

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9052 OF 2024

Anil Dnyanu Athawale

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Narendra Bandiwadekar, Senior Advocate a/w Mr. Vinayak Kumbhar, Mr. Rajendra Khaire, Mr. Aniket Phapale i/b Ashwinin Bandiwadekar for the Petitioner.

Mr. Abhijeet Naik, AGP for Respondent Nos. 1 and 2/State.

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

DATE : 18 JULY 2024

P.C. :

. Heard learned counsel for the parties.

2. Learned counsel for the Petitioner submits that as per order of this Court, Respondent Nos. 3 and 4 (Education Institute and College) have been served and they are supporting the case of the Petitioner. We proceed on the basis of the said statement.

3. The Petitioner, who is a retired employee as on today, is challenging the order dated 20 June 2023 passed by Respondent No.2 (the Deputy Director of Education, Mumbai Region, Mumbai) holding that he is covered by Defined Contributory Pension Scheme

(‘DCPS’), in effect rejecting the Petitioner’s proposal for entitlement to Old Pension Scheme. The Petitioner is further seeking direction to the Respondent Authorities to apply old pension scheme and take consequential steps.

4. The learned counsel for the Petitioner pointed out that the only reason given in the impugned order is that the appointment of Petitioner on full time post is after 1 November 2005, which is the concerned cutoff date. The Petitioner has relied upon the Judgment of *Purshottam Harishchandra Shirsekar and Anr. v/s. State of Maharashtra and Ors.*¹ in support of his case. He submitted that the Petitioner was appointed prior to 1 November 2005 and occupied part time fully aided post receiving 100% grant in aid.

5. Facts are in narrow compass and undisputed. The Petitioner was appointed as part-time Shikshan Sevak on fully aided post on 22 June 2000. The appointment was approved vide order dated 30 November 2000. After completing 3 years, the Petitioner’s services were continued as part-time teacher in applicable pay scale, which also came to be approved by order dated 30 March 2005. The Petitioner was thereafter made full-time teacher by combined workload of Hindi and EVS and appointment was made in the applicable pay scale. Respondent No.2 granted approval to the Petitioner as full-time teacher in applicable pay scale from 15 June 2007, under order dated 23 December 2011. We are informed that

¹ 2022 (2) Mh. L.J.390

the Petitioner has already retired on 31 May 2024. All the approvals are produced on record. Therefore, the Petitioner has worked as part-time teacher from June 2000 till June 2007 and thereafter, from June 2007 till his retirement as full time teacher.

6. It is settled law that teachers like present Petitioner having been appointed prior to 1 November 2005 on part time basis in fully aided Education Institute and who have completed qualifying service are entitled to benefits of Old Pension Scheme. This Court has recently passed an order dated 26 June 2024 in Writ Petition No. 7010 of 2024 in the case of *Manjushree Sanjay Bhagwat Vs. State of Maharashtra*, in which series of judgments taking this consistent view are considered and followed.

7. The learned AGP was at pains to defend the impugned decision, however could not distinguish the Petitioner's case *vis-a-vis* the facts of the Judgments referred above. No contrary decisions are shown. In light of the aforesaid legal position, the impugned order cannot be sustained.

8. Therefore the petition succeeds and we pass the following order:

(i) The impugned order dated 20 June 2023 passed by Respondent No.2 is quashed and set aside. The Petitioner is held entitled to the Old Pension Scheme.

(ii) The Respondent Nos. 1 and 2 are directed to process and clear the Petitioner's pension proposal extending him the benefit of the Old Pension Scheme and ensure that the payment of pension to the Petitioner commences within a period of 8 weeks from today

(iii) The outstanding/unpaid pension amount shall carry interest @ 6% per annum from the date of Petitioner's retirement (31 May 2024) till actual payment, to be made within the same period as stipulated above.

9. Writ Petition is disposed of in the aforesaid terms. No order as to costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)