

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7010 OF 2024

Manjushree Sanjay Bhagwat

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. S.C. Mangle for the Petitioner.

Mr. K.S. Thorat, 'B' Panel Counsel for Respondent Nos. 1 to 3/State.

Mr. Suhas Deokar for Respondent No.4.

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**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 26 JUNE 2024

P.C. :

. Rule. Rule is made returnable forthwith. Taken up for final disposal with consent of the learned counsel for the Respondents, who waive service.

2. The Petitioner is a retired teacher, who has filed this petition challenging the refusal of her pension proposal under the impugned communication/order dated 17 August 2023 by Respondent No.3/the Education Officer (Secondary), Zilla Parishad, Ratnagiri. Under the impugned order, it is communicated that by order dated 31 July 2023, also impugned in petition, the Respondent No.2/the Deputy Director of Education, Kolhapur Division, Kolhapur has returned the Petitioner's pension proposal on the ground that her appointment on full time post was after 1 November 2005 and

therefore, the Old Pension Scheme is not applicable.

3. Heard the learned counsel for the Petitioner, learned AGP for Respondent Nos. 1 to 3 / State and the learned counsel for the Respondent No.4/Management. Respondent No.4 has supported the case of the Petitioner.

4. The Petitioner was appointed as a part time teacher for Marathi subject with Respondent No.4/Junior College w.e.f. 20 June 1996 on 100% aided post and was working on the said post till 1 August 2008, which is more than 12 years of service. This appointment as a part time teacher was duly approved by Respondent No.2 by order dated 12 August 1996. The Petitioner was thereafter appointed as full time teacher for Marathi subject from 1 August 2008 and thereafter worked on the said post till her retirement on 31 October 2023. The Respondent No.4/College sent the Petitioner's pension proposal on 8 June 2023. The proposal clearly asserted that since the Petitioner was appointed on 100% aided post since June 1996 (prior to 2005) and since she has completed pensionable service, she is duly covered under the Old Pension Scheme. The proposal itself relied upon the judgment of this Court.

5. The Respondent Education Officer forwarded the Petitioner's pension proposal to Respondent Deputy Director of Education for its due consideration. Thereafter, by the impugned communication dated 17 August 2023, the Petitioner's pension proposal has been returned, thereby effectively rejecting it.

6. The learned counsel for the Petitioner relied upon the Judgment passed by the co-ordinate Bench of this Court in the case of *Nilesh Namdeo Gurav and others v/s. State of Maharashtra*¹ and submitted that the Petitioner's case is identical and therefore duly covered by the said Judgment. Perusal of the said judgment shows that this Court after considering series of Judgments starting from *Jyoti Prakash Chougule v/s. State of Maharashtra*² decided in 2013 till *Renuka Chandrabhan Umredkar v/s. State of Maharashtra*³ filed in the year 2021 and also a Full Bench Judgment of this Court in the case of *Deshmukh Dilipkumar Bhagwan and Ors. v/s. State of Maharashtra*⁴ held that teachers like the present Petitioner, having been appointed prior to 1 November 2005 on part time basis in fully aided Education Institute will be entitled to benefits of the Old Pension Scheme. In that judgment also, the only contention raised by the Respondent/State was that the Petitioners were not appointed as full time employees prior to 1 November 2005. In the present case also, that is the only reason stated in the impugned order for rejecting the Petitioner's pension proposal.

7. The Respondent No.4/College (employer) has supported the Petitioner's case and there is no dispute that the Petitioner was appointed in the year 1996 on part time basis on 100% aided post. The learned AGP was at pains to defend the impugned decision, however could not distinguish the Petitioner's case *vis-a-vis* the facts

1 2022(1) Bom CR 612

2 2014 SCC OnLine Bom 5114

3 2021 SCC OnLine Bom 9587

4 2019(4) Bom CR 460

of the Judgment relied upon by the Petitioner.

8. No contrary decisions are shown, therefore the petition succeeds and we pass the following order:

(i) The impugned communication dated 31 July 2023 by Respondent No.2/the Deputy Director of Education, Kolhapur Division, Kolhapur and the impugned communication dated 17 August 2023 issued by Respondent No.3/the Education Officer are quashed and set aside. The Petitioner is held entitled to the Old Pension Scheme.

(ii) The Respondent Nos. 1 to 3 are directed to process and clear the Petitioner's pension proposal extending her the benefit of the Old Pension Scheme and ensure that the payment of pension to the Petitioner commences within a period of 6 weeks from today

(iii) The outstanding/unpaid pension amount shall carry interest @ 6% per annum from the date of Petitioner's retirement (31 October 2023) till actual payment, to be made within the same period as stipulated above.

9. Writ Petition is disposed of and Rule is made absolute in the above terms. No order as to costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)