

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

WRIT PETITION NO.262 OF 2023

Shirin Bano Sheikh Mehboob
w/o Ahtesham Sheikh,
Age 47 years, Occ: Service,
R/o Nagpur. **PETITIONER**

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

1. The State of Maharashtra,
School Education and Sports Department
through its Secretary, Mantralaya,
Mumbai – 32.
2. The Deputy Director of Education,
Nagpur Division, Nagpur.
3. The Education Officer (Primary),
Zilla Parishad, Nagpur.
4. The Superintendent, Pay and PF Unit
(Primary), Nagpur, Behind Patwardhan
High School, Sitaburdi, Nagpur.
5. St. Ignatius Education Society,
St. Vincent High School, Uday Nagar
Square, Tapasya School T-point,
Manewada Ring Road,
Nagpur - 440024, Through its Secretary.
6. St Vincent High School,
Through its Head Master,
Manewada, Uday Nagar Square,
Nagpur.
7. Shaheed Primary School,
Opp. Ram Mandir,
Mayo Hospital Compound,
Nagpur – 440018,
Through its Head Master. **RESPONDENTS**

Mr. Devendra A. Mohgaonkar, Advocate for Petitioner.
Mrs. Kalyani R. Deshpande, AGP for Respondents 1, 2 and 4/State.
Mr. Majid Sheikh, Advocate for Respondent 3.
Mr. A. Z. Jibhkate, Advocate for Respondents 5 & 6.

CORAM: **ROHIT B. DEO AND M. W. CHANDWANI, JJ.**
DATE: **30th JUNE, 2023.**

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

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

2. Petitioner was appointed as Shikshan Sevak in clear, vacant and sanctioned post on the establishment of Shaheed Primary School, Nagpur – respondent 7 vide order dated 04.09.2001.

3. The petitioner asserts that R-7 school was receiving 100% grant w.e.f. 01.09.2001.

4. The petitioner completed the probation period of three years successfully and vide order dated 31.08.2004 was appointed as permanent Assistant Teacher.

5. Petitioner states that for reasons inexplicable the management of R-7 issued another order dated 01.07.2007 purporting to appoint the petitioner as Assistant Teacher till further orders.

6. The petitioner further submits that while she was appointed in 2001 the Education Officer did not consider approval. Petitioner approached the High Court in Writ Petition 4712/2007. The petition was withdrawn with liberty to address representation to the Education Officer.

7. Petitioner accordingly submitted representation to the Education Officer who passed order dated 03.02.2009 approving the appointment of the petitioner as Shikshan Sevak w.e.f. 01.07.2004.

8. It appears that onward approval as Assistant Teacher was granted by the Education Officer w.e.f. 01.07.2007.

9. Due to reduction in the number of students admitted in R-3 school, the petitioner was declared surplus and vide order dated 01.08.2009 the Education Officer asked her to join R-6

school.

10. While the petitioner is working continuously with R-6 school, she was not enrolled/included in the General Provident Fund scheme and she addressed representation dated 04.03.2017 to the Pay and PF Unit, Nagpur. Petitioner followed up the representation by issuing letter dated 04.03.2017 to the Head Master.

11. However, the petitioner was informed by the Pay and PF Unit that the petitioner is covered under the Defined Contribution Pension Scheme (DCPS) which replaced the old pension scheme.

12. It is w.e.f. 01.11.2005 that the DCPS has replaced the old pension scheme. The petitioner is not extended the benefit of the old pension scheme on the assumption that she is appointed on 01.07.2007 and therefore, is covered by the DCPS scheme and not the old pension scheme.

13. During the course of hearing, we requested the respondents to ascertain whether the appointment of the

petitioner with R-7 was in 100% aided vacancy. The learned counsel for the Education Officer Mr. Majid Sheikh fairly states that his instructions are that as on the date of the appointment of the petitioner R-7 was receiving 100% grant-in-aid.

14. In view of the fair statement on behalf of the Education Officer, we find that the petitioner is clearly entitled to the benefit of the old pension scheme. She was appointed in 2001 and the said appointment as Shikshan Sevak was as a fact was approved by the Education Officer w.e.f. 01.07.2004. Since the petitioner was working in R-7 which was receiving 100% grant-in-aid, since 2001, the petitioner is entitled to the benefit of the old pension scheme.

15. The other grievance in the petition is that the benefit of the higher pay scale is not granted.

16. We direct the petitioner to appear before the R-3 Education Officer (Primary), Zilla Parishad, Nagpur on 10.07.2023 and to place on record all relevant material. If so advised, the management of R-5, R-6 and R-7 may also appear in the proceedings.

17. The Education Officer shall consider the grievance of the petitioner as regards the entitlement to higher pay scale and shall pass appropriate order.

18. Insofar as the entitlement of the petitioner to the old pension scheme, we have already held *supra* that the petitioner is entitled to the benefit of the old pension scheme.

19. We direct R-4 to take appropriate steps consistent with the finding which we have recorded.

20. The Education Officer shall submit an appropriate proposal/recommendation to the Pay Unit stating that the petitioner is entitled to the benefit of the old pension scheme.

21. The needful shall be done by the Education Officer within four weeks from the date of appearance of the parties.

22. The petition is allowed in the aforestated terms.

(M. W. CHANDWANI, J.)

(ROHIT B. DEO, J.)