

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1094 OF 2022

**DISTRICT: MUMBAI
SUB : Old Pension Scheme**

Shri Hanumant K. Sanas ,)
Age:- 51 yrs, Occ : Peon, GST Bhavan, 3rd)
Floor, Yerwada, Pune 411 006.)
R/at Jai Bhavani Galli No.3, Nagar, Parvati)
Paytha, Pune 411 009.)... **Applicant**

Versus

- 1) The State of Maharashtra, through)
Additional Chief Secretary, Finance Dept.)
Mantralaya, Mumbai 32.)
- 2) The Spl. Commissioner of State GST,)
Vastu va Seva Kar Bhawan, 3rd floor, New)
Building, Mazgaon, M.S. Mumbai 400 010.)
- 3) The Joint Commisioner-03, State GST,)
GST Bhavan, 3rd floor, Airport Road,)
Yerwada, Pune 411 006.)
- 4) The Additional Commissioner, State GST)
GST Bhavan, 4th floor, Airport Road,)
Yerwada, Pune 411 006.)...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 15.02.2023

ORDER

1. The Applicant has challenged the order dated 04.02.2022 issued by the Government (Respondent No.1) thereby rejecting his representation for benefit of Old Pension Scheme in terms of

Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules 1982' for brevity).

2. Briefly stated facts are as under:-

The Applicant is serving as Peon on the establishment of Respondent No.4. It appears that name of the Applicant was in the list of backlogs to fill in Class-IV posts maintained by the office of Respondent No.4. The Respondent No.4, therefore, by letter dated 22.07.2005 called upon the Applicant to remain present for interview on 25.08.2005 along with educational qualification, certificate of project effected person and caste certificate etc. Accordingly, the Applicant was interviewed on 25.08.2005 and got selected. The Respondent No.4 issued appointment order dated 29.10.2005 giving one month time to him for joining. Accordingly, the Applicant joined on 02.11.2005. Since then, he is in service. He made representation though belatedly on 18.02.2021 raising grievance that since his appointment order is prior to cut-off date of 01.11.2005, he is entitled to Old Pension Scheme in terms of 'Rules 1982' and other service rules. The proposal seems to have been forwarded to the Government. However, Government by communication dated 04.02.2022 informed to Respondent No.4 that since the Applicant joined on 02.11.2005 after the cut-off date, he will be governed by New Pension Scheme namely Defined Contributory Pension Scheme (DCPS) in terms of Notification issued by the Government of Maharashtra on 31.10.2005 which *inter-alia* states that who are recruited on or after 01.11.2005 will be governed by New Pension Scheme (DCPS) introduced by the Government of India. Being aggrieved by it, the Applicant has filed the present O.A.

4. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

5. Smt. Mahajan, learned Counsel for the Applicant submits that since the Applicant is appointed before cut-off date, he is entitled to Old Pension Scheme and mere joining after cut-off date will not deprive him of the benefit of Old Pension Scheme. Whereas, learned P.O. in reference to Affidavit in Rely all that urged since admittedly, the Applicant joined on 02.11.2005 i.e. cut-off date, he is not entitled to Old Pension Scheme.

6. In view of the submission advanced at bar, the issue posed for consideration is whether the Applicant is entitled to Old Pension Scheme in terms of 'Rules 1982'. The facts of date of appointment, date of joining etc. as stated above are not in dispute. Indisputably, it is the Respondent No.4 who at his own issued call letter to fill in the post of Peon since the Applicant's name was in the backlog list and in response to it, the Applicant appeared for interview on 25.08.2005 and succeeded. Furthermore, the Respondent No.4, admittedly, issued the appointment order on 29.10.2005 wherein one month time was given for joining.

7. The Government of Maharashtra had published Notification dated 31.10.2005 in the official gazette stating that who are recruited on or before 01.11.2005 will be governed by New Defined Contributory Pension Scheme and necessary amendment was made in Pension Rules, 1982 stating that 'Rules 1982' shall not apply to the Government servants, who are recruited on or after 1st November, 2005. As such, it is applicable to the persons who are recruited on or after 01.11.2005. Whereas in present case, entire process of interview, selection and issuance of appointment order was completed prior to 01.11.2005. This being so clear, merely because the Applicant joined on 02.11.2005, the right accrued to him by virtue of appointment order dated 29.10.2005 could not be taken away.

8. True, there is no reference in appointment order as to whether he would be governed by Old Pension Scheme or New Pension Scheme, the fact remains that his appointment order was issued prior to cut-off date. Furthermore, he was given one month time for joining and accordingly,

he joined on 02.11.2005. Thus when appointment order is prior to cut-off date, mere joining on 02.11.2005 would not take away Applicant's right accrued to him by virtue of appointment order dated 29.10.2005. Indeed, the Central Government Department of Pension and P.W. clarified that where result of recruitment was declared before 01.01.2004 (cut-off date for Central Government employee) denial of Old Pension Scheme to the affected Government servants is not considered justified.

9. True, the Applicant was given benefit of New Pension Scheme by making some contribution in the scheme. However, that itself would not debar the Applicant from claiming benefit of Old Pension Scheme. All that he has to forgo the said benefit accrued to him if any. The contribution paid by him under NPS is required to refund him.

10. Indeed, the issue about entitlement of Government servant for Old Pension Scheme, whose appointment orders were issued prior to cut-off date but joined after the cut-off date is no more res-integra in view of various consistent decisions of the Hon'ble High Court bench Aurangabad. In this behalf, reference is made to **W.P. No.13702/2021 (Gangu Zade V/s State of Maharashtra), decided on 06.09.2022, W.P. NO.2689/2014 (Kishor Nirwal V/s State of Maharashtra), decided on 27.08.2018 and W.P. No.4115/2016 (Balasaheb Kale V/s State of Maharashtra), decided on 30.11.2018**. In all these decisions, benefit of Old Pension Scheme was granted irrespective of later date of joining in exactly similar situation.

11. Learned P.O. could not point out contrary decision to substantiate that where Government servant join after the cut-off date but appointment order is prior to cut-off date is not entitled to Old Pension Scheme.

12. The totality of the aforesaid discussion leads me to conclude that Applicant is entitled to benefit of Old Pension Scheme in terms of 'Rules 1982' and MCS (Commutation of Pension) Rules, 1984. The impugned order dated 04.02.2022 is totally bad in law and liable to be quashed. Hence, the following order:-

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 04.02.2022 is quashed and set aside.
- (C) The Applicant is held entitled to the benefits of Old Pension Scheme under 'Rules, 1982' and MCS (Commutation of Pension) Rules, 1984.
- (D) The Respondents are further directed to refund the contribution paid by the Applicant in New Defined Contribution Pension Scheme within two months from today.
- (E) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai

Date: 15.02.2023

Dictation taken by: Vaishali Santosh Mane

D:\VSM\VSO\2023\ORder & Judgment\February\Old Pension Scheme\O.A.1094-22.doc

