



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1987 OF 2022

- 1) Raju Parmeshwar Agose,
age : 35 years, occupation : Assistant
Teacher, r/o c/o Vasantrao Naik
Madhyamik Va Uccha Madhyamik
Vidyalaya, Kali (Dk.), Panchayat
Samiti, Mahagaon, District Yavatmal.
- 2) Nandkishor Shaligram Kharbade,
age : 43 years, occupation :
Assistant Teacher, r/o c/o Kai Virji
Bhimji Gherwara High School,
Darwaha, Panchayat Samiti,
Darwaha, District Yavatmal.
- 3) Ku. Vanita Vasudeo Ukande,
age : 37 years, occupation : Assistant
Teacher, r/o c/o Sau. Umabai
Shankarrao Kanikar Madhyamik
Girls High School, Darwaha,
Panchayat Samiti, Darwaha,
District Yavatmal.
- 4) Sanjay Tulshiram Mantute,
age : 45 years, occupation : Assistant
Teacher, r/o c/o Vasantrao Naik
Vidyalaya, Varandhali,
Panchayat Samiti, Digras,
District Yavatmal.

... Petitioners

- Versus -

- 1) The State of Maharashtra, through
Secretary, Ministry of Education
and Sports, Mantralaya, Mumbai-32.

- 2) The Education Officer (Secondary),
Zilla Parishad, Yavatmal,
Tahsil and District Yavatmal.
- 3) The Superintendent, Pay Unit
Middle and GPF Office,
Zilla Parishad, Yavatmal,
Tahsil and District Yavatmal.
- 4) The Deputy Director of Education,
Amravati Division, Amravati. ... Respondents

Shri P.S. Kshirsagar, Advocate for petitioners.

Shri S.M. Ukey, Additional Government Pleader for respondent nos.1,
2 and 4.

**CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.**

DATED : JANUARY 30, 2024

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

Rule, returnable forthwith. Heard finally with consent of Shri Kshirsagar, learned Counsel for the petitioners and Shri Ukey, learned Additional Government Pleader for the respondent nos.1, 2 and 4.

2) A declaration is sought by the petitioners that they are entitled for the benefits of the Maharashtra Civil Services (Pension) Rules, 1982 having been appointed as Shikshan Sevaks before

1/11/2005 in the School, which is getting 100% grant-in-aid . The said benefits are denied to the petitioners on the ground that they have acquired the required qualification of a trained Teacher after 1/11/2005.

3) In the aforesaid background, the respondents have taken a stand that the petitioners are covered by the Defined Contribution Pension Scheme (DCP Scheme) and not the old pension scheme.

4) Shri Kshirsagar, learned Counsel for the petitioners, submits that the issue is no more res integra and would rely on the Division Bench judgment of this Court delivered at Aurangabad in Writ Petition No.858/2017 *(Ashok Vasantrao Bochare vs. State of Maharashtra and others)*. According to him, the said issue is specifically dealt with by the Division Bench in para (10) of the said judgment.

5) When confronted, Shri Ukey, learned Additional Government Pleader for respondent nos.1, 2 and 4, would urge that the case of the petitioners has to be considered independent of the aforesaid judgment in the matter of *Ashok Vasantrao Bochare* (cited supra) as the case of the petitioners can be distinguishable. He

would try to justify his contentions on the basis of factual matrix of the matter.

6) We have appreciated the submissions canvassed by the learned Counsel for the parties. The Division Bench of this Court in para (10) of the judgment in the case of **Ashok Vasantrao Bochare** (cited supra) has observed thus :

“10) ... Only objection of the respondents that the petitioner has acquired a required qualification of trained teacher in 2013, i.e. after 01-11-2005 and therefore DCP Scheme is applicable to the petitioner. However, as the petitioner was permanent employee working since 1988 in respondent No.3-School and respondent No.3-School is receiving 100% grant since 1992 only because petitioner has acquired D.Ed. qualification in 2013 it cannot be said that DCP Scheme is applicable to him as he is fulfilling the requirement of getting pension as per the old scheme in the light of decision of full bench of this Court in the case of Deshmukh Dilipkumar Bhagwan (supra). Another aspect to be noted is that the Government Resolution dated 31-10-2005 applying DCP scheme since 01-11-2005 does not have bearing on the educational qualification of the teaching or non teaching employee. Therefore, there is no substance in the objection raised by the respondents that as the petitioner has been granted approval as a trained under graduate Assistant Teacher from 20-08-2013

as he acquired requisite qualification on the said date his case would be governed by the DCP Scheme.”

This Court has specifically noted that the petitioners have acquired the status of permanent employees in the School, which is admitted to 100% grant-in-aid. The same appears to be the factual matrix in the case of the petitioners.

7) 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 is declared that the petitioners' services are governed by the Maharashtra Civil Services (Pension) Rules, 1982 and not by the pension scheme otherwise brought post 2005. The petition is allowed accordingly.

8) Rule is made absolute in the above terms. No costs.

(ABHAY J. MANTRI,J.)

(NITIN W. SAMBRE, J.)

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