

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7203 OF 2024

Raju Daniel Shinde

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Satyajeet Rajeshirke for the Petitioner.

Mr. S.B. Kalel, AGP for the Respondent Nos. 1 to 4/State.

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

DATE : 3 JULY 2024

P.C. :

. Heard learned counsel for the parties. Taken for disposal.

2. Pursuant to the earlier order, the Petitioner has served the Respondent/Management and tendered affidavit of service. The Petitioner was working as an Assistant Teacher with Respondent Nos. 5 to 7/Management. The Petitioner has retired on superannuation on 31 May 2020. The proposal was submitted by the Management regarding Petitioner's pension on 3 December 2020, which was returned by order dated 4 March 2021. The Petitioner filed Writ Petition No. 10172 of 2022 which was disposed of on 29 August 2022, by the following order.

"1. Heard the learned counsel for the respective parties.

2. The Petitioner claims to have been appointed as part-time teacher on 2nd September 2002. Subsequently, he is upgraded as full-time teacher on 12th December 2005. The Petitioner seeks benefit of old pension scheme.

3. The said issue has been decided by this Court in its earlier judgment. Reference can be had to the order dated 11th April 2022 in Writ Petition No.8990 of 2021.

4. In view of this, we follow the same course. The Petition is therefore, partly allowed and following directions are issued.

5. The Deputy Director of Education, is directed to decide the 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 the law laid down by this Court in its various judgments including the judgments in the case of **Nilesh s/o Namdev Gurav Vs. The State of Maharashtra and Ors.**¹ in the case of **Deshmukh Dilipkumar Bhagwan and Ors. Vs. State of Maharashtra**² and also in the case of **Smt. Darshana wd/o Adikrao Gaikwad Vs. State of Maharashtra and Ors.**³ decided on 30th April 2019 and 9th July 2018 respectively.

6. If it is so found by the Deputy Director of Education that the Petitioner is governed by old pension scheme, the Deputy Director of Education, as the case may be, 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 refund of these amounts to the Petitioner from whose salary, same are deducted, within four weeks from the date on which such determination is made.

7. In case, it is found that the Petitioner is governed by the old pension scheme, necessary directions shall be

1 Writ Petition No.4748 of 2019

2 2019 (3) Mh.L.J.903

3 Writ Petition No.5421 of 2017 (Bombay Bench)

issued by the Deputy Director of Education for grant of pension as per the said scheme. Parties shall thereafter take necessary steps.

8. The impugned order is quashed and set aside.

9. The Petitioner shall appear before the Deputy Director of Education on 22nd September 2022.

10. Writ Petition is disposed of accordingly.”

Thereafter, the Petitioner appeared before the Deputy Director of Education who again rejected the proposal in respect of the Petitioner's pensionary benefits by the impugned order dated April 2023 (bearing outward No. 503/2022-23/4404, order date is not available on Exh-L page 103).

3. In the impugned order the Deputy Director of Education has referred to the decision of the Full Bench of this Court dated 30 April 2019 in Writ Petition No. 8387 of 2013 regarding the school receiving 100% grant-in-aid before 29 November 2010, however did not record any final finding on the issue regarding 100% grant-in-aid and rejected the Petitioner's proposal on the ground that the Petitioner was appointed on full time post on 12 February 2006 and therefore, the Petitioner is not entitled to the old pension scheme.

4. In the impugned order itself, the Deputy Director of Education has noted that the Petitioner worked on part time basis from 3 September 2002 to 11 December 2005 and thereafter, his services were on full time basis. This factual situation was noted by the Division Bench in the earlier order and the Deputy Director was

directed by the Division Bench to consider the law laid down by this Court in respect of the consideration of part time services and thereafter, issue necessary orders. Not only the order passed by the Deputy Director of Education is contrary to the law laid down by this Court, but even contrary to the specific directions passed in the Petitioner's case. This conduct of the Deputy Director is in fact bordering on contempt of this Court, however, since other aspects regarding the school receiving 100% grant in aid not being considered which would be germane, we are not proceeding under the Contempt Jurisdiction.

5. Accordingly, the impugned order is quashed and set aside. The proposal of the Petitioner stands restored to file. The only scrutiny that the Deputy Director of Education would now carry out, would be applicability of the law laid down by the Full Bench. The issue of Petitioner's services being on part time basis prior to the cutoff date will not be raised by the Deputy Director of Education.

6. The Deputy Director would accordingly take fresh decision as above within a period of eight weeks and pass necessary consequential orders.

7. Writ Petition is disposed of in the above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)