



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

WRIT PETITION NO.669 OF 2024

- PETITIONERS :**
1. Dr. Rajesh Dnyaneshwar Mirge,
Aged about 47 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Amravati, Ta. & Dist. Amravati.
 2. Dr. Yogita Sahebrao Thakre,
Aged about 41 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Akola, Ta. & Dist. Akola.
 3. Dr. Hemant Prabhakar Rao Sapkal,
Aged about 47 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Akola, Ta. & Dist. Akola.
 4. Dr. Ananda Bhikuji Kale,
Aged about 56 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Akola, Ta. & Dist. Akola.
 5. Dr. Milind Rajesh Belkhedkar,
Aged about 43 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Akola, Ta. & Dist. Akola.
 6. Dr. Sharayu Manoj Thorat,
Aged about 56 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Akola, Ta. & Dist. Akola.
 7. Dr. Gajanan Wasudeorao Belsare,
Aged about 51 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Akola, Ta. & Dist. Akola.
 8. Dr. Ganpat Dewaji Deshmukh,
Aged about 48 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Akola, Ta. & Dist. Akola.

9. Dr. Rajesh Pundlikrao Ganorkar,
Aged about 48 years, Occ. Service,
R/o. C/o. Mahatma Fule Arts & Commerce
College, Warud, Dist. Amravati.
10. Dr. Sunil Ramkrushna Kondulkar,
Aged about 51 years, Occ. Service,
R/o. C/o. Mahatma Fule Arts & Commerce
College, Warud, Dist. Amravati.
11. Prof. Madhuri Rajendra Umekar,
Aged about 54 years, Occ. Service,
R/o. C/o. Mahatma Fule Arts & Commerce
College, Warud, Dist. Amravati.
12. Dr. Punam Vijaykumar Barabde,
Aged about 47 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts & Commerce
College, Amravati, Ta. & Dist. Amravati.
13. Prof. Sarika Dadarao Pachraut,
Aged about 50 years, Occ. Service,
R/o. C/o. Shri Gopalrao Khedkar College,
(Gadegaon) Telhara, Dist. Akola.
14. Dr. Nandkishor Sahadeorao Gopakar,
Aged about 50 years, Occ. Service,
R/o. C/o. J. D. Patil Sanguldkar College,
Daryapur, Dist. Amravati.
15. Dr. Santosh Narayan Patole,
Aged about 54 years, Occ. Service,
R/o. C/o. Shri Shivaji Arts, Commerce
Science College, Akot, Dist. Akola.
16. Dr. Manisha Marotrao Kodape,
Aged about 42 years, Occ. Service,
R/o. C/o. Chemistry Department of Sant
Gadge Baba Amravati University, Amravati.
17. Dr. Anil Rameshwar Somawanshi,
Aged about 47 years, Occ. Service,
R/o. C/o. J. D. Patil Sanguldkar College,
Daryapur, Dist. Amravati.

18. Dr. Jyotsna Sambhaji Pusate,
Aged about 52 years, Occ. Service,
R/o. C/o. J. D. Patil Sanguldkar College,
Daryapur, Dist. Amravati.
19. Dr. Avinash Sharadrao Dhobe,
Aged about 42 years, Occ. Service,
R/o. C/o. Shyamaprasad Mukherjee
College, Shendurjana Ghat, Tq. Warud,
Dist. Amravati.
20. Dr. Kalpana Narayanrao Pawar,
Aged about 49 years, Occ. Service,
R/o. C/o. Science College, Congress
Nagar, Nagpur.
21. Dr. Vishwanath Akoji Kodape,
Aged about 52 years, Occ. Service,
R/o. C/o. Science College, Pauni,
Dist. Bhandara.
22. Dr. Atulkumar Biharilal Sahare,
Aged about 43 years, Occ. Service,
R/o. C/o. Science College, Pauni,
Dist. Bhandara.
23. Dr. Ravindrakumar Sahebrao Dhande,
Aged about 46 years, Occ. Service,
R/o. C/o. Shri S. R. Lahoti Science
College, Morshi, Dist. Amravati.
24. Dr. Sanjay Janardhan Aglawe,
Aged about 50 years, Occ. Service,
R/o. C/o. J. D. Patil Sanguldkar College,
Daryapur, Dist. Amravati.
25. Dr. Manisha Shankar Yadav,
Aged about 45 years, Occ. Service,
R/o. C/o. Shri Gadge Maharaj College,
Karanja Road, Murtizapur, Dist. Akola.
26. Dr. Kishor Marotrao Taksande,
Aged about 51 years, Occ. Service,
R/o. C/o. Arts & Science College,
Kurha, Tq. Teosa, Dist. Amravati.

