



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

WRIT PETITION NO. 2011 OF 2022

- 1) Sambhaji Narayan Gaikwad,
Age 40 years,
Occupation – Assistant Teacher,
R/o C/o. Saddhamma Primary
Marathi School Mulawa, Panchayat
Samiti Umarkhed, District Yavatmal.
- 2) Ku. Kiran Digambar Thote,
Age 48 years,
Occupation – Assistant Teacher,
R/o C/o. Ahilyadevi Holkar Primary
Marathi School Digras, Panchayat
Samiti Digras, District Yavatmal.
- 3) Bhaurao Shivaji Torkad,
Age 47 years,
Occupation – Assistant Teacher,
R/o C/o. Mahatma Mungasaji Primary
Marathi School Pusad, Panchayat
Samiti, Pusad, District Yavatmal.
- 4) Jayram s/o Hausaji Kale,
Age 44 years,
Occupation – Assistant Teacher,
R/o C/o. Smt. Shakuntalabai Deshmukh
Primary School, Pusad, Panchayat
Samiti, Pusad, District Yavatmal.
- 5) Bandu s/o Vitthalrao Dhakre,
Age 42 years,
Occupation – Assistant Teacher,
R/o C/o. Smt. Shakuntalabai Deshmukh
Primary School Pusad, Panchayat
Samiti Pusad, District Yavatmal.
- 6) Pralhad Parbhat Jawade,
Age 42 years,
Occupation – Assistant Teacher,

R/o C/o. Smt. Shakuntalabai Deshmukh,
Primary School, Pusad, Panchayat Samiti,
Pusad, District Yavatmal.

.... **PETITIONERS**

VERSUS

- 1) The State of Maharashtra,
through Secretary, Ministry of Education
and Sport, Mantralaya, Mumbai-32.
- 2) The Education Officer (Primary),
Zilla Parishad, Yavatmal,
Tahsil and District Yavatmal.
- 3) The Superintendent,
Pay Unit Primary and GPF Office,
Zilla Parishad, Yavatmal, Tahsil and
District Yavatmal.
- 4) The Deputy Director of Education,
Amravati Division, Amravati.

.... **RESPONDENTS**

Mr. P.S. Kshirsagar, Counsel for the petitioners,
Mr. A.S. Fulzele, Addl. G.P. for respondent Nos. 1 and 4,
Mr. B.N. Jaipurkar, Counsel for respondent No.2.

CORAM : NITIN W. SAMBRE
& ABHAY J. MANTRI, JJ.
DATED : 8th FEBRUARY, 2024

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

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

2. By this petition, the petitioners are claiming the relief of declaration that they are entitled to the benefit of Maharashtra Civil Services (Pension) Rules, 1982 (for short "*Rules of 1982*") having been appointed as Shikshan Sevak in the respective schools, which are

receiving 100% grant-in-aid before 01-11-2005. The said benefits are denied to the petitioners on the ground that they have acquired the requisite qualification of a trained teacher after 01/11/2005.

3. Mr. P.S. Kshirsagar, learned Counsel for the petitioners submits that the issue is no more *res integra* and has relied on the judgment of the Coordinate Bench of this Court in Writ Petition No. 858/2017 (*Ashok Vasantrao Bochare v. State of Maharashtra and others*). Hence he has urged that in view of the dictum laid down in the aforesaid judgment, the petitioners are entitled to the declaration as sought.

4. *Per contra*, Mr. A.S. Fulzele, learned Additional Government Pleader for respondents Nos.1 and 4 has argued that the petitioners were untrained Teachers before 01-11-2005 and had not fulfilled the educational criteria for the post of Assistant Teacher. However, after 01/11/2005 they have acquired the educational qualifications, therefore, they are not entitled to the relief as prayed. In support of his contention, he has relied upon the judgment of the Co-ordinate Bench of this Court in Writ Petition No. 2894/2014 (*Rohidas Vitthal Bole and others v. State of Maharashtra and others*) decided on 09-8-2019 and urged that the case of the petitioners is covered by the said judgment and therefore, he submitted that petitioners would be governed by the Defined Contribution Pension Scheme (for short “*DCP Scheme*”) and

not for the Old Pension Scheme. Hence, he has prayed for the dismissal of the petition.

5. When confronted, with the dictum laid down in Writ Petition No. 858/2017, the learned Additional Government Pleader has urged that the case of the petitioners has to be considered independent of the aforesaid judgment as a case of the petitioners can be distinguishable. He tries to justify his contention based on the factual matrix of the case.

6. We have appreciated the submissions of both parties as well as gone through the judgments relied upon by both parties.

7. Having considered the rival contentions of the parties we would like to refer to the law laid down by the Full Bench of this Court at the Principal Seat, in Writ Petition No.8387/2013 with connected matters as under. (Relevant para 37)

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

Question No.1 :

In the context of the right of an employee of a private school or college of education to receive pensionary benefits and the corresponding liability of the Government to pay the same, only those schools and colleges of education which are receiving 100% grant-in-aid can be termed as aided institutions.

Question No.2 :

The employees who were appointed prior to 1-11-2005 in aided recognized primary and 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.

Question No.3 :

Similar will be the situation of the employees who were appointed prior to 1-11-2005 in aided primary, secondary, and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 1-11-2005 but which became 100% aided before 29-11-2010 would also be governed by the DCP Scheme.”

8. In the case at hand, the documents on record categorically show that the petitioners have been appointed as Shikshan Sevak before 01-11-2005, in the respective schools that have received 100% grant-in-aid before 01-11-2005. Thus, it seems that the case of the petitioners is squarely covered by the answer to question No.1 in the above-referred Full Bench Judgment. Apart from the above, the case of the petitioners is also covered by the judgment in Writ Petition No. 858/2017. Merely because the petitioners acquired the educational qualifications after 01-11-2005 does not disentitle them to claim the relief as prayed. On the contrary in view of the judgment of the Full Bench of this Court, petitioners are entitled to be governed by the old pension Scheme. Moreover, the respondents have not denied that the schools were not receiving 100% grant-in-aid before 01-11-2005. That being so, the dictum laid judgment in Writ Petition No. 2894/2014, is not helpful to respondents in support of their defence.

9. In the aforesaid background, the objection raised by the learned Additional Government Pleader thereby trying to distinguish the case of the petitioners, cannot be accepted and is required to be overruled. That being so, it seems that the case of the petitioners is covered by the judgment of the Full Bench of this Court.

10. In view of the above, we deem it appropriate to pass the following order.

- (i) It is declared that the petitioners' services are governed by the Maharashtra Civil Services (Pension) Rules, 1982, and not by the New DCP Scheme.
- (ii) Accordingly, the concerned respondents to take necessary steps.

11. Rule is made absolute in the above terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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