

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.235 OF 2022**

**DISTRICT : MUMBAI**  
**Sub.:- Pension Scheme**

- 1) Shri Rajendra P. Patil. )  
Age : 49 Yrs, Occu.: Service, )  
R/o. 1/9, Vikrant Society, Near Railway )  
Gate, Bhandup (E), Mumbai. )
2. Smt. Shobha R. Vijaysenani. )  
Age : 55 Yrs, Occu.: Service, )  
Presently residing at C/o Anil Chotelal )  
Dongre, Gawali House, Ambedkar Road, )  
Manohar Pada, District : Thane. )
3. Shri Ashok B. Sonwane. )  
Age : 49 Yrs, Occu.: Service, )  
Presenting residing at C/o. Baburao )  
R. Gavhare, Room No.4, Chawl No.1, )  
Near Railway Gate, Vikrant Society, )  
Bhandup (E), Mumbai – 400 042. )
4. Shri Satish U. Naikwade. )  
Age : 55 Yrs, Occu.: Service, )  
R/o. Orchid Apartment, A-Wing, Flat No.7,)  
Khatri Park, Desai Estate, )  
Tal.: Baramati, District : Pune. )
5. Smt. Vaishali V. Patil. )  
Age : 51 Yrs, Occu.: Service, )  
R/o. Daryavardi Road, Vishnu Galli, )  
Tasgaon, District : Sangli. )
6. Smt. Suchitra S. Narote. )  
Age : 53 Yrs, Occu.: Service, )  
R/o. Prism Society, A-1/1002, )  
Near Rohan Nilay Society, Behind Spicer )  
School, Aundh, Pune – 07. )
7. Shri Namdeo S. Taralgatti. )  
Age : 51 Yrs, Occu.: Service, )  
R/o. Plot No.183, Kanakdhara, Shakuntal )  
Nagar, Isbavi, Pandharpur, )

District : Solapur. )

8. Smt. Vishakha S. Bharte. )  
 Age : 52 Yrs, Occu.: Service, )  
 R/o. Flat No.105, A-Wing, Vishwakarma )  
 Presige, Back to Khanvilkar Petrol Pump, )  
 Nagala Park, Kolhapur – 416 003. )

9. Shri Milind D. Pandkar. )  
 Age : 53 Yrs, Occu.: Service, )  
 R/o. 17/134, Maharshi Nagar, Near )  
 Durgamata Mandir, Pune – 411 037. )

10. Shri Milind D. Datrange. )  
 Age : 53 Yrs, Occu.: Service, )  
 R/o. Plot No.140, Lane No.17, Rajas )  
 Housing Society, Katraj-Kondhawa Road, )  
 Katraj, Pune – 411 046. )

11. Smt. Charusheela S. Paunikar. )  
 Age : 47 Yrs, Occu.: Service, )  
 Presently R/o. C/o. Deepak Gokhe )  
 6-A, 701, Spring Leaf Lokhandwala )  
 Complex, Kandivali (E), Mumbai – 101. )

12. Shri Keshav Y. Salunke. )  
 Age : 46 Yrs, Occu.: Service, )  
 R/o. Flat No.Y-6/87, Government Colony, )  
 Bandra (E), Mumbai. )

13. Shri Dilip P. Bahiram. )  
 Age : 48 Yrs, Occu.: Service, )  
 R/o. At Post Kanshi, Tal. : Kalwan, )  
 District : Nashik – 423 502. )

)...Applicants

**Versus**

1. The State of Maharashtra. )  
 Through Principal Secretary, )  
 Finance Department, Mantralaya, )  
 Mumbai – 400 032. )

2. The State of Maharashtra. )  
 Through Principal Secretary, )  
 Home Department (Pole 10), )  
 Mantralaya, Mumbai – 400 032. )

3. The State of Maharashtra. )  
 Through Director of Prosecution, )

5<sup>th</sup> Floor, J. Tata Road, Churchgate, )  
Mumbai – 400 020. )

4. Maharashtra Public Service )  
Commission, Through Secretary, )  
5<sup>th</sup> , 7<sup>th</sup> & 8<sup>th</sup> Floor, Cooperage )  
Telephone Exchange Building, )  
Cooperage, Mumbai – 400 021. )...**Respondents**

