

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

WRIT PETITION NO. 1540 OF 2023

(Gulabrao s/o Laxman Cheke Vs. State of Maharashtra & Ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri R.D. Karode, Advocate for the petitioner.

Shri A.A. Madiwale, Assistant Government Pleader for respondent Nos. 1 to 4/ State.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : MARCH 13, 2023.

The petitioner claims to have been appointed on an unaided post as Assistant Teacher prior to 01/11/2005. The petitioner claims a declaration as regards applicability of the old pension scheme to receive admissible benefits on the ground that the respective Institution was receiving 100% grant-in-aid.

The learned Counsel for the petitioner rely upon the judgment delivered by this Court at Principal Seat dated 01/10/2021 in Writ Petition No. 4748/2019 (*Nilesh s/o Namdev Gurav and ors. Vs. The State of Maharashtra and ors.*) with connected matters and the judgment and order dated 11/04/2022 in Writ Petition No. 8990/2021 (*Smt. Manasi Sudhir Mane Vs. The State of Maharashtra and ors.*) with connected Writ Petitions.

In light of the above and for the reasons recorded in the aforesaid judgments, we are inclined to pass a similar order as follows:-

(i) The case of the petitioner is relegated to the Deputy Director of Education/ Education Officer (Secondary) as the case may be for taking appropriate decision depending upon the outcome of verification and the facts governing the case of the petitioner.

(ii) The Deputy Director of Education/ Education Officer (Secondary) is directed to decide the case of the petitioner regarding applicability of the old pension scheme as per the Maharashtra Civil Services (Pension) Rules, 1982, the Maharashtra Civil Services (Computation of Pensions) Rules, 1984 and the General Provident Fund Scheme by keeping in view the law laid down by this Court in its various judgments referred to above.

(iii) If it is so found by the Deputy Director of Education/ Education Officer (Secondary) that the petitioner is governed by the old pension scheme, he shall issue necessary directions to not deduct any amount from the salary payable to the petitioner governed by the old pension scheme for the purpose of its applying to DCPS or NPS and shall also issue necessary directions for refunding of these amounts to the petitioner from the salary if the same is deducted within four weeks of the date on which such determination is made.

(iv) In case it is found that the petitioner is governed by the old pension scheme, necessary directions shall be issued by the Deputy Director of Education/ Education Officer (Secondary) to open GPF account in the name of the petitioner within four weeks from the date on his eligibility is determined.

(v) The right of the petitioner would be determined as per the decision of the Full Bench subject to the same being affirmed, reversed or modified before the Hon'ble Supreme Court, meaning thereby, the mandamus issued by this Court today would automatically stand modified depending upon the view finally taken by the Hon'ble Supreme Court.

(vi) The petitioner to appear before the Deputy Director of Education/ concerned Education Officer (Secondary) on 10/4/2023 to enable consideration of the aforesaid.

The Writ Petition stands disposed of accordingly. No costs.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

SUMIT