



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

**WRIT PETITION NO. 4623 of 2023**

1. Rajesh s/o Anant Tumsare  
Age : 54 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Tejaswini High School and  
Junior College, Koradi,  
Tal. Kamptee, Dist. Nagpur.
2. Sanjay s/o Govindrao Fusey,  
Age : 51 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Vidharbha Buniyadi High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
3. Smt. Vaishali Sadanand Tayde,  
Age : 51 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Dinanath High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
4. Nityanand s/o Krishnaji Khandait  
Age : 52 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Vidharbha Buniyadi High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
5. Rajesh s/o Bhivraj Lanjewar,  
Age : 52 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Babananak Sindhi High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
6. Prashant s/o Vasantrao Bhure,  
Age : 48 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Vidharbha Buniyadi High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.

7. Punyawardhan s/o Abhiman Gondane,  
Age : 49 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Tejaswini High School and  
Junior College, Koradi  
Tal. Kamptee and Dist. Nagpur.
8. Ghanshyam s/o Jagannath Warudkar,  
Age : 44 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Abhinandan High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
9. Shailesh s/o Yashwantrao Thote,  
Age : 46 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Abhinandan High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
10. Prabal s/o Ravindranath Sarkar,  
Age : 50 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Dinanath High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
11. Smt. Shubhangi Kiran Malewar,  
Age : 51 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Vidharbha Buniyadi High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
12. Srinivasulu s/o Satyanarayana Gangisetty,  
Age : 51 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Vidharbha Buniyadi High School and  
Junior College, Nagpur,  
Tal. and Dist. Nagpur.
13. Smt. Prerna Prakash Satpute,  
Age : 53 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Tejaswini High School and

Junior College, Koradi,  
Tal. Kamptee, Dist. Nagpur.

14. Maruti s/o Bodanna Appanwar  
Age : 47 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Model High School and  
Junior College, Karanja,  
Tal. Karanja, Dist. Wardha.
15. Hemant s/o Nivruttinath Mandekar  
Age : 50 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Tejaswini High School and  
Junior College, Koradi,  
Tal. Kamptee, Dist. Nagpur.
16. Naresh s/o Ram Tammewar  
Age : 51 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Vidharbha Buniyadi High School and  
Junior College, Nagpur  
Tal. and Dist. Nagpur.
17. Rajesh s/o Dattatraya Gadewar,  
Age : 56 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Vidharbha Buniyadi High School and  
Junior College, Nagpur  
Tal. And Dist. Nagpur.
18. Rajesh s/o Pundlik Mohurle  
Age : 52 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Abhinandan High School and  
Junior College, Nagpur  
Tal. and Dist. Nagpur.
19. Sanjay s/o Vasantrao Chauhan  
Age : 57 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Model High School and  
Junior College, Karanja,  
Tal. Karanja Dist. Wardha.
20. Vinodkumar s/o Parasram Tembhurne,  
Age : 51 years, Occ.:Service,

As Jr. College Teacher presently  
working with Tejaswini High School and  
Junior College, Koradi,  
Tal. Kamptee, Dist. Nagpur.

21. Sanjay s/o Bhimrao Kale  
Age : 56 years, Occ.:Service,  
As Jr.College Teacher presently  
working with Tejaswini High School and  
Junior College, Koradi,  
Tal. Kamptee, Dist. Nagpur.
22. Sanjay s/o Krushnaji Donode  
Age : 51 years, Occ.:Service,  
As Jr. College Teacher presently  
working with Tejaswini High School and  
Junior College, Koradi,  
Tal. Kamptee, Dist. Nagpur.

..... **PETITIONERS**

**...V E R S U S...**

1. 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, Nagpur, District Nagpur.
5. The Superintendent,  
Pay and Provident Fund Unit,  
Education Department, Nagpur,  
District Nagpur.

..... **RESPONDENTS**

---

Shri Arvind G. Ambetkar, Advocate for petitioners.  
Shri Amit Madiwale, Assistant Government Pleader for respondents.

---

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

**DATE :- 4<sup>th</sup> SEPTEMBER, 2023**

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

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

2. The petitioners came to be appointed on the post of 'Junior College Teacher' prior to 01.11.2005 in partially aided divisions. According to the petitioners, each Institution was receiving 100% grant-in-aid prior to 01.11.2005. The services of the petitioner nos. 2, 3, 4, 6, 10, 11, 12, 14, 16, 17 and 19 came to be approved in 2007-08 and the petitioner nos. 1, 5, 7, 8, 9, 13, 15, 18, 20, 21 and 22 came to be approved in 2008-09 on fully aided sections of the respective High School and Junior Colleges. Thereafter the respondents have converted the 'Defined Contributory Pension Scheme, into the 'National Pension Scheme' without consent of the petitioners. The petitioners thus claim entitlement to benefit under the Old Pension Scheme on the premise that the High Schools and Junior Colleges were receiving 100% grant-in-aid prior to 01.11.2005. The order dated 02.09.2022 is thus challenged.

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.”*

4. From the aforesaid, what is relevant is receipt of 100% grant prior to 01.11.2005 irrespective of the fact that a particular post on which the employee is serving 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. The Division Bench actually allowed the petition with costs. We do not think it is necessary to go quite that far we do note that the default provision in that order was interest at 18% per annum plus a potential charge of contempt”.*

*“14. The finding is clear that it is the Old Pension Scheme and the date of the petitioner’s initial employment in the unaided section which would have to be taken into account for computing the number of years of service for the purposes of pension”.*

5. Since the petitioners seek 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 petitioners claim in that regard in the light of the aforesaid decisions. By the impugned order dated 02.09.2022 such claim has been disallowed on the ground that the Schools/Colleges on which the petitioners are serving were 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 re-examine the petitioners claim on merits. Accordingly the following order is passed:

- (I) The order dated 02.09.2022 passed by the Deputy Director of Education, Nagpur Division, Nagpur, holding the petitioners not entitled for benefits under the Old Pension Scheme is set aside.
- (II) The Deputy Director of Education, Nagpur Region, Nagpur, would re-consider the matter in the light of the decisions referred to above.
- (III) To enable such fresh consideration, the petitioners shall appear before the respondent no.3.-Deputy Director of Education, Nagpur Region, Nagpur on 25.09.2023. The petitioners are 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 petitioners before it. The decision taken be communicated to the petitioners.

7. Rule is made absolute in aforesaid terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

*Andurkar.*