1st November 2005 shall be governed by the old pension scheme. It was held that since employees in that matter had been appointed prior to 1st November 2005 and occupied a part time fully aided post i.e. receiving 100% grant-in-aid from the State Government, the old pension scheme would be made applicable to such employees. This decision has been followed in the subsequent decision in **Shri Purushottam Harishchandra***

¹ WP-4748-2019

***Shirsekar** (supra) wherein this Division Bench held that the Petitioner had been appointed as part time Shikshan Sevak on 11th September 2001 on the post which was a sanctioned aided post in the school. The Petitioner's services were granted approval by the Education Officer and the services continued. The employee was thereafter, appointed as part time teacher and upgraded to full time teacher in the said school on 15th June 2015 which post was a sanctioned aided post. It was accordingly, held that the Petitioner would be entitled to the benefits of the old pension scheme and the relevant date of the service of the employee is to be counted from the first date of appointment irrespective of whether it is on a part-time or full time posts.*

15. *The Division Bench in the recent decision in **Renuka Chandrabhan Umredkar** (supra) after referring to the above referred decisions held that the Respondent-State could not overlook the fact that the Petitioner therein was appointed as part-time Librarian on aided post in 100% aided school and the said appointment was duly approved by the Education Officer. The Respondents-State thus, could not refuse to give benefit of 50% of services rendered by the Petitioner therein as part-time Librarian prior to 1st November 2005 for computation of pensionable services along with the services rendered by the Petitioners on full time basis after 31st October 2005. The entitlement of the Petitioner for pension under the old pension scheme would be on the basis of initial date of appointment as part-time Librarian on aided post and not on the basis of appointment as full time Librarian under DCP Scheme. It has accordingly, been held that the Petitioner would be governed by the old pension scheme and not DCP Scheme introduced on 31st October 2005.*

16. *We are of the view that the present case of all the Petitioners are similar as to the Petitioners in the above referred decisions as they were appointed prior to 1st November 2005 in fully aided education institutions albeit on part-time basis. It is clear from the Affidavit in Reply of Respondent No. 5 filed in Writ Petition No. 4748 of 2019 and Writ Petition No. 4749 of 2019 that the only contention of the Respondents is that the Petitioners were not appointed as full-time employees prior to 1st November 2005 and were appointed as part-time employees and thus, not extended the old pension scheme. However, it has not been disputed that the Petitioners were employees in educational institutions which were fully aided institutions prior to 1st November 2005.*

11. As per the said judgement, employees appointed prior to 1st November 2005 in aided Educational Institutions receiving 100% grant-in-aid prior to 1st November 2005 would be governed by the old pension scheme. In the present case, the service record of the Petitioner, as set out hereinabove shows that from 13th June 1988 till 29th June 1991, the Petitioner was employed in Schools receiving 100% grant-in-aid, and further that, from 1st July 1991 to 1st February 2000 the Petitioner has been employed in Junior Colleges receiving 100% grant-in-aid. Further, even as far as the period from 2nd February 2000 to 31st May 2022 is concerned, at which time the Petitioner was employed with Respondent No.6-College, the Respondent No.6-College received 100% grant in aid from the Academic Year 2008-2009.

12. Therefore, prior to 1st November 2005, the Petitioner was employed in various schools and Junior Colleges which were receiving 100% grant-in-aid. Therefore, as per the judgement of this Court in ***Nilesh Namdeo Gurav*** (supra), the Petitioner would be entitled to pensionary benefits. The decision of Respondent No.3 that, for his whole period of employment prior to 1st November 2005 the Petitioner should be employed in an institution receiving 100% grant-in-aid, is without any basis and incorrect.

13. For all the aforesaid reasons the following orders are passed:-

- A. Impugned Order dated 8th August 2021 passed by Respondent No.3 is hereby quashed and set aside.
- B. Respondent No.3 is ordered and directed to sanction the Pension Proposal of the Petitioner.
- C. Respondent Nos.1 to 4 are directed to give all pensionary benefits under the unamended Maharashtra Civil Services Pension Rule 1982 (“Old Pension Scheme”) to the Petitioner.
- D. Rule issued in this Petition is made absolute in the aforesaid terms.
- E. In the facts and circumstances of the case, there will be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(A. S. CHANDURKAR, J.)