

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10459 OF 2025

Sanjay Babaso Musute.] **...Petitioner.**

Versus

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|---|---|------------------------|
| 1. The State of Maharashtra. |] | |
| Through The Secretary, |] | |
| Finance Department. |] | |
| 2. The Secretary, School Education and |] | |
| Sports Department, Mumbai. |] | |
| 3. The Dy. Director of Education, |] | |
| Kolhapur Region, Kolhapur. |] | |
| 4. The Education Officer (Secondary) |] | |
| Zilla Parishad, Kolhapur. |] | |
| 5. The Superintendent, Pay and Provident |] | |
| Fund Unit Education Department, Kolhapur] | | |
| 6. Bahubali Vidyapeeth, Bahubali, |] | |
| Tq. Hatkangale, Dist Kolhapur. |] | |
| 7. Sanmati Vidyalaya, Tardal, |] | |
| Tq. Hatkangale, Dist Kolhapur. |] | ...Respondents. |

Mr. Ketan D. Pote i/b Mr. Arvind G. Ambetkar for the Petitioner.
Ms. T. J. Kapare, AGP for the Respondent-State.

**Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.**

Date : November 6, 2025.

Oral Order (Per Ajit B. Kadethankar, J.):

Subject Matter: The Petitioner seeks to be governed by the Old Pension Scheme [for short “**OPS**”] and not by the New Pension Scheme [for short “**NPS**”] or by the Defined Contributory Pension Scheme [for

short “**DCPS**”]. For that, Petitioner relies upon the Government Resolution dated 31st October 2005 and various orders passed by this Court, which we have referred further.

1. We have heard at length Mr. Ketan Pote, learned Counsel for the Petitioner as also Ms. T. J. Kapare, learned Assistant Government Pleader.

2. Considering the nature of prayers made in petition, this petition is being disposed finally at the admission stage by consent of parties.

3. **Petitioner’s argument:-**

3.1 Petitioner contends to have been appointed on 22th November 2004 as Assistant Teacher at Sanmati Vidyalaya, Tardal, Tq. Hatkangale, Dist Kolhapur.

3.2 Learned Counsel for the Petitioner would submit that since prior to the date of appointment of the Petitioner, the said school was recognized as 100% grant-in-aid school. He would further submit that in April 2009, Petitioner’s services were approved as Assistant Teacher in grantable division of the school run by respondent management. He would submit that employees appointed prior to 1st November 2005 in the educational institution receiving 100% grant-in-aid prior to 1st November 2005 shall be governed by OPS.

- 3.3** Mr. Pote would submit that Government of Maharashtra introduced NPS vide Government Resolution dated 31st October 2005. He would further submit that School Education and Sports Department of Government of Maharashtra issued Government Resolution dated 29th November 2010 thereby launching the DCPS on the Central Government pattern. It is further submitted that subsequently, the DCPS came to be converted into NPS.
- 3.4** Mr. Ketan Pote, learned Counsel for the Petitioner would further contend that for the purpose of pension, a school employee's services has to be counted from the first date of such employee's appointment and it is irrespective of the nature of initial appointment, whether part-time or full-time. He would further submit that if the initial appointment - may be of any nature-is prior to 1st November 2005, such employee must be governed by OPS if appointed in fully aided educational institution prior to 1st November 2005.
- 3.5** Mr. Pote would rely on Clause (4) of Government Resolution dated 31st October 2005 and would submit that Petitioner be held entitled to the benefits of OPS in accordance with the provisions of Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, and General Provident Fund be made applicable to Petitioner.

3.6 The sum and substance of the submissions of Mr. Ketan Pote is that the Petitioner does not want to be governed by DCPS or NPS. Mr. Pote would place on record the judgment delivered by this Court at Principal Seat-Mumbai on 27th February 2025 in Writ Petition No. 2345 of 2014 and connected matters, namely, Maharashtra Rajya Madhyamik Va Ucha Madhyamik Shala Kruti Samittee v. The State of Maharashtra [known as राज्य माध्यमिक व उच्च माध्यमिक शाला कृती समिती **case**]. He would also rely on order dated 22nd December 2023 passed by this Court at Principal Seat-Mumbai in Writ Petition No. 8416 of 2024 and connected matters. Petitioner's simultaneous thrust is also on another point that there could be no distinction between a part-time employee and full-time employee for the purpose of conferring benefit of OPS.

