

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 141 OF 2020  
(Subject:-Benefits of Old Pension Scheme)**

**DISTRICT: - AURANGABAD**

**Anil S/o Dinkar Sanap,** )  
Age 36 years, Occ. Service as )  
Senior Clerk, Office of )  
Deputy Director of Health Services, )  
Aurangabad, Dist. Aurangabad. )...**APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra,** )  
Through its Principal Secretary, )  
Public Health Department, )  
G.T. Hospital Compound, 10<sup>th</sup> Floor, )  
Mantralaya, Mumbai -400001. )
- 2. The Commissioner,** )  
Health Services, Mumbai, )  
National Health Mission, )  
Arogya Bhavan, )  
Saint George Hospital Compound, )  
P.D., Mello Road, Mumbai -400 001. )
- 3. The Director - 2,** )  
Health Services, )  
Central Building, 1<sup>st</sup> Floor, )  
Near Railway Station, )  
Pune -411001. )
- 4. The Dy. Director of Health Services,** )  
Health Services, Mahaveer Chowk, )  
Opposite Baba Petrol Pump, )  
Aurangabad, Dist. Aurangabad 431005) )
- 5. The Dy. Director of Health Services,** )  
(HIVS), Kutumb Kalyan Bhavan, )  
Dr. Nayadu Hospital Area, )  
Kenadi Road, Pune 411 001. )...**RESPONDENTS**
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**APPEARANCE** : Shri S.B. Solanke, learned Advocate for  
the applicant.  
: Shri S.K. Shirse, learned Presenting  
Officer for the respondents.  
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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**

**DATE** : **21.12.2022.**  
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### **ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985, this Original Application is filed seeking direction to the respondent authorities not to apply Defined Contribution Pension Scheme (D.C.P.S.) to the applicant as he is recruited before 01.11.2005 and seeking declaration that being recruited before 01.11.2005, he is entitled for the benefit of Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and General Provident Fund Scheme (G.P.F.) and to make contribution towards the said Pension Scheme and General Provident Fund Scheme (G.P.F.).

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant being qualified and eligible to be appointed as Statistical Investigator, he applied for the said post pursuant to advertisement (part of Annex. 'A-1' collectively). In the said recruitment process, he received call letter dated 31.08.2005 (part of Annex. 'A-1' collectively) appearing for oral interview to be held on 19.09.2005. The applicant appeared for the said oral interview. He was selected and he came to be appointed on the post of Statistical Investigator by appointment letter dated 31.10.2005 (Annex. 'A-2'). The applicant received the said appointment letter on 07.11.2005 through post. The applicant immediately joined on the said post on 09.11.2005 at Gadchiroli. Thereafter, the applicant was promoted in May, 2014 as Statistical Assistant and thereafter as Senior Clerk. Presently he is working under the respondent No.4 at Aurangabad on the post of Senior Clerk.

(ii) It is contended that several candidates, who had applied along with the applicant had joined the services. Those who joined on their duties prior to 31.10.2005, are given the benefit of old pension scheme, but since the appointment

order was served upon the applicant by post, he could not join at the earliest and only after receipt of the appointment order on 07.11.2005, he could join on 09.11.2005. The applicant in fact is also entitled to get the benefit of old pension scheme, since the entire process of recruitment was completed prior to 01.11.2005 and even the appointment order was issued on 31.10.2005.

(iii) It is further submitted that the State Government has issued G.R. dated 31.10.2005 (Annex. 'A-3') thereby providing that the Government servants who are recruited on or before 01.11.2005 would be governed by the new pension scheme namely, Defined Contribution Pension Scheme and it was also provided that, the consequential amendment would be made in the Maharashtra Civil Services (Pension) Rules, 1982. Subsequently, the said pension Rule of 1982 came to be amended by notification dated 31.10.2005 issued by the Finance Department, Government of Maharashtra and certain additional G.Rs. were also issued in respect of proper implementation of Defined Contribution Pension Scheme (D.C.P.S.).

(iv) It is further contended that in the similar set of facts, Writ Petition No. 4115/2016 was filed before the Hon'ble High

Court of Judicature at Bombay, Bench at Aurangabad by Balasaheb Subrao Kale & Ors. The said Writ Petition was decided by order dated 30.11.2018 (Annex. 'A-5') whereby the said Writ Petition was allowed holding that the petitioners therein would be governed by the Old Pension Scheme, 1982 and not by DCPS. The applicant filed about nine representations between 22.12.2016 to 31.01.2020 including representation dated 11.12.2019 (Annex. 'A-7') to the respondents specifically to the respondent No.5 seeking applicability of old pension scheme. However, there was no response from the respondents.

(v) In the circumstances as above, it is contended that the facts and documents on record would show that the applicant is recruited before 01.11.2005 by issuing appointment letter dated 31.10.2005. As per the settled law the term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. In view of that, the applicant is entitled for the reliefs as claimed. Hence, this application.