27. Dr. Anant Madan Awati,
Aged about 44 years, Occ. Service,
R/o. C/o.Shri Vyankatesh Arts, Commerce &
Science College, Deulgaon Raja,
Dist. Buldhana.
28. Prof. Sandip Bhaskarrao Jagtap,
Aged about 60 years, Occ. Service,
R/o. C/o.Shri Vyankatesh Arts, Commerce &
Science College, Deulgaon Raja,
Dist. Buldhana.

V E R S U S

RESPONDENTS :

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai-440032.
2. The Director of Higher Education,
State of Maharashtra,
Central Building, Pune-01.
3. The Joint Director of Higher Education,
Amravati Division, Amravati.
4. The Joint Director of Higher Education,
Nagpur Division, Nagpur.

Shri A. I. Sheikh, Advocate for petitioners.

Shri A. S. Fulzele, Additional Government Pleader for respondent
Nos.1 to 4.

CORAM: SMT. M. S. JAWALKAR AND
PRAVIN S. PATIL, JJ.

DATE : 13/08/2025.

ORAL JUDGMENT : (PER : PRAVIN S. PATIL, J.)

1. **Rule.** Rule made returnable forthwith. By consent of
learned Counsel for the parties, the matter is taken up for final
disposal.

2. By this petition, the prayer is made by the petitioners to declare that the petitioners are governed by the provisions of Old Pension Scheme and their services shall not be governed by the provisions of New Defined Contributory Pension Scheme (DCPS) introduced by the Government Resolution dated 31/10/2005.

3. It is undisputed fact that in the present petition, petitioners are working as a full time approved lecturers and serving at Aided Colleges, which are Affiliated to the Non-Agricultural Universities.

4. Petitioners to substantiate their submission that the recruitment exercise was initiated before cut off date prescribed in Government Resolution dated 31/10/2005, provided the details of date of advertisement and date of appointment are as under :-

<u>Sr. No.</u>	<u>Name of Teacher</u>	<u>Date of Advertisement</u>	<u>Date of Appointment order</u>
1	Dr. Rajesh D. Mirge	20/10/2005	10/02/2006
2	Dr. Yogita S. Thakare	20/10/2005	13/02/2006
3	Dr. Hemant Prabhakar Rao Sapkal	20/10/2005	23/03/2006
4	Dr. Ananda B. Kale	20/10/2005	08/02/2006
5	Dr. M. R. Belkhedkar	20/10/2005	08/02/2006
6	Dr. Sharyu M. Thorat (Ku. S. K. Deshmukh)	20/10/2005	08/02/2006
7	Dr. G. W. Belsare	20/10/2005	10/02/2006
8	Dr. Ganpat D. Deshmukh	20/10/2005	20/02/2006

9	Dr. Rajesh P. Ganorkar	20/10/2005	22/03/2006
10	Dr. Sunil R. Kondakar	20/10/2005	10/02/2006
11	Prof. Madhuri R. Umekar	20/10/2005	10/02/2006
12	Dr. Punam V. Barabdhe	20/10/2005	10/02/2006
13	Prof. Sarika D. Pachraut	20/10/2005	10/02/2006
14	Dr. Nandkishor S. Gopakar	20/10/2005	22/03/2006
15	Dr. Santosh N. Patole	20/10/2005	10/02/2006
16	Dr. Manisha M. Kodape	20/10/2005	13/02/2006
17	Dr. Anil R. Somavanshi	20/10/2005	23/02/2006
18	Dr. Jyotsna S. Pusate	20/10/2005	13/02/2006
19	Dr. Avinash S. Dhobe	30/06/2005	19/11/2005
20	Dr. Kalpana N. Pawar	20/10/2005	16/02/2006
21	Dr. V. A. Kodape	20/10/2005	13/02/2006
22	Dr. Atul B. Sahare	20/10/2005	28/03/2006
23	Dr. R. S. Dhande	20/10/2005	17/02/2006
24	Dr. Sanjay J. Aglawe	20/10/2005	13/02/2006
25	Dr. Manisha S. Yadav	04/10/2005	25/01/2006
26	Dr. Kishor M. Taksande	28/09/2005	01/12/2005
27	Dr. Anant M. Awati	20/09/2005	14/11/2005
28	Prof. Sandip B. Jagtap	20/09/2005	14/11/2005

5. In view of above, it is the submission of petitioners that they are entitled for benefit of old pension scheme in terms of subsequent Government Resolution dated 02/02/2024 wherein it is made clear that the recruitment exercise initiated before cut off date and appointed subsequently are entitled for old pension scheme. Hence, to seek the declaration as stated above, the present petition came to be filed.