4. Respondent's argument:-

4.1 Ms. Kapare,, learned Assistant Government Pleader would fairly submit that there can be no dispute over the law laid down by this Court as to the entitlement of certain class of employees to be governed by OPS. However, he would submit that it is not a straitjacket formula that a person employed prior to 1st November 2005 would be *ipso facto* entitled to be governed by OPS.

4.2 Learned AGP would further add that in view of the law laid down by the Full Bench of this Court in the case of ***Deshmukh Dilipkumar Bhagwan v. State of Mah. [2019 (3) Mh.L.J. 903]***, the qualification of 'Educational Institute' has to be assessed. That, if there was gap in the services of Petitioner-employee, it needs to be verified as to whether such gap could be condoned or not in the light of relevant Rules and Government Policy etc.

5. Discussion and observations:-

5.1 With the able assistance of the learned counsel for the parties, we have gone through the Government Resolutions relied upon by the parties and the law laid down by the Full Bench of this Court in ***Deshmukh Dilipkumar Bhagwan*** (supra) as well as the orders passed by the co-ordinate Benches of this Court in various similar cases.

5.2 At first, we would refer to what the learned Full Bench in ***Deshmukh Dilipkumar Bhagwan*** (supra) has held while answering the reference that was made to it. At Paragraph No.37 of the Full Bench Judgment it has been observed that :

"37. Under these circumstances, we answer the Reference as under:—

Question No. 1:

In the context of the right of an employee of 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, 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."

5.3 At this juncture, a profitable reference can be made to the observations made by this Court in Paragraph Nos.15 and 16 in the case of राज्य माध्यमिक वा उच्च माध्यमिक शाला कृती समिती (supra), which is reproduced below :

"15. This Court, therefore, concluded by placing reliance upon the Full Bench view in Deshmukh Dilipkumar Bhagwan (supra) that educational institutions receiving grant in aid prior to 1st November, 2005 would be governed by the Old Pension Scheme. In so far as part-time librarians were concerned, it was concluded that their entitlement for pension under the Old Pension Scheme would be on the basis of the initial date of appointment on an aided post prior to 31st October, 2005. While advertng to the details of the Petitioners set out in the charts that were made available to the Court, the Division Bench concluded that those who are in employment prior to 1st November, 2005, even on part-time basis in a fully aided educational institution, would be entitled for the benefits of the Old Pension Scheme.

16. In Writ Petition No.327 of 2023 (Smt. Anuradha Pramod Kale @ Anuradha Ashokrao Sagane V/s. The State of Maharashtra and Others), the Nagpur Bench referred the case of the Petitioners to the Deputy Director of Education for considering their eligibility for the OPS."

5.4 This Court while deciding the case of राज्य माध्यमिक व उच्च माध्यमिक शाला कृती समिती (supra), has relied upon the observations made by this Court in the case of **Nilesh Namdev Gurav v. State of Maharashtra**, namely, Writ Petition No.4748 of 2019 with

connected matters decided on 1st October 2021. Relevant portion of Nilesh Gurav's Case is reproduced below for ready reference:

"13. We are of the view that the issue arising in these Petitions is no longer *res integra*. There has been a consistent stand taken by this Court in the decisions referred to and relied upon by the learned Counsel for the Petitioners that the service of the employees of educational institutions is to be counted from the first date of appointment irrespective of whether it is on part-time or full time basis. This stand has been made clear by this Division Bench in Renuka Chandrabhan Umredkar (supra), wherein the Government Resolution dated 31st October 2005 as well as the Full Bench decision of this Court in case of Deshmukh Dilipkumar Bhagwan (supra) and prior decision of Division Bench of this Court in case of Shri Purushottam Harishchandra Shirsekar (supra) amongst other decisions were considered. This Court had upon considering the Government Resolution dated 31st October 2005 and in particular Clause 4 thereof observed that as per Government Resolution, employees recruited on or after 1st November 2005 in the services of the recognized aided educational institutions, the new pension scheme i.e. DCP Scheme has been made applicable.