**Mr. M.V. Thorat, Advocate for Applicants.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 06.04.2023**

### **JUDGMENT**

1. The Applicants who are appointed as Additional Public Prosecutor by appointment order dated 21.04.2006 sought to challenge the order dated 20.09.2021 issued by Respondent No.2 (Government of Maharashtra, Home Department) thereby rejecting their claim for applicability of old pension scheme in terms of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 (hereinafter referred to as 'Commutation of Pension Rules of 1984' for brevity) stating that they being appointed after 01.11.2005 will be governed by Defined Contribution Pension Scheme (DCPS) in terms of Notification issued by Respondent No.1 – Finance Department on 31.10.2005.

2. Following are the uncontroverted facts :-

(i) Respondent No.4 – MPSC issued Advertisement on 30.01.2004 inviting the applications to fill-in the posts of Assistant Public Prosecutor, Group-A (Page No.118 of Paper Book).

(ii) In Advertisement dated 30.01.2004 vide Notification No.986(10)/5866-SD/X referred to above, there was specific

stipulation that the posts are permanent and pensionable, which is crucial aspect in the matter.

(iii) Applicants participated in the process of recruitment and were interviewed from 04.01.2005 to 11.01.2005.

(iv) Respondent No.4 – MPSC recommended Applicants' name to the Government by its communication dated 07.07.2005 (Page No.43).

(v) Respondent No.2 issued appointment order dated 21.04.2006 appointing the Applicants wherein there is specific reference of the Advertisement as Notification No.986(10)/5866-SD/X and in pursuance of it, Applicants joined the service.

(vi) Applicants made representations claiming the benefit of old pension scheme in view of specific Advertisement that the posts are pensionable.

(vii) However, Respondent No.2 by order dated 20.09.2021 (Page No.48 of P.B.) rejected their claim stating that since they are appointed after cut-off date 01.11.2005, they will be governed by DCPS and not by old pension scheme.

3. It is on the above background, Applicants have filed the present O.A. challenging order dated 20.09.2021 *inter-alia* contending that there was specific commitment in the Advertisement that the posts are pensionable and entire process of selection being completed before cut-off date, they are entitled to old pension scheme.

4. Respondent No.3 – Director of Prosecution resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that though process to fill-in the posts was initiated before cut-off date, they being appointed on 21.04.2006 i.e. after cut-off date, they will be governed by DCPS and not

by old pension scheme and accordingly, benefits of DCPS is made applicable to them.

5. Respondent Nos.1, 2 and 4 have not filed separate Affidavit-in-reply. Furthermore, notably, Respondent No.4 – MPSC who is impleaded in the O.A. during the pendency of matter do not dispute the factum of issuance of Advertisement vide Notification dated 986(10)/5866-SD/X, dated 30.01.2004 (Page No.118 of P.B.) in which there is specific reference that the posts are permanent and pensionable.

6. Shri M.V. Thorat, learned Advocate for the Applicant sought to assail the legality of impugned order dated 20.09.2021 and his main thrust of the submission is that, once there is specific stipulation in the Advertisement that the posts are pensionable, it amounts to promise, and therefore, Respondents later cannot turn around and disown the liability to extend the benefit of old pension scheme to the Applicants. He emphasized that it is on the basis of commitment made by the Respondents, the Applicants participated in the process, and therefore, subsequent change in the terms and applicability of DCPS for those who appointed on or after 01.11.2005 would amount to change of the then existing rules, which is prejudicial to the Applicants and it is impermissible in law. To substantiate the contention, he made reference to certain decisions, which will be dealt with a little later.

7. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that merely because recruitment process was initiated before cut-off date, that itself would not create any sort of substantive right in favour of Applicants, so as to claim the benefit of old pension scheme and they being admittedly appointed after cut-off date, they are governed by DCPS in view of Notification issued by Finance Department on 31.10.2005 stating that who are recruited on or after 1<sup>st</sup> November, 2005 will be governed by DCPS. In this behalf, she sought to place reliance on the decision of Hon'ble High Court, Bench at Aurangabad delivered in **Writ**

**Petition No.1016/2022 [Ganesh Sable Vs. State of Maharashtra] decided with Writ Petition No.1247/2022 on 20.07.2022** in which though recruitment process was initiated before cut-off date, but their appointment order being issued after cut-off date, their claim for old pension scheme was dismissed.

