

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 328 of 2023

Govardhan s/o Waman Lanje,
Age : 58 years, Occ.:Retired,
R/o. Budhewada, Post-Zarpda,
Tq. Arjuni/Mor, District Gondia.

..... **PETITIONER**

...VERSUS...

1. The State of Maharashtra,
Through its Secretary,
Finance Department, State of Maharashtra,
Mantralaya, Mumbai-32.
2. The Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32
3. The Deputy Director of Education,
Nagpur Region, Nagpur, District Nagpur.
4. The Education Officer (Secondary),
Zilla Parishad, Gondia, District Gondia.
5. The Superintendent,
Pay and Provident Fund Unit,
Education Department, Gondia,
District Gondia.
6. The Principal,
Manvata Jr.College Bondgaon/De.,
Tq.Arjuni/Mor, District Gondia.

..... **RESPONDENTS**

Shri Ketan Pote, Advocate h/f Shri A.G.Ambetkar, Advocate for petitioner.
Shri A.S.Fulzele, Additional Government Pleader for respondent nos. 1 to 5.
Ms Kiran G. Nakade, Advocate for respondent no.6.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATE :- 31st JULY, 2023

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner came to be appointed on the post of 'Junior Lecturer' on 01.07.2003 in a partially aided division at the respondent no.6-College. According to the petitioner, the School was receiving 100% grant-in-aid from 01.06.1994 while the Junior College was receiving such grant-in-aid from 2003-04. The petitioner's services came to be approved in 2007-08 on a fully aided section of the respondent no.6-College. The petitioner retired on 31.10.2022. Having completed more than 19 years of service, the petitioner claims entitlement to pension under the Old Pension Scheme on the premise that the School as well as the Junior College were receiving 100% grant-in-aid prior to 01.11.2005.

3. We have heard the learned counsel for the parties and we have perused various documents on record. We find that the Division Bench in *Nilesh s/o Namdev Gurav and others vs. State of Maharashtra and others [2022(3) Mh.L.J.615]* has in paragraph 17 held as under:

"17.It is noted that respondents have in the charts annexed to the said affidavits singled out the case of petitioner no.6 in Writ Petition No.4748 of 2019 by

stating that he was an employee on unaided post. However, it is clear from the Government Resolution dated 19.07.2011 that what is to be taken into consideration is whether the educational institution is a fully aided educational institution, receiving 100% aid from the Government Resolution and not whether particular post is aided or not.”

Further, the Division Bench in *Prakash Arjun Rajeshirke and another vs. State of Maharashtra and another [2021 DGLS (bom) 1742]* has in paragraphs 13 and 14 held as under:

“13. In our view, the period of service rendered by the petitioner on the said post for Assistant Lecturer in the unaided school run by the petitioner no.2 will have to be considered along with the period of service rendered by the petitioner in the said school having granted grant-in-aid w.e.f. 1st January, 2005 for the purpose of computing qualifying services for the payment of pension. In our view, the stand taken by the State that the qualifying service will have to be computed from the date of sanction of the grant-in-aid is totally erroneous and contrary to the principles of law laid down by this Court in the case of Dnyaneshwar s/o Shankarrao Marotkar (supra)”.

“14. If the period of service rendered by the petitioner in the unaided school is taken into consideration along with the period of services rendered in the grant-in-aid school, the period of service would be more than 17 years which is more than the qualifying service required for the purpose of entitlement of pension. We accordingly pass the following order”.

4. From the aforesaid, what is relevant is receipt of 100% grant by the educational institution prior to 01.11.2005 irrespective of the fact that a

particular post on which the employee is serving is aided or not.

5. Since the petitioner seeks the benefit of the Old Pension Scheme, it would be necessary that the respondent no.3- Deputy Director of Education, Nagpur Region, Nagpur to re-consider the petitioner's claim in that regard in the light of the aforesaid decisions. By the impugned order dated 24.11.2022 such claim has been disallowed on the ground that the School/College on which the petitioner was serving was brought on grant-in-aid from 2007-08 and 2008-09.

6. In the light of the decisions *Nilesh s/o Namdev Gurav and Prakash Arjun Rajeshirke (supra)*, the impugned order is liable to be set aside. The Deputy Director of Education, Nagpur Region would be required to re-examine the petitioner's claim on merits. Accordingly the following order is passed:

- (I) The order dated 24.11.2020 passed by the Education Officer(Secondary) holding the petitioner not entitled for pensionary benefits under the Old Pension Scheme is set aside.
- (II) The Deputy Director of Education, Nagpur Region, Nagpur, is directed to re-consider the matter in the light of the decisions referred to above. The claim shall not be rejected only on the ground that some Sections of the School/College were not on grant-in-aid.

- (III) To enable such fresh consideration, the petitioner shall appear before the respondent no.3.-Deputy Director of Education, Nagpur Region, Nagpur on 18.08.2023. The petitioner is free to rely upon additional material in the form of the decisions of this Court in that regard.
- (IV) The Deputy Director of Education shall decide the claim within a period of four weeks from the date of appearance of the petitioner before it. The decision taken be communicated to the petitioner.
- Rule is made absolute in aforesaid terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.