

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

WRIT PETITION NO.2067 OF 2020

1. Shri Anand Baburao Ghuge,
Aged about 40 years, Occ: Service,
R/o. Shastri Nagar, At Post Yeoda,
Tah. Daryapur, Dist. Amravati – 444706.
2. Yeoda Shikshan Sanstha, Yeoda,
Through its Secretary, Tah. Yeoda,
Dist. Amravati.
3. Kashibai Agrawal Vidyalaya & B.Y. alias
Bhausahab Deshmukh Higher Secondary
School, Yeoda, Through its Principal,
Tah. Yeoda, Dist. Amravati. **PETITIONERS**

..V E R S U S..

1. The State of Maharashtra through its
Secretary, Department of School
Education and Sports, Mantralaya,
Mumbai-32.
2. The Deputy Director of Education,
Amravati Division, Amravati.
3. The Accountant General
(Accounts and Entitlements)-II,
Post Box No. 114, Pension Wing,
Old Building, Civil Lines, Nagpur.
4. The Superintendent, Pay and Provident
Fund Unit, Amravati. **RESPONDENTS**

 Mr. Anand Parchure, Advocate for Petitioners.
 Mr. M. K. Pathan, AGP for Respondents 1 to 4/State.

CORAM: **ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.**
DATE: **8th MARCH, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard. Rule. Rule made returnable forthwith by consent of the learned counsels for the parties.

2. The petitioner 1 is seeking a declaration that in view of his continuous and approved service from the date of initial appointment i.e. 01.08.2005 the 'Defined Contribution Pension Scheme' (DCPS) introduced by Government Resolution dated 31.10.2005 cannot be made applicable to him.

3. Facts are broadly admitted and lie in a narrow compass. The petitioner 1 was appointed at petitioner 3 – Junior College in August, 2005. The services of the petitioner 1 came to be approved by various orders issued by the Deputy Director of Education, Amravati Division, Amravati, from time to time. It further appears that the order of approval dated 17.03.2007 refers to the services of the petitioner 1 as part time.

4. The State Government issued Government Resolution dated 31.10.2005 which replaced the old pension scheme with DCPS. The said scheme was made applicable to employees appointed on 01.11.2005 and thereafter. The grievance of the

petitioner 1 is that although his appointment with effect from 30.07.2005 was continuous and approved, the DCPS is made applicable to him on the premise that the appointment is part time and not full time. The issue is no more *res integra*.

5. The learned AGP Mr. Pathan fairly invites our attention to the judgment of the Coordinate Bench in ***Purushottam Harishchandra Shirsekar and another v. State of Maharashtra and others 2022(2) Mh.L.J. 390*** and in particular to the observation in paragraph 18 onwards which we extract below:

18. It has thus been a consistent view of this Court that the services of the employee of the Educational Institution is to be counted from the first date of appointment irrespective of whether it is on a part time or full time post. Further, if such appointment is prior to 1st November, 2005, then the old pension scheme would be made applicable to the employee. This requirement is further made clear from the Government Resolution dated 31st October, 2005 which provides in Clause 4 that the employees who are to be recruited on or after 1st November, 2005 in the services of the recognized and aided educational institutions, for them the new pension scheme (DCPS) is made applicable.

19. The decision of this Court in Deshmukh Dilipkumar Bhagwan (Supra) had referred certain questions to the full bench and one of the questions is material herein which is whether the employees appointed prior to 1st November, 2005 in aided recognized primary, secondary and higher secondary schools as well as colleges of

education which were receiving less than 100% grant-in-aid as on 1st November, 2005 are entitled to the old pension scheme under the pension rules and the commutation of pension rules or whether they will be governed by the new pension scheme under the Government Resolution dated 31st October, 2005? This question along with two other questions have now been answered in the full bench decision in Deshmukh Dilipkumar Bhagwan (Supra). The Full Bench has made it clear that only those education institutions receiving 100% grant-in-aid can be termed as aided institutions. The employees appointed prior to 1st November, 2005 in aided educational institutions but receiving less than 100% grant-in-aid as on 1st November, 2005 would be governed by the new pension scheme (DCPS).

20. Thus it is clear that employees such as Petitioner No.1 who were appointed prior to 1st November, 2005 in aided educational institution receiving 100% grant-in-aid as on 1st November, 2005 would be governed by the old pension scheme. This has further been made clear by the Division bench in Deshmukh Dilipkumar Bhagwan (Supra) along with companion matters, decision dated 26th August, 2019 (Coram Pradeep Nandrajog, CJ and Smt. Bharati Dangre, J.). It has been held therein that employees of schools, including colleges of education working against fully aided, i.e. 100% aided post prior to 1st November, 2005, irrespective of the nature of the initial appointment would be governed by the old pension scheme. We do not find any merit in submission of the learned AGP that the employee must not only be appointed prior to 1st November, 2005 but the post against which the employee is appointed must also be a fully aided post for making the old pension scheme applicable to such employee. The impugned order has only referred to a Government Order

which it alleges provides for such requirement. However, the said Government Order has neither been produced nor any particulars of the same has been given. Further the Government Order relied upon in the impugned order cannot be contrary to what has to be laid down in the decisions of this Court including the decision of the Full Bench in Deshmukh Dilipkumar Bhagwan (Supra).

6. We respectfully agree with the observations of the Coordinate Bench extracted *supra*.

7. We allow the petition in terms of prayer clauses (i), (ii) and (iii) which read thus:

(i) To hold and declare that by virtue of the continuous approved service of the petitioner no. 1 since his initial appointment on 01.08.2005, the new DCPS scheme introduced by Government Resolution dated 31.10.2005 (Annexure XII) is not applicable to the petitioner no. 1.

(ii) To hold and declare that the petitioner no. 1 is entitled to receive the benefit of old pension and GPF scheme and other retirement benefits by virtue of considering his initial date of appointment i.e. 01.08.2005.

(iii) Direct the Respondent No.3 i.e. The Accountant General (Accounts and Entitlements)-II, to stop deducting contribution from salary of the petitioner no1 as per the new DCPS pension scheme.

8. The necessary consequential action shall be taken by the respondent 3 within eight weeks from the date this order is uploaded on the website.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

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