6. Per contra, learned Additional Government Pleader has strongly opposed the petition by stating that the policy framed by the Government is not applicable to the University teachers as they do not fall in the definition of “Government Servants” and accordingly, it is his submission that the policy framed by the State Government is not applicable to them.

7. It is further stated that the advertisement, selection process, approval and the appointment of the petitioners are not the subject of answering respondent. The entire process is within the competence of management / society of the petitioners and therefore, considering the fact that the appointments were made by the respective management / society, Higher and Technical Education Department cannot be held responsible in the matter and accordingly, DCPS scheme cannot be made applicable to the petitioners.

8. We have heard learned counsel for the parties and considered the documents placed on record. It is clear from the Government Resolution dated 31/10/2005 that same would be applicable to the employees who are recruited on or after 01/11/2005 in the service of the Recognized and Aided Educational Institutions, Non-Agricultural Universities and

Affiliated Non-Governmental Colleges and Agricultural Universities, etc. Hence, considering the policy framed by the State Government, it is clear that the same was made applicable to the employees of Non-Agricultural Universities. Therefore, objection raised by Respondent is not sustainable in the eyes of law.

9. In the present petition, the Government Resolution dated 02/02/2024 is produced on record. Accordingly, Government itself clarified that if the recruitment exercise is started before the cut off date i.e. 01/11/2005, and employees were appointed, thereafter in pursuance of that recruitment exercise, will be entitled for the benefit of Old Pension Scheme.

10. Furthermore, this Court in Writ Petition No.3715/2022 has dealt with the identical issue and recorded the findings in Para Nos.7 and 8 which are reproduced as under :-

“7. The issue is not res integra. The Principal Bench of this Court in the case of Khilari Rajendra Eknath and others v. The State of Maharashtra and others in Writ Petition No.2270 of 2021 has already dealt with this issue and it will be advantageous to reproduce paragraphs 27 and 28 of the said judgment, which read thus -

“27. Sub-Rule (2) of Rule 2 of the M.C.S.(Pension) Rules, 1982 states that these rules would not apply to the Government Servants who are

recruited on or after 01.11.2005. Rules 1982 are the beneficial piece of legislation governing the post retiral benefits to a government employee. It has been held time and again that pension is not a bounty. Rules 1982 are not made applicable to the government servants who are recruited on or after 01.11.2005. Though the amendment to the Rules 1982 by the State Government are based upon the amendment carried out in the Central Civil Services (Pension) Rules, 1972 there is a subtle difference between the two. The Central Civil Services (Pension) Rules, 1972 apply to the Government Servants appointed on or before 31.12.2003 meaning thereby that it would not apply to the government servants appointed on or after 1st day of January, 2004. Whereas under the said M.C.S. (Pension) Rules, 1982, the wordings are 'the Rules shall not apply to government servants who are recruited on or after 01.11.2005'. The phraseology "Recruitment" and "Appointment" are not synonymous. There is a marked distinction between "Recruitment" and "Appointment". Recruitment is a stage prior to appointment. Recruitment is the process which entails selection of candidates. Selection is a process of picking the candidates from the short listed candidates. An appointment means an actual act of posting a person to a particular office.

8. Thus, as per Pension Rules, Old Pension Scheme would not apply to the persons whose recruitment process had

commenced after 01/11/2005, meaning thereby the Old Pension Scheme shall apply to the persons, who are recruited in the government services prior to 01/11/2005. Appointment does not mean recruitment. Recruitment entails selection process. In the present petitions though the appointments were made after 01/11/2005, the selection process started prior to 01/11/2005 by publishing the advertisement. Admittedly, the advertisements in this batch of petitions were issued prior to 01/11/2005, however, the appointment orders of the petitioners were issued after cut-off date i.e. 01/11/2005 on which date DCPS is made applicable to all government servant as per GR dated 31/10/2005 and Pension Rules. Therefore, the petitioners shall be entitled to be governed by the Old Pension Scheme and General Provident Fund Scheme which were in vogue prior to 01/11/2005. Resultantly, the petitions succeeded.”

11. In view of above, we are of the view that the petitioners are entitled to get the benefit of Old Pension Scheme as their recruitment was started before the cut off date issued by the Government Resolution as indicated in the abovementioned chart. Accordingly, we pass following order :-

ORDER

- i] Writ Petition is allowed.
- ii] It is declared that the petitioners shall be governed by the provisions of Old Pension Scheme which was in vogue prior to 01/11/2005 and accordingly, necessary steps be taken by the

respondents to accord benefits of Old Pension Scheme to the petitioners within a period of three months.

iii] Rule is made absolute in above terms with no order as to costs.

[PRAVIN S. PATIL, J.]

[SMT. M. S. JAWALKAR, J.]

Choulwar