

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8778 OF 2022

Sou. Ekhande Padmaja Ravindra

...Petitioner

Versus

The State Of Maharashtra and Ors

...Respondents

.....

Mr. Shrishail Sakhare, for the Petitioner.

Mr. S.B. Kalel, AGP for Respondent Nos. 1 to 3-State.

Mr. Gautam Kulkarni i/b Mr. S.a. Rajeshirke for Respondent Nos. 4 and 5.

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CORAM : NITIN JAMDAR &
M.M.SATHAYE, JJ.

DATE : 05 JANUARY 2024

P.C.:

. Heard learned counsel for the parties. Petition is taken up for disposal.

2. The Petitioner, working as Assistance Teacher with Respondent No. 5-School, has approached this Court by way of this Writ Petition, challenging the order dated 14 February 2022, passed by Respondent No. 2- Education Officer(Secondary), Pay and Provident Fund Unit Squad, Solapur holding that the Petitioner is not entitled to open account for General Provident Fund Scheme on the ground that Petitioner's approval as a part time teacher on 11

June 2001 and as full time was given on 1 August 2016. Though the impugned order does not state so, it is passed on the basis of the Government Resolution dated 31 October 2005. According to said resolution, the employees who are appointed prior to 31 October 2005 are entitled to old pension Scheme and General Provident Fund and not those who are appointed after 1 November 2005.

3. The Petitioner has asserted that Respondent No. 5, where Petitioner is working is 100% aided school. Statement made by Petitioner has gone un-controverted. The question as to whether those who are appointed prior to 31 October 2005, are entitled to old pension scheme and General Provident Fund is concerned, several orders have been passed by this Court. In case of *Purushottam Vs. State of Maharashtra*¹, division Bench after taking a review of earlier decisions has observed in paragraph nos. 17, 18 and 19 as under:-

“17. Having considered the submissions, it-is to be noted that the Petitioner No. 1 was appointed on a part time fully aided post in the school of the previous management on 11th September, 2001. It has been consistently observed by this Court in various decisions including the decisions relied upon by the learned Counsel for the Petitioners and referred to in the Petition i.e. the decisions of this Court in Writ Petition No. 8289 of 2013, the decision dated 29th April, 2014; decision in Writ Petition No. 5421 of 2017, decision dated 9th July, 2018 and decision in Writ Petition No.

¹[2022 (2) Mh.L.J. 390]

10221 of 2015; decision dated 11th February, 2016 that teaching as well as non-teaching employees who have been 'appointed initially in part time services and there after in full time services are entitled 'to claim pension and pensionary benefits on 50% of the part time services rendered by the employee along with the full time services in the educational institutions. The services of the employee has to be counted from the first date of appointment on either part time or full time post for purpose of pension and pensionary benefit. It is also been held in a subsequent decision of the Division Bench of this Court in Smt. Prema Narsinha Herkal (Supra) that the services in that case of the Petitioner as full time librarian cannot be considered as a fresh appointment as the Petitioner therein had been appointed as part time librarian prior to 1st November, 2005 i.e. on 21st September, 1990 and thereafter as full time librarian from 6th November, 2006. The services of the Petitioner has to be counted from the first date of appointment and it was accordingly held by the Division Bench that, the old pension scheme prevailing prior to 1st November, 2005 would be applicable to the Petitioner.

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 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)."

4. The learned AGP submitted that though the above position of law is correct, school must be on 100% grant- in- aid basis, for it to apply to Petitioner's case. As stated earlier, Petitioner has made this assertion on oath which has not been controverted.

Though this Petition is pending since 2019, we therefore find no impediment to grant the prayer as sought for. In light thereof, Writ Petition is allowed in terms of prayer clause (d) which reads thus:

“this Hon’ble court be pleased to direct the Respondent Nos. 1 and 3 to count 50% of service rendered by the Petitioner as part time service from 11/06/2001 to 30/04/2022 alongwith full time service as Assistant Teacher from 11/06/2001 rendered by her for pension purpose.”

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)