



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

WRIT PETITION NO. 6220 OF 2024

Kapil s/o Avtarsing Chauhan
Age : 46 years, Occu.: Service as
Jr. College Teacher (Assistant Teacher),
Presently working with N.M.D.
Jr. College of Arts & Commerce,
Gondiya, Tq. & Dist. Gondia. .. Petitioner

.. Versus ..

- 1] The State of Maharashtra
Through its Secretary,
Finance Department,
State of Maharashtra,
Mantralaya, Mumbai-32.
- 2] The Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai-32.
- 3] The Dy. Director of Education,
Nagpur Region, Nagpur,
District-Nagpur.
- 4] The Education Officer (Secondary),
Zilla Parishad, Gondia,
District-Gondia.
- 5] The Superintendent (Secondary),
Pay and Provident Fund Unit
Education Department,
Gondia, Dist-Gondia. .. Respondents

Shri Ketan D. Pote, Advocate holding for Shri Arvind G. Ambetkar,
Advocate for Petitioner.

Shri G.S. Umale, Assistant Govt. Pleader for Respondent Nos.1 to 4.

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

DATED : 11th AUGUST, 2025.

JUDGMENT [Per : Pravin S. Patil, J.]

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

2. By this petition, petitioner is seeking declaration that he is entitled for the benefits of Old Pension Scheme i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and General Provident Fund which are applicable to him in the capacity of Assistant Teacher by considering his date of appointment prior to 01.11.2005.

3. Petitioner herein was appointed as a part time Shikshan Sevak at Higher Secondary/Junior College Section at D.B. Science Junior College Gondia on 01.10.2003. At the time of

his appointment in the school, the school was already receiving 100% grant-in-aid and only because of the workload, he was appointed as a part time Shikshan Sevak. It is further not disputed that his services were duly approved on 27.02.2007 as a part time Assistant Teacher on the same post and presently since 01.11.2014, he is working as a full time Assistant Teacher (Junior College) with D.B. Science Junior College, Gondia. It is categorically stated by the petitioner that though he was appointed on 01.10.2003 as a part time Shikshan Sevak, his services were continued without any break and he was in receipt of benefits of service from initial date of appointment from the respondent-authority.

4. The State Government by its Government Resolution dated 31.10.2005 has introduced the policy of Defined Contribution Pension Scheme for the government servants who are recruited on or after 01.11.2005 in the State Government service. As such, the employees, who are appointed after 01.11.2005 are to be governed by new pension scheme known as Defined Contribution Pension Scheme (DCPS). But subsequently by Government Resolution dated 19.07.2011

clarified that employees, who were recruited before cut off date on Honorary basis and continued in service after completion of said period, the said employees would be entitled for old pension scheme.

5. In the background of above said factual position, petitioner approached to this Court to seek above said declaration by stating that he being appointed as a part time Shikshan Sevak in 100% grant-in-aid Junior College prior to 31.10.2005, he is eligible and entitled to receive benefits of old pension scheme. In support of her submission, petitioner has relied upon the following judgments :

- (i) *Nilesh s/o Namdev Gurav and others .vs. State of Maharashtra and others, reported in 2022 (3) Mh.L.J. 615.*
- (ii) *Purushottam Harishchandra Shirsekar and another .vs. State of Maharashtra and others, reported in 2022 (2) Mh.L.J. 390.*
- (iii) *Judgment in Writ Petition No.9542/2021 (Anil Popat Chobhe .vs. The State of Maharashtra and other connected matters) decided on 24.08.2022.*
- (iv) *Judgment in Writ Petition No.1534/2020 (Ku. Nilima Harishchandra Katole and others .vs. The State of Maharashtra and others) decided on 08.03.2023.*

**(v) Judgment in Writ Petition No.2618/2022
(Vinod s/o Mahadev Nagarkar .vs. The State
of Maharashtra and others and other
connected matters) decided on 05.07.2023.**

6. This Court considering the grievance of the petitioner issued notices to the respondents. Respondent No.3 has strongly opposed the petition by stating that appointment of the petitioner was made as a part time Shikshan Sevak and, thereafter, petitioner was appointed as a Shikshan Sevak on 01.07.2005 and approval was granted to him on 27.08.2005. According to Respondent No.3, petitioner was appointed on non grant-in-aid post as a part time teacher till 01.11.2014. The post of petitioner became 100% grant-in-aid and petitioner received 100% salary grant from 21.08.2013. Hence, petitioner is not entitled to the declaration which he has sought in the present petition.

7. In the background of rival submissions of both the parties, we have gone through the record and also considered the case laws pointed out by the petitioner in the matter.

