



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1193 OF 2022

- 1) Ganesh Shankarrao Kukde,
Age 44 years, Occ. - Assistant Teacher,
R/o "Laxmi Sadan", Gayatri Nagar,
Hiwarkhed, Tq. Telhara, Dist. Akola.
- 2) Shailesh Jaidev Bharate,
Age 44 years, Occ.- Junior Clerk,
R/o Beside Mate Complex and
infront of Kalash Mangal Karyalay,
Mothi Umri, Akola, Tq. & Dist. Akola.
- 3) Ravindra Vishwanath Gomase,
Age 46 years, Occ. - Lab Attendant,
R/o Avdhut Colony, College Road,
Akot, Tq. Akot, Dist. Akola.
- 4) Ganesh Mahadevrao Kule,
Age 41 years, Occ.- Peon,
R/o Nandkhed, Post Hanwadi,
Tq. Akot, Dist. Akola.
- 5) Sahadev Suryabhan Chandangole,
Age 48 years, Occ.- Peon,
R/o Bajrang Chowk, Shivsena Vasahat
Old City, Akola, Tq. & Dist. Akola.
- 6) Shrihari Dinkarrao Tolmare,
Age 46 years, Occ. - Peon,
R/o Behind Nagar Parishad School
No.1, Gautameshwar Nagar, Telhara,
Tq. Telhara, Dist. Akola.
- 7) Manoj Singh Prem Singh Mungone,
Age 46 years, Occ. - Assistant Teacher,
R/o Ward No.16, Near Hanuman
Mandir, Nandura, Tq. Nandura,
Dist. Buldhana.
- 8) Yogesh Gopalrao Bhade,
Age 36 years, Occ. - Lab Attendant,

R/o Agrawal Layout, Near Vitthal
Rukhmini Hall, Mothi Umri, Akola,
Tq. & Dist. Akola.

- 9) Pawan Narayan Junare,
Age 38 years, Occ. - Peon,
R/o Jigaon, Tq. Nandura, Dist.
Buldhana.
- 10) Pramod Jagdev Bole,
Age 43 years, Occ. - Peon,
R/o Near Hanuman Mandir,
Zilla Parishad Nagar, Khadki (Bk.),
Gandhi Nagar, Akola, Tq. & Dist.
Akola.
- 11) Subhash Uttamrao Pawar,
Age 49 years, Occ. - Peon,
R/o Unnati Nagar, Kaulkhed, Akola,
Tq. & Dist. Akola.

.... **PETITIONERS**

VERSUS

- 1) The State of Maharashtra,
through its Secretary, Finance
Department, Mantralaya, Mumbai.
- 2) The State of Maharashtra,
through its Secretary Department of
School Education and Sports,
Mantralaya, Mumbai.
- 3) Deputy Director of Education,
Amravati Division, Tope Nagar,
Amravati, Tq. & Dist. Amravati.
- 4) Education Officer (Secondary),
Zilla Parishad, Akola, Tq. and Dist.
Akola.
- 5) Superintendent of Pay and
Provident Fund Unit, Akola,
C/o Education Officer (Secondary),
Zilla Parishad, Akola, Tq. & Dist. Akola.

.... **RESPONDENTS**

Mr. P.S. Patil, Counsel for the petitioners,
Mr. A.M. Deshpande, In-charge G.P for the respondents/State.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**
DATED : 2nd JANUARY, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. By this petition, the petitioners seek a declaration that their services are governed by the old pension Scheme and that they are entitled to service benefits according to the said scheme and the New Pension Scheme i.e. Defined Contribution Pension Scheme (for short- “**DCPS**”) does not apply to them as they were appointed before 01-11-2005.

3. The petitioners are teaching and non-teaching staff of private schools. Their service conditions are governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short- ‘*the MEPS Act*’), and the Rules framed thereunder. All of them were appointed by following due procedure of law before 01-11-2005 and having due approval from the respondent-Education Officer as a full-time employee. They have acquired the status of deemed confirmed employees in the schools. According to

them, as per the MEPS Act and Rules, 1981, they are entitled to all service benefits like other employees of private schools irrespective of the fact that whether the school is receiving 100% grant-in-aid or not.

4. On 31-10-2005 the State Government introduced the DCPS for the persons who are appointed in Government service after 01-11-2005. In the year 2009, respondent Nos. 3 and 4 on receipt of the application from the petitioners had opened the General Provident Fund (for short "*GPF*") account in their names. In between 2015 to 2019 the school in which petitioner Nos. 1 to 6 were working was closed by the management voluntarily. As such the services of the petitioner Nos. 1 to 6 were absorbed in other schools.

5. Thereafter the petitioners personally as well as through their school authorities approached the office of the respondents and requested to continue their GPF accounts by deducting their monthly GPF subscription amount from their salary. However, respondent Nos. 4 and 5 without disclosing any reason discontinued the GPF accounts of the petitioners, and therefore, the petitioners have preferred this petition.

6. Mr. P.S. Patil, learned Counsel for the petitioners has submitted that the petitioners were appointed before 01-11-2005 and they are

working in the schools to whom 100% grant-in-aid is received. Therefore, their services are required to be governed by the Old Pension Scheme instead of the New Pension Scheme i.e. DCPS. During the argument, he submitted that this issue is squarely covered by the judgment of the Full Bench of this Court passed on 30-04-2019. He also invited our attention to the order passed in Writ Petition No. 7236/2018 along with other connected writ petitions and prayed to dispose of the petition accordingly.

7. Mr. A.M. Deshpande, learned In-charge Government Pleader does not dispute the aforesaid position of law.

8. Perused the order dated 23-6-2022 passed in Writ Petition No. 7236/2018 along with other connected writ petitions. It seems that the issues raised in the said writ petitions are identical to the issues in the present petition. In the said order this Court has referred to paragraph No.37 of the judgment dated 30-4-2019 passed by the Full Bench of this Court. We would like to reproduce the same:

“37. Under these circumstances, we answer the Reference as under : -

Question No.2 :

The employees who were appointed prior to 1-11-2005 in aided recognized primary, secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1-11-2005 would be governed by the DCP Scheme.”

9. It is to be noted that, the learned Counsel for the petitioners fairly submitted that in all the cases the management started receiving 100% grant-in-aid after 01-11-2005. Therefore, in view of this position and the law laid down by the full bench, it is clear that the petitioners would be governed by DCPS which has come into force from 01/11/2005. That being so, we deem it appropriate to dispose of the petition. Thus, in view of the order passed in the aforesaid writ petitions the present petition is disposed of.

10. While disposing of this writ petition in the aforesaid terms, it is also observed that this adjudication would be subject to the challenge that is pending before the Hon'ble Supreme Court against the judgment of the Full Bench. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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