14. The Full Bench decision of this Court in the case of Deshmukh Dilipkumar Bhagwan (supra) had held that employees appointed prior to 1st November 2005 in aided educational institution and receiving 100% grant-in-aid prior to 1st November 2005 shall be governed by the old pension scheme. It was held that since employees in that matter had been appointed prior to 1st November 2005 and occupied a part time fully aided post i.e. receiving 100% grant-in-aid from the State Government, the old pension scheme would be made applicable to such employees. This decision has been followed in the subsequent decision in Shri Purushottam Harishchandra Shirsekar (supra) wherein this Division Bench held that the Petitioner had been appointed as part time Shikshan Sevak on 11th September 2001 on the post which was a sanctioned aided post in the school. The Petitioner's services were granted approval by the Education Officer and the services continued. The employee was thereafter, appointed as part time teacher and upgraded to full time teacher in the said school on 15th June 2015 which post was a sanctioned aided post. It was accordingly, held that the Petitioner would be entitled to the benefits of the old pension scheme and the relevant date of the service of the employee is to be counted from the first date of appointment irrespective of whether it is on a part-time or full time posts.

15. The Division Bench in the recent decision in Renuka Chandrabhan Umredkar (supra) after referring to the above referred decisions held that the Respondent-State could not overlook the fact that the Petitioner therein was appointed as part-time Librarian on aided post in 100% aided school and the said appointment was duly approved by the Education Officer. The

Respondents-State thus, could not refuse to give benefit of 50% of services rendered by the Petitioner therein as part-time Librarian prior to 1st November 2005 for computation of pensionable services along with the services rendered by the Petitioners on full time basis after 31st October 2005. The entitlement of the Petitioner for pension under the old pension scheme would be on the basis of initial date of appointment as part-time Librarian on aided post and not on the basis of appointment as full time Librarian under DCP Scheme. It has accordingly, been held that the Petitioner would be governed by the old pension scheme and not DCP Scheme introduced on 31st October 2005.

16. We are of the view that the present case of all the Petitioners are similar as to the Petitioners in the above referred decisions as they were appointed prior to 1st November 2005 in fully aided education institutions albeit on part-time basis. It is clear from the Affidavit in Reply of Respondent No. 5 filed in Writ Petition No. 4748 of 2019 and Writ Petition No. 4749 of 2019 that the only contention of the Respondents is that the Petitioners were not appointed as full-time employees prior to 1st November 2005 and were appointed as part-time employees and thus, not extended the old pension scheme. However, it has not been disputed that the Petitioners were employees in educational institutions which were fully aided institutions prior to 1st November 2005.

17. It is noted that Respondents have in the Charts annexed to the said Affidavits singled out the case of Petitioner No. 6 in Writ Petition No. 4748 of 2019 by stating that he was an employee on unaided post. However, it is clear from the Government Resolution dated 19th July 2011 that what is to be taken into consideration is whether the educational institution is a fully aided educational institution, receiving 100% aid from the Government Resolution and not whether particular post is aided or not.

18. Petitioner No. 6 in Writ Petition No. 4748 of 2019, having been appointed prior to 1st November 2005 on part-time basis in a fully aided education institutions would along with the other Petitioners be entitled to the benefits of the old pension scheme."

6. Learned AGP would point out that Judgment and Orders referred supra are now subject matter before the Hon'ble Supreme Court. To this, observations made by this Court in Paragraph No.17(h) of Judgment and Order in the case of राज्य माध्यमिक वा उच्च माध्यमिक शाला कृती समिती (supra) could be referred to, which are reproduced as follows:-

“(h) Until the decision of the Hon’ble Supreme Court is delivered in the Special Leave Petition (SLP) filed by the State Government challenging the view taken by the Division Bench in *Nilesh Namdev Gurav (supra)* and the proceedings initiated by individuals before the Hon’ble Supreme Court [assailing the view taken by the learned Full Bench of this Court in *Deshmukh Dilipkumar Bhagwan and Others (supra)*], the Deputy Director of Education would follow the law as is laid down in *Deshmukh Dilipkumar Bhagwan and Others (supra)* and *Nilesh Namdev Gurav (supra)*. In the event, the Hon’ble Supreme Court delivers an order in *Deshmukh Dilipkumar Bhagwan and Others (supra)* and/or *Nilesh Namdev Gurav (supra)*, the said Authority would be obliged to follow the view and the directions set out by the Hon’ble Supreme in such judgment”

7. We are in full agreement with the view taken by this Court in the cited cases (supra). We agree with learned AGP’s argument that case of each individual employee seeking benefit of OPS needs to be meticulously examined by the concerned authority. This is because the entitlement of employee to be governed by OPS also depends upon some other factors including continuity of his service, status of the Institution as Aided/non-aided in the light of the law laid down by this Court in the cases cited supra.