8. Smt. K.S. Gaikwad, learned Presenting Officer, however, fairly concedes that in Advertisement/Notification dated 30.01.2004, there was specific mention that the posts are permanent and pensionable. At the same time, she tried to contend that it is the date of appointment which is crucial to determine the issue and appointment being made on 21.04.2006, consequently, they are governed by DCPS which was the scheme in force on the date of appointment of the Applicants.

9. In view of the pleadings and submissions, the issue posed for consideration is whether Applicants are entitled to the benefit of old pension scheme instead of DCPS.

10. Indeed, the issue of entitlement of the Government servant to old pension scheme or DCPS is the subject matter of various decisions. In this behalf, learned Advocate for the Applicant referred to the decision of Hon'ble High Court, Bench at Aurangabad in **Writ Petition No.13702/2021 [Gangu Zade Vs. State of Maharashtra] decided on 06.09.2022**, in **Writ Petition No.2689/2014 [Kishor Nirwal Vs. State of Maharashtra] decided on 27.08.2018** and **Writ Petition No.4115/2016 [Balasaheb Kale Vs. State of Maharashtra] decided on 30.01.2018**. However, the perusal of decision reveals that in all those matters, appointments were issued before cut-off date, but the Petitioners therein joined after cut-off date, and therefore, in fact situation, since appointment was before cut-off date, the Petitioners were held entitled to old pension scheme.

11. Shri M.V. Thorat, learned Advocate for the Applicants further referred to the decision of Delhi High Court delivered in **Writ Petition**

**No.756/2020 [Dr. Davinder Brar Vs. Union of India] decided on 28.01.2020** and has pointed out that the decision of Delhi High Court was upheld by Hon'ble Supreme Court on 04.02.2021 and SLP was dismissed. He further referred to the decision of Hon'ble High Court delivered in **Writ Petition No.12712/2021 [Pawan Kumar Vs. Union of India] decided on 11.01.2023**. In all these cases, there was an issue of applicability of old pension scheme to the Central Government employees. For Central Government employees, the cut-off date for DCPS was 01.01.2004. Notably, the perusal of these decisions reveals that those Writ Petitions were filed by CRPF and BSF Personnel for applicability of old pension scheme, since recruitment process was completed before cut-off date, but they were appointed after cut-off date. The Petitions were allowed because in the Notification issued by Central Government for applicability of NPS itself, it was made applicable to Central Government employees except Armed Forces. Hon'ble High Court held that the Personnel of CRPF and BSF comes in the expression 'Armed Forces' used in Notification. As such, in Notification itself, the NPS is shown applicable to Central Government except Armed Forces, and therefore, the benefits of old pension scheme were granted to the Petitioners. This is clearly material and vital distinguishing factor.

12. In view of above, these decisions, referred to above, cannot be said laying down any proposition that where recruitment is completed earlier but the appointment orders are issued after cut-off date, in that event, Government servants would be entitled to old pension scheme. Indeed, this issue is made clear by the decision of Hon'ble High Court, Bench at Aurangabad in **Ganesh Sable's** case (cited supra) referred by learned Presenting Officer. In that case, final selection list was published on 10.10.2005, but the appointment order was issued on 30.11.2005 i.e. after cut-off date of 01.11.2005. The issue raised before Hon'ble High Court was as to whether Petitioners would be entitled to the benefit of old pension scheme in the light of G.R. dated 31.10.2005. Hon'ble High Court held that recruitment process is purely mode of selection through

which candidate has to pass and selection itself does not amount to appointment, since selection does not create any right to an individual to claim appointment. Until appointment order is issued, the selected candidate would only remain in select list. Hon'ble High Court, therefore, dismissed the Writ Petition by order dated 20.07.2022.

13. Needless to mention, the ratio of any Judgment must be understood in the background of the facts of that case and decision is only authority for what it actually decides and not what logically follows from it. It is well settled principle of law that little difference in the facts or single additional fact makes lot of difference in the presidential value of decision. Therefore, one need to see the facts of the case in hand for appropriate decision. In the case in hand, the Advertisement published by MPSC with specific commitment that the service would be pensionable is very crucial distinguishing factor and the whole fate of Applicants depends upon it.

