

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

WRIT PETITION NO. 2556 OF 2021

Parveen Hazi Mohd.Yunus, Aged about
61 years, Occup. Retired Assistant
Teacher, R/o Taj Nagar, Lalkhed Road,
Amravati.

Petitioner

-Vs.-

1. State of Maharashtra, through it's
Secretary, Ministry of Secondary
Education, Mantralaya, Mumbai-32.
2. Deputy Director of Education,
Amravati Division, Amravati.
3. Education officer, (Secondary)Zilla
Parishad, Amravati.
4. Accountant General (II), Civil Lines,
Nagpur 440 001.
5. Friends Urdu High School, Habib
Nagar, Amravati through Principal.

Respondents

Mr.S.U.Kothekar, counsel holding for Mr. D.R.Khapre, counsel for
petitioner.

Mr.S.A.Ashirgade Addl.G.P for respondent Nos. 1 to 4.
Mr.D.P. Dapurkar, counsel holding for Mr.V.A. Kothale, counsel for
respondent No.5.

**CORAM:A.S.CHANDURKAR AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 19th JUNE, 2023

O R A L J U D G M E N T (Per :A.S.Chandurkar, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner came to be appointed as Assistant Teacher at the respondent No.5 School on 01.07.2000. Her services were duly approved by an order dated 30.10.2004. After rendering the service for about 17 years, the petitioner superannuated on 30.11.2017. The pension papers of the petitioner were forwarded by the respondent No.5 to the Education Officer (Secondary). Since there was no response received and the petitioner was deprived of her pensionary benefits, the present writ petition has been filed seeking a direction to be issued to the respondents to pay her pension.

4. After hearing the learned counsel appearing for the parties and after perusing affidavit-in-reply, filed by the Education Officer (Secondary), we find that the respondent No.5-School came to be recognised in the year 2000-2001. The said school started receiving 20% grant from the year 2003-2004 and was entitled to receive 100% grant from 01.03.2008. The only reason for refusing to grant pensionary benefits assigned by the Education Officer, (Secondary) is that the school was not receiving 100% grant prior to 01.11.2005. We find that this issue is no

longer *res integra* in view of the law laid down by the Full Bench of this Court in the case of **Deshmukh Dilipkumar Bhagwan and ors Vs. State of Maharashtra** reported in **(2019)3 Mah. LJ 903**. In paragraph No.37, while answering the Question No.3, it was held as under:-

“Similar will be the situation of the employees who were appointed prior to 1-11-2005 in aided primary, secondary and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 1-11-2005 but which became 100% aided before 29-11-2010 would also be governed by the DCP scheme”.

5. It thus becomes clear that when an employee is appointed prior to 01.11.2005, though the school was receiving less than 100% grant-in-aid as on 01.11.2005 but was entitled to receive 100% grant-in-aid before 29.11.2010, such employee would be governed by the Defined Contributory Pension Scheme.

6. We find that the case of the petitioner falls within the situation contemplated while answering Question No.3. The petitioner would thus be entitled to receive pension since she was appointed prior to 01.11.2005 and the school was entitled to 100% grant from 01.03.2008.

7. Though there is a dispute with regard to the proposal to be sent by the respondent No.5 to the Education Officer, (Secondary), we find that respondent No.5 can be directed to send a fresh proposal to the Education Officer, (Secondary) for the release of petitioner's pension. Accordingly the following order is passed :-

(i) In the light of the judgment of the Full Bench in **Deshmukh Dilipkumar Bhagwan and ors Vs. State of Maharashtra** (supra) it is held that petitioner is entitled to pensionary benefits under the Defined Contributory Pension Scheme.

(ii) Within a period of four weeks from today the respondent No.5 shall submit a fresh proposal to the Education Officer (Secondary) for releasing petitioner's pension.

(iii) The Education Officer ((Secondary) shall consider the said proposal and take appropriate steps in the matter for releasing of the petitioner's pension. With these directions, the writ petition is allowed and disposed of.

10. Rule is made absolute in the afore-stated terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(A.S.CHANDURKAR)