3. The application is resisted by filing affidavit in reply on behalf of the respondents by one Dr. Eknath Maloji Bhosale working as Chief Administrative Officer in the office of

respondent No.4 i.e. the Deputy Director Health Services, Aurangabad thereby he denied adverse contentions raised in the Original Application.

(i) It is specifically contended that the candidates, who have joined prior to 01.11.2005 are rightly given the benefit of old pension scheme but since the applicant has joined his service after 01.11.2005, he is held to be not eligible for getting benefit of old pension scheme. The case law of the Hon'ble Bombay High Court relied upon by the applicant cannot be made applicable in the case in hand as the same is in respect of Zilla Parishad employees and those are not at par with the applicant.

(ii) The Government has already taken a decision implementing the new Defined Contribution Pension Scheme in the entire State and therefore, the respondents cannot consider the request of the applicant for giving the benefit old pension scheme. The applicant is appointed and joined after 01.11.2005 and therefore, he is not entitled for old pension scheme. Hence, the application is liable to be dismissed.

4. I have heard at length the arguments advanced by Shri S.B. Solanke, learned Advocate for the applicant on one

hand and Shri S.K. Shirse, learned Presenting Officer representing the respondents on other hand.

5. Undisputedly the advertisement for the post of Statistical Investigator for which the applicant applied was published prior to 01.11.2005. The copy of the advertisement is placed on record by the applicant as part of Annex. 'A-1' collectively. It does not specify the date. However, it is mentioned therein that as on 28.02.2005, the minimum and maximum age limit of the candidates for the said post would be 18 years and 33 years with 5 years relaxation to backward Class candidates. Last date for acceptance of applications from the candidates is stated to be 28.03.2002. In the said recruitment process, the applicant received the call letter dated 31.08.2005 (part of Annex. 'A-1') for appearing for oral interview to be held on 19.09.2005. The applicant remained present in the said interview. He was selected and appointment letter to him was issued on 31.10.2005 (Annex. 'A-2'). In view of the same, recruitment process seems to have been completed on or before 31.10.2005.

6. Admittedly, the applicant having received appointment order on 07.11.2005, he joined on that post on 09.11.2005.

His joining place was stated to be Gadchiroli. Further by virtue of G.R. dated 31.10.2005 (Annex. 'A-3') issued by the Finance Department, Maharashtra State, new pension scheme known as Defined Contribution Pension Scheme (D.C.P.S.) was made applicable who are recruited on after 01.11.2005 in the State Government services. Working guidelines thereby issued on the same date i.e. on 31.10.2005. Notification dated 31.10.2005 (Annex. 'A-4') was published making amendment in Maharashtra Civil Services (Pension) Rules, 1982 thereby inserting Sub Rule (2) of Rule 2 as follows:-

*“(2) These rules shall not apply to the Government servants, who are recruited on or after 1<sup>st</sup> November, 2005.”*

7. In view of the same, in order to resolve the controversy raised in the Original Application, one has to understand the proper meaning of the term “recruitment”. In this regard, learned Advocate for the applicant has placed reliance on the case law of the Hon'ble Apex Court reported in AIR 1993 SCW 671 in the matter of **Prafulla Kumar Swain Vs. Prakash**

**Chandra Misra & Ors.** In paragraph No. 28 it is observed as follows:-

*“28. At this state, we will proceed to decide as to the meaning and effect of the words “recruitment” and “appointment”. The term “recruitment” connotes and clearly signifies enlistments, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word “appointment” means an actual act of posting a person to a particular office.”*

8. Learned Advocate for the applicant further placed reliance on the judgment of Hon’ble Apex Court in the matter of **P. Ranjitharaj Vs. the State of Tamil Nadu & Ors.** decided on 25.04.2022. In the said citation case 53 vacancies of Assistant Public Prosecutor Grade II came to be advertised by the Tamil Nadu Public Service Commission by advertisement dated 9.11.2001. After undertaking the process for selection, the final select list was sent by the Commission to the State Government, pursuant to which 51 persons, including those who are lower in order of merit to the Appellants therein, were appointed on the post of APP Grade –II by the Government by order dated 24.09.2002. At that point of time the Appellants were withheld for want of

further verification and clearance from the Commission. The Commission on verification granted clearance to both the Appellants and intimated to the State Government by its communication dated 03.09.2002 (much before the appointments made by order dated 24.09.2002). Despite all the formalities being completed, without any reasonable cause or justification, the State Government withheld the appointment of the Appellants and finally both the Appellants were appointed on the post of Grade-II on 23.08.2005 and 23.04.2004 respectively. In the meanwhile, vide notification dated 06.08.2003, an amendment was made under the Tamil Nadu Pension Rules, 1978 which came into force w.e.f. 01.04.2003 and following proviso was added to Rule 2.

*“Provided that these Rules shall not apply to Government Servants appointed on