14. Indisputably, in Notification published by MPSC vide Notification No.986(10)/5866-SD/X, dated 30.01.2004, there is specific stipulation that the posts are permanent and pensionable. Furthermore, in appointment order dated 21.04.2006 (Page No.45 of P.B.) also there is reference of Notification No. 986(10)/5866-SD/X, dated 30.01.2004. As such, it is in consonance of the Notification with clear admission and commitment that the posts are permanent and pensionable, the Applicants participated in the recruitment process and came to be appointed.

15. Thus, once in Notification/Advertisement, Respondents made commitment that the posts are pensionable and relying upon it, the Applicants participated in recruitment process that they would get pension as per the then existing Rules i.e. old pension scheme, in that event, the Respondents cannot be allowed to turn around and contend that because of applicability of DCPS w.e.f. 01.01.2005, the Applicants



would not be entitled for old pension scheme. Such contention in the first place is breach of promise expressly given in the Notification and where such breach of promise results into serious prejudice to the participants, the Respondents are estopped from changing the Rules existed and doctrine of promissory estoppels is certainly attracted and claim of the Applicants cannot be defeated by adopting new policy subsequently.

16. In this behalf, learned Advocate for the Applicants rightly referred to the decision of Hon'ble Supreme Court in **(1979) 2 SCC 409 [M/s. Motilal Padampat Sugar Mills V/s. State of Uttar Pradesh & Ors.]**. In Para Nos.23 and 24, Hon'ble Supreme Court held as under :-

*“23. It was also contended on behalf of the Government that if the Government were held bound by every representation made by it regarding its intention, when the exporters have acted in the manner they were invited to act, the result would be that the Government would be bound by a contractual obligation even though no formal contract in the manner required by Article 299 was executed. But this contention was negatived and it was pointed out by this Court that the respondents "are not seeking to enforce any contractual right: they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme, and we are of the view that even if the Scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out". It was thus laid down that a party who has, acting in reliance on a promise made by the Government, altered his position, is entitled to enforce the promise against the Government, even though the promise is not in the form of a formal contract as required by Article 299 and that Article does not militate against the applicability of the doctrine of promissory estoppel against the Government.*

*This Court finally, after referring to the decision in the **Ganges Manufacturing Co. v. Surujmull (supra)**, **The Municipal Corporation of the City of Bombay v. The Secretary of State for India (supra)** and **Collector of Bombay v. Municipal Corporation of the City of Bombay & Ors. (supra)**, summed up the position as follows :*

*"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the*

*citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen."*

*The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a Republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual."*

17. The Applicants have also legitimate expectation of getting pensionary benefits in terms of commitment made by Respondents in the Advertisement. Such legal expectation may arise either from representation or from promise made by the authority. The concept of legitimate expectation is recognized by the Courts from time to time. Indeed, in the present case, it is not a case of mere legitimate expectation, but it is on better/stronger footing in view of clear promise made in the Notification that the posts are pensionable. It is on the basis

of this promise given by the Respondents, the Applicants participated in the process. Otherwise, perhaps, they might not have participated if known that the posts are not pensionable in terms of old pension scheme. Thus, where a person acted upon the promise given by the Government, later cannot be allowed to turn around and to act in a manner prejudicial to the person to whom promise is made.

18. Shri M.V. Thorat, learned Advocate for the Applicants further rightly referred to **(2010) 13 SCC 467 [State of Bihar & Ors. Vs. Mithilesh Kumar]** wherein Hon'ble Supreme Court held that though person may not acquire an indefeasible right to appoint merely on the basis of selection, but where appointment is negated by change of policy after selection process had begun, it is impermissible and unsustainable. In Para No.20, Hon'ble Supreme Court held as under :-

*“20. The decisions which have been cited on behalf of the Respondent have clearly explained the law with regard to the applicability of the Rules which are amended and/or altered during the selection process. They all say in one voice that the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect.”*

19. The learned Advocate for the Applicant further made reference to **(1998) 9 SCC 223 [B.L. Gupta & Anr. Vs. M.C.D.]** to substantiate that the vacancies are required to be filled-in as per the then existing rules prevailing at the time of vacancies and further vacancies arise after cut-off date will have to be filled as per amended Rules.