8. In view of this, writ petition is disposed of with following directions :

- [i] The School Management shall submit Petitioner’s case to the Education Officer (Secondary), Zilla Parishad or the Deputy Director of Education, considering the post that Petitioner is holding, within six weeks from the date of receipt of a copy of this order.

- [ii] On receipt of such proposal, the Education Officer (Secondary) or the Deputy Director of Education, as the case may be, shall conduct a meticulous scrutiny of records with the assistance of School Management. The concerned authority shall give an opportunity of hearing to the Petitioner, if there is any deficiency in the proposal.
- [iii] Neither the Education Officer (Secondary) nor the Deputy Director of Education shall keep the claim/proposal pending for want of any authority. If at all the Education Officer (Secondary) is of the opinion that the power to decide the claim rests with the Deputy Director of Education or *vise-a-versa*, both the authorities shall transmit the proposal/claim between themselves expeditiously. In any event, the proposal/claim shall be decided by the Education Officer (Secondary) or the Deputy Director of Education, as the case may be, within six weeks of its receipt.
- [iv] The Education Officer (Secondary) or Deputy Director of Education, as the case may be, shall pass appropriate order in Petitioner's case in view of the services of Petitioner, service record and the observations made by this Court in the cases cited *supra*. The Petitioner shall be entitled to be governed by OPS if the concerned authority is satisfied that Petitioner's initial date of appointment is prior to 1st November 2005 in the Institution that was fully aided prior to 1st November 2005 in view of the Full Bench decision of this Court in ***Deshmukh Dilipkumar Bhagwan*** (*supra*) and the Division Bench judgment of this Court in ***Nilesh Namdev Gurav***

(supra). The said Authority shall also consider whether services of Petitioner could be held continuous service from the date of initial appointment, i.e. if there is any gap in service, whether such gap could be condoned as per the relevant statutory provisions.

- [v] In the event, Petitioner is found deserving the benefit of OPS, the Respondent Authorities shall extend the benefits of OPS to the Petitioner and shall not deduct any amount from the salary of Petitioner by applying DCPS. In the event, any amount has already been deducted by applying DCPS, such amount shall be refunded to the Petitioner within a period of four weeks from the date of decision on such proposal.
- [vi] Respondent Authorities shall allot the GPF Account to the Petitioner and thereafter permit the concerned educational institution to deduct the amount of monthly contribution from the salary of Petitioner and deposit the same in the said GPF account of Petitioner.
- [vii] If the authority i.e. the Education Officer (Secondary) or the Deputy Director of Education, as the case may be turns down Petitioner's proposal, such order would assign precise reasons for rejection. The Authority shall clearly indicate the reasons for refusal of OPS to the Petitioner, if the proposal is negated.
- [viii] The observations made by this Court in Paragraph Nos.13 to 18 in the judgment dated 1st October 2021 in **Nilesh Gurav's** case (supra), would be applicable to the Petitioner's case also.

9. If the concerned Authority favorably decides Petitioner's case and holds Petitioner eligible for OPS, further steps for submission of Petitioner's pension papers and its clearance, shall be taken up expeditiously and in such circumstances, the office of Accountant General would not hold the Petitioner ineligible for pension, since the Education Officer (Secondary) or the Deputy Director of Education, as the case may be, having already completed the entire exercise of scrutiny.

10. Needless to state that, if the Petitioner is aggrieved by the negative decision, the petitioner would be at liberty to seek redressal of such grievance by availing appropriate remedy as may be permissible in law.

11. It would not be out of place to mention that we have not observed anything on the merits of entitlement of Petitioner for the purpose of being governed by OPS.

12. In view of the disposal of Writ Petition, nothing survives for consideration in the pending Civil / Interim Application and the same stands disposed of.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]