8. It will be relevant to consider the judgment of this Court in the case of ***Purushottam Harishchandra Shirsekar and***

another (supra). In this judgment, the Court observed in Para 17 and 18 as under :

17. Having considered the submissions, it is to be noted that the Petitioner No.1 was appointed on a part time fully aided post in the school of the previous management on 11th September, 2001. It has been consistently observed by this Court in various decisions including the decisions relied upon by the learned Counsel for the Petitioners and referred to in the Petition i.e. the decisions of this Court in Writ Petition No.8289 of 2013, the decision dated 29th April, 2014; decision in Writ Petition No.5421 of 2017, decision dated 9th July, 2018 and decision in Writ Petition No.10221 of 2015, decision dated 11th February, 2016 that teaching as well as non-teaching employees who have been appointed initially in part time services and thereafter in full time services are entitled to claim pension and pensionary benefits on 50% of the part time services rendered by the employee along with the full time services in the educational institutions. The services of the employee has to be counted from the first date of appointment on either part time or full time post for purpose of pension and pensionary benefit. It is also been held in a subsequent decision of the Division Bench of this Court in [Smt. Prema Narsinha Herkal](#) (Supra) that the services in that case of the Petitioner as full time librarian cannot be considered as a fresh appointment as the Petitioner therein had been appointed as part time librarian prior to 1st November, 2005 i.e. on 21st September, 1990 and thereafter as full time librarian from 6th November, 2006. The services of the Petitioner has to be counted from the first date of appointment and it was accordingly held by the Division Bench that, the old pension scheme prevailing prior to 1st November, 2005 would be applicable to the Petitioner.

18. It has thus been a consistent view of this Court that the services of the employee of the Educational Institution is to be counted from the first date of appointment irrespective of whether it is on a part time or full time post. Further, if such appointment is prior

to 1st November, 2005, then the old pension scheme would be made applicable to the employee. This requirement is further made clear from the Government Resolution dated 31st October, 2005 which provides in Clause 4 that the employees who are to be recruited on or after 1st November, 2005 in the services of the recognized and aided educational institutions for the new pension scheme (DCPS) is made applicable.”

9. Relying upon the said judgment, this Court in the case of ***Nilesh Namdev Gurav and others*** (supra) has considered the legal position and observed in para 13 as under :

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.

10. In the light of above legal position, it is clear that consistent view has been taken by this Court that the employee, who has been appointed on a part time post, wherein the school was receiving 100% grant-in-aid, is entitled for the benefits of old pension scheme.

11. Learned Assistant Government Pleader appearing for the respondents has pointed out that the judgments relied upon by the petitioner are not disputed. However, he has pointed out that the leading judgment in the case of *Deshmukh Dilipkumar Bhagwan and others .vs. The State of Maharashtra and others passed in Writ Petition No.8387/2013 dated 26.08.2019* is under challenge before the Hon'ble Supreme Court of India. As such, the issue which petitioner has raised is now under consideration before the Hon'ble Supreme Court of India. It is further pointed out the judgment delivered in *Nilesh Namdev Gurav* (supra) is also under challenge before the Hon'ble Supreme Court of India in Special Leave Petition (Civil) Diary No.9059/2023. Therefore, considering this fact, no relief can be granted to the petitioner.

12. Considering this submission of the respondents, we have made specific query to the learned counsel for the respondents, as to whether, there is any interim relief against the judgment relied by the petitioner is granted by the Hon'ble Supreme Court of India or not. He has fairly conceded that there is no stay nor any interim direction has been granted by the Hon'ble Supreme Court of India in the pending petition.

13. In view of aforesaid factual position, we are of the considered opinion that the present petition can be disposed of by declaring that right of the petitioner would be determined as per the decision of the Hon'ble Supreme Court in a pending petition. Hence, we proceed to pass the following order :

O R D E R

(i) The Writ Petition is allowed.

(ii) It is hereby declared that the Petitioner's services should be governed under the Old Pension Scheme i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and General Provident Fund which are applicable to the Assistant Teachers, subject to final outcome of the pending Special Leave Petition (Civil) Diary No.9059/2023 before the Hon'ble Supreme Court of India.

(iii) The Respondents are directed to apply the Old Pension Scheme to the services of the Petitioner with specific remark that benefits are made available to the Petitioner, subject to final outcome of the decision of the Hon'ble Supreme Court of India in Special Leave Petition (Civil) Diary No.9059/2023.

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

(Pravin S. Patil, J.)

(Smt. M.S. Jawalkar, J.)