

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 25 OF 2024

Dr Manisha Bharat Salunkhe ...Petitioner

Versus

The State Of Maharashtra And Ors ...Respondents

WITH

CONTEMPT PETITION NO. 4 OF 2024

Dr Manisha Bharat Salunkhe ...Petitioner

Versus

Mahesh J Chothe & Anr. ...Respondents

.....

Mr.Satyajeet A. Rajeshirke, for the Petitioner.

Ms. Rupali Shinde, AGP for Respondent Nos. 1 to 4 in W.P.
25/2024 and Respondents in Contempt Petition No. 4/2024.

.....

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

DATE : 9 JANUARY 2024

P.C.:

. The Petitioner is working with Respondent Nos. 5 and 6 as Assistant Teacher. By a Government resolution dated 31 October 2005, State Government introduced Defined Contribution Pension Scheme which came into effect from 1 November 2005. Treating the Petitioner being governed by the new scheme of Defined Contribution Pension, deductions from the Petitioner's salary commenced. Petitioner's case is that Petitioner had rendered a part time service alongwith full time

service and therefore Petitioner was entitled to old pension scheme.

2. Petitioner filed a Writ Petition bearing No. 10385 of 2022, which was disposed of on 7 September 2022 by following order.

“ The petitioner contends that the petitioner was appointed as part time teacher on 9th October, 2002. The said appointment was approved. The petitioner was upgraded as a full time teacher on 2nd January, 2006. The contention of the petitioner is that the petitioner is governed by the old pension scheme.

2. Reference is made to the order of this Court dated 11th April, 2022 in Writ Petition No. 8990 of 2021 with connected writ petitions.

3. We have also heard the learned AGP.

4. In the light of the aforesaid order, we follow the same course and pass the following order :-

(a) Deputy Director of Education-respondent no.3 is directed to decide case of the petitioner regarding applicability of the old pension scheme as per Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Computation of Pensions) Rules-1984 and General Provident Fund Scheme by keeping in view law laid down by this Court in its various judgments including the judgments referred to in the body of the judgment.

(b) If it is so found by respondent no.3-Deputy Director of Education that the petitioner is governed by old pension scheme, the respondent

no.3 shall issue necessary directions to not deduct any amount from the salary payable to the petitioner governed by the old pension scheme for the purpose of its applying to the DCPS or NPS, and shall also issue necessary directions for refunding of these amounts to the petitioner from the salary, same are deducted, within four weeks of the date on which such determination is made.

(c) In case it is found that the petitioner is governed by the old pension scheme necessary directions shall be issued by respondent no.3- Deputy Director of Education to open GPF account in the name of petitioner found eligible for same, within four weeks of the date on which his eligibility is determined.

(d) The petitioner to appear before the respondent No.3-Deputy Director of Education on 28th September, 2022.

(e) Rule is made absolute in above terms. No costs.

(f) Petition stands disposed of accordingly.”

(emphasis supplied)

The above emphasized portion i.e. paragraph 2 refers to the order passed by this Court dated 11 April 2022 in Writ Petition No. 8990 of 2021, which was part of the Writ Petition.

3. By the order dated 7 September 2022, Deputy Director of Education was directed to examine Petitioner's case in view of the law laid down by this Court in various judgments including referred to in paragraph no. 2 of the said order. The judgment referred in para 2 relies on various earlier decisions of

this Court which indicate consistent legal position. Therefore, then Division Bench passed order on 7 September 2022, Deputy Director of Education was called upon to keep in mind the consistent view taken and thereafter examine Petitioner's case. Thereupon, Deputy Director passed an order on 19 June 2023 rejecting Petitioner's case. This rejection is subject matter challenge of this Writ Petition as well as it is alleged that it is passed in a contemptuous manner.

4. Learned counsel for the Petitioner has taken us to order dated 19 June 2023 and submits that entire narration in the discussion and conclusion does not take into consideration legal position laid down in various decisions referred to in order dated 7 September 2022. Only reference that is made is to a decision in Writ Petition No. 2311 of 2013 dated 31 March 2015 (*Satish Ganpatrao Patil & Ors. V/s The State of Maharashtra*). Learned counsel for the Petitioner contends that in subsequent decision, Division Bench of this Court in Writ Petition No. 2074 of 2020 and group of Petitions (Aurangabad Bench) dated 1 October 2022, reference made to the decision in Satish Ganpatrao Patil has distinguished the said decision.

5. In the impugned order there is no reference of various decisions referred to in order dated 7 September 2022. Considering that the Deputy Director of Education deals with

such issues relating to education frequently and would have acquired domain expertise and would know the law on subject , we have to proceed on that basis that Deputy Director would be aware of the legal position laid down by this Court. Inspite of this presumption that carries with the post, this Court had drawn attention of the Deputy Director to the orders passed by this Court and to deal with the same before passing the order, yet the Deputy Director has not done the same. This is not an isolated case. This Court has come across numerous orders where law laid down by this Court is not taken into consideration by the office of the Education Department of the State forcing the employees to repeatedly approach this Court.

6. Issue notice in the Contempt Petition to Respondent No. 1 Mahesh J. Chothe, Deputy Director of Education, Kolhapur Region, Kolhapur, to file reply as to why we should not take this case forward in the contempt jurisdiction. At this stage, this notice be treated as notice before admission and not initiating contempt.

7. Also, issue notices to the Respondents in Writ Petition. Learned AGP waives service for Respondent Nos. 1 to 4. Notices are made returnable on **29 January 2024**.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)