20. He further referred to **(2008) 1 SCC 36 [B. Ramakichenin @ Balagandhi Vs Union of India & Ors.]** wherein in the matter of short listing, Hon'ble Supreme Court held that once criteria is notified in the Advertisement, it must be adhered to and deviation at later stage is not permissible.

21. Thus, in view of judicial principles and ratio laid down in the aforesaid authorities, once Respondents made unequivocal and unambiguous promise in the Notification that the posts are pensionable, it amounts to express promise and Respondents later cannot be allowed to turn around and to act in a manner which is prejudicial to the Applicants and amount to infringement of their rights and legitimate expectation. Doctrine of promissory estoppels is clearly attracted and Respondents are bound to abide it's promise and commitment. True, Applicants were given the benefit of DCP Scheme, but in view of express promise given in the Advertisement, the applicability of DCPS to the Applicants would not come in their way and all that, they have to forego the benefits, if any, received under DCP Scheme.

22. Apart, Applicants' claim for old pension scheme also gets support from letter dated 17.02.2020 issued by Government of India, Department of Pension. Notably, Government of Maharashtra adopted new Defined Contribution Pension Scheme introduced by Government of India through Department of Pension and PW. After the scheme was introduced and implemented, the Government of India had received representations from Government servants who were appointed on or after 01.11.2005 i.e. cut-off date for Central Government employees on the ground that their appointment was delayed on account of administrative reasons or lapses, and therefore, claimed benefit of old pension scheme. Accordingly, Government of India, Department of Pension and PW by it's letter dated 17.02.2020 issued Office Memorandum. Para No.3 of Office Memorandum is material, which is as under :-

**“3.** From the representations of the Government employees and the references received from Ministries/Departments, it has been observed that in many of the cases referred to this Department, selection process (including written examination, interview and declaration of result) for recruitment had been completed before 01.01.2004 but the employee joined the Government service on or after 01.01.2004. A few illustrations where the selection was finalized before 01.01.2004 but actual joining took place on or after 01.01.2004 are under :-

- (i) The result for recruitment was declared before 01.01.2004 but the offer of appointment and actual joining of the Government servant was delayed on account of police verification, medical examination, etc.
- (ii) Some of the candidates selected through a common selection process were issued offers of appointments and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 1.1.2004 due to administrative reasons/constraints including pending Court/CAT cases.
- (iii) Candidates selected before 01.01.2004 through a common competitive examination were allocated to different Departments/organization. While recruitment process was completed by some Department(s)/organizations on or before 31.12.2003 in respect of one or more candidates, the offers of appointment to the candidates allocated to the other Departments/organization were issued on or after 01.01.2004.
- (iv) Offers of appointment to selected candidates were made before 01.01.2004 with a direction to join on or after 01.01.2004.
- (v) Offers of appointment were issued to selected candidates before 01.01.2004 and many/most candidates joined service before 01.01.2004. However, some candidate(s) were allowed extension of joining time and they joined service on or after 01.01.2004. However, their seniority was either unaffected or was depressed in the same batch or to a subsequent batch, the result for which subsequent batch was declared before 01.01.2004.
- (vi) The result for recruitment was declared before 01.01.2004 but one or more candidates were declared disqualified on the grounds of medical fitness or verification of character and antecedents, caste or income certificates. Subsequently, on review, they were found fit for appointment and were issued offers of appointment on or after 01.01.2004.

In all the above illustrative cases, since the result for recruitment was declared before 01.01.2004, denial of benefit of pension under CCS (Pension) Rules, 1972 to the affected Government servants is not considered justified.”

23. The totality of aforesaid discussion leads me to sum-up that the impugned order dated 20.09.2021 denying the benefits of old pension scheme to the Applicants is totally arbitrary and unsustainable in law. The Applicants are entitled to the benefit of old pension scheme. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order dated 20.09.2021 is quashed and set aside.
- (C) The Applicants are declared entitled to the benefit of M.C.S. (Pension) Rules, 1982 as well as M.C.S. (Commutation of Pension) Rules, 1984.
- (D) The Applicants have to forego the benefit, if any, received under DCP Scheme. The contribution made by them, be refunded to them within two months from today.
- (E) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 06.04.2023

Dictation taken by :

S.K. Wamanse.

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