

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

WRIT PETITION NO. 3645 OF 2024

Shamshuddin Umarali Mushrif
Versus

...Petitioner

The State Of Maharashtra Thr
Its Secretary And Ors

...Respondents

Mr. Arvind G. Ambetkar (Through VC) a/w. Mrs. Surekha H. Kable,
Advocate for petitioner.

Mr. Vikas M. Mali, AGP for respondents-State.

**Coram : Madhav J. Jamdar &
Pravin S. Patil, JJ.**

Date : April 22, 2026.

P. C. :

1. The petitioner herein has impugned the order passed by the Deputy Director of Education, Kolhapur Division, Kolhapur dated 19th June 2023. It is the submission of the petitioner that his initial appointment in the college was from 17th July 1989 to 17th June 1990 on a clock hours basis. Thereafter, from the academic sessions 1990 to 2010, he has worked as a part-time assistant teacher. It is his submission that at the time of his initial appointment, the school/college was receiving 100% grant-in-aid.

2. The petitioner has also pointed out from the record that his services were duly approved as a full-time assistant teacher from 7th June 2010 to 31st December 2019. It is also not disputed that the petitioner attained the age of superannuation on 31st December 2019, but till date he has not been provided the benefits of pension, and hence he has approached this Court.

3. The petitioner has pointed out the order of the Deputy Director of Education, particularly Clause 2 thereof, wherein the Deputy Director of Education has himself admitted the fact that the school/college was receiving 100% grant-in-aid before the cut-off date, i.e., 1st November 2005. However, he has denied the benefit of the old pension scheme to the petitioner, by relying upon the Maharashtra Aided and Recognised Secondary Schools Provident Fund Rules, 1977 and the Government Resolution of the Finance Department dated 31st October 2005.

4. In light of this factual aspect, it would be relevant to refer to the judgment delivered by the Coordinate Bench of this Court in the case of *Nilesh s/o Namdev Gurav & Ors. vs. State of Maharashtra & Ors.*, reported in 2022 (3) Mh.L.J. 615. The Coordinate Bench of this Court, while considering an identical issue, has recorded specific findings in paragraph Nos. 15 and 17, which read thus:

“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.

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.”

5. The Coordinate Bench has specifically held that part-time teachers working in a school which was receiving 100% grant before the cut-off date are entitled to the old pension scheme. The same view has been consistently followed by this Court in a catena of judgments.

6. Learned AGP has pointed out that the judgment in *Nilesh Namdev Gurav (supra)* has been challenged by the State Government before the Hon’ble Supreme Court, and the same is pending for final disposal. However, there is no interim order passed by the Hon’ble Supreme Court

of India till date in the matter. In this factual scenario, in our considered opinion, the view taken by the Coordinate Bench of this Court in *Nilesh Namdev Gurav (supra)*, which has been consistently followed in a catena of judgments, deserves to be followed.

7. In light of above observation, we are of the considered opinion that the petitioner is entitled to the benefit of the old pension scheme.

8. The impugned order dated 19th June 2023 passed by the Deputy Director of Education, Kolhapur Division, Kolhapur is hereby quashed and set aside.

9. The respondents are directed to consider the case of the petitioner for the old pension scheme and accordingly process his proposal to its logical end within a period of four months from the date of this order, and thereby release all monetary benefits to the petitioner as per his entitlement.

10. With the above directions, the writ petition stands disposed of. There shall be no order as to costs.

[Pravin S. Patil, J.]

[Madhav J. Jamdar, J.]