



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

WRIT PETITION NO.2308 OF 2022

- 1) Chudaram Namdev Bhendarkar
Age – 50 years, Occupation – Asstt. Teacher
R/o. C/o. Bhagavanrao Uchha Madhamik
Vidhyalay Gomni,
Tal. Mulchera, District Gadchiroli
- 2) Sanjay Yuvraj Pathade
Age – 48 years, Occupation – Asstt. Teacher
R/o. C/o. Bhagavanrao Uchha Madhamik
Vidhyalay Gomni,
Tal. Mulchera, District Gadchiroli
- 3) Aanandrao Jankiram Nikhade
Age – 51 years, Occupation – Asstt. Teacher,
R/o. C/o. Bhagavanrao Uchha Madhamik
Vidhyalay Gomni,
Tal. Mulchera, District Gadchiroli

...PETITIONERS

VERSUS

- 1) The State of Maharashtra
through its Secretary,
Higher Education Department
Mantralaya, Mumbai – 32
- 2) Dy. Director of Education,
Nagpur Division, Nagpur
- 3) The Superintendent,
Pay and Provident Fund Unit
(Secondary), Gadchiroli
- 4) The Education Officer (Secondary)
Zilla Parishad, Gadchiroli

...RESPONDENTS

Mr. P.S. Kshirsagar, Advocate for the petitioners.
Mr. N.S. Autkar, AGP for the respondents.

CORAM : **AVINASH G. GHAROTE & URMILA JOSHI-PHALKE, JJ.**
DATE : **NOVEMBER 09, 2023.**

JUDGMENT (Per Urmila Joshi-Phalke, J.)

RULE. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the parties.

2. The petitioner Nos.1 and 2 were appointed as an Assistant Teacher on 10th August 2001 and petitioner No.3 was appointed as an Assistant Teacher on 10th August 2004 at Bhagvantrao Ucchha Madhyamaik Vidhyalay, Gomni, Taluka Mulchera, District Gadchiroli and the approval was granted to their appointments vide order dated 23rd January, 2003 by the Education Officer, Secondary, Gadchiroli with effect from the date of the appointment.

3. The petitioners have challenged the cancellation of G.P.F. accounts which was open under the old pension scheme under the Maharashtra Aided and Recognised Secondary School Provident Fund Rules, 1977 as well as Maharashtra Civil Services (Pension) Rules, 1982. On the basis of Government Resolution dated 29th November 2010 and

31st October 2005 whereby the new defend pension has been made applicable to the employees who was appointed in service on or after 01st November 2005. The said Government Resolution dated 29th November 2010 made applicable to the Private Schools who was not getting 100% grant on 01st November, 2005. The petitioner's School brought on 100% grant from the financial year 2005-2006 which commence from the 01st April, 2005 i.e. before the cut-off date i.e. 01st November, 2005 and therefore the petitioners are entitled for the benefits of old pension scheme applicable to the employees who were appointed before the 01st November, 2005. Thus, as per the contention of the learned Counsel for the petitioners, the action of cancelling the G.P.F. account and applying the new pension scheme is illegal and liable to be set aside.

4. Heard Mr. Kshirsagar, learned Counsel for the petitioners. He reiterated the contention and submitted that the issue raised in the present petition is already covered by the judgments of this Court in Writ Petition No.6689 of 2013 (*Anil V. Wasekar and ors. Vs. State of Maharashtra and ors.*) decided on 10th July, 2014 and Writ Petition No.5093 of 2014 (*Umesh s/o Madhukarrao Choudhary and ors. Vs. The State of Maharashtra and ors.*) decided on 03rd December, 2014.

5. It is not disputed that petitioner Nos.1 and 2 were appointed as an Assistant Teacher on 10th August 2001 and petitioner No.3 was appointed as an Assistant Teacher on 10th August 2004 at Bhagvantrao Uchha Madhyamaik Vidhyalay, Gomni, Taluka Mulchera, District Gadchiroli and the approval was granted to their appointments vide order dated 23rd January, 2003 by the Education Officer, Secondary, Gadchiroli. The School in which the petitioners were working received the 100% grant-in-aid from July, 2004 i.e. before the cut-off date i.e. 01st November 2005 and therefore, the petitioners are entitled for the old pension scheme.

6. Mr. Autkar, learned Assistant Government Pleader opposed the petition on the ground that in view of the Government Resolution dated 29th November 2010 and 31st October 2005 whereby new pension scheme has been introduced, and therefore, the new pension scheme is made applicable to the petitioners. The petition is devoid of merits and liable to be quashed and set aside.

7. It appears on hearing the learned Counsel for the petitioners that the grant-in-aid was actually disbursed to the college 100% grant in the year 2004-2005. Said grant-in-aid was made applicable from July, 2004 to the Bhagvantrao Uchha Madhyamaik Vidhyalay, Gomni, Taluka

Mulchera, District Gadchiroli. Thus, the grant-in-aid was actually disbursed to the College in which the petitioners are imparting education.

8. The college was brought on grant-in-aid with effect from July, 2005. The cut-off date is 01st November, 2005 from which the new pension scheme is made applicable to the employees who are appointed after 31st October, 2005. The Government Resolution dated 29th November, 2010 shows that said newly introduced pension scheme was made applicable to the private schools contending that the employees who are appointed after 01st November, 2005 and the institutions which has not come under the 100% grant-in-aid. Admittedly, in the present case, the School in which the petitioners are working came under the 100% grant-in-aid in July, 2004 itself i.e. prior to the cut-off date. The necessary communication dated 17th January, 2006 shows that the school in which the petitioners were working come under the 100% grant from July, 2004. Thus, the issue raised in the present petition is covered by the judgment passed by this Court in Writ Petition No.6689 of 2013 (*Anil V. Wasekar and ors. Vs. State of Maharashtra and ors.*) decided on 10th July, 2014 and Writ Petition No.5093 of 2014 (*Umesh s/o Madhukarrao Choudhary and ors. Vs. The State of Maharashtra and ors.*) decided on 03rd December, 2014 wherein it is held that the

petitioners were appointed after following the due selection process before the cut-off date, i.e. 01st November, 2005 and the approval to the appointments of the petitioners was also granted by the Education Authority before 01st November, 2005. The school in which the petitioners are imparting education brought on 100% grant-in-aid from the financial year 2005-2006 and hence, Defined Contribution Pension Scheme (DCPS) was not applicable to the petitioners and the petitioners would be governed by the Maharashtra Civil Services (Pension) Rules, 1982.

9. It appears on hearing the learned Counsel for the petitioners that petitioner Nos.1 and 2 were appointed as an Assistant Teacher on 10th August 2001 and petitioner No.3 was appointed as an Assistant Teacher on 10th August 2004 and the approval was granted with effect from their date of appointment. The communication which is placed on record shows that the School in which the petitioners are working come under the 100% grant-in-aid from July, 2004 i.e. prior to cut-off date. Merely because the grant-in-aid was disbursed in favour of the college subsequently in January, 2006, it cannot be said that the college was not brought on grant-in-aid before January, 2006. The action on the part of the respondents applying the new pension Scheme and denying the old pension scheme is bad in law and hence, the writ petition deserves to be

allowed. Hence, we proceed to pass the following order:

- (i) The writ petition is allowed with a declaration that the petitioners are governed by the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and the Defined Contribution Pension Scheme would not be applicable to the petitioners.
- (ii) The respondents are directed to take the appropriate action to apply the old pension scheme to the petitioners.
- (iii) It is declared that the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 would be made applicable to the petitioners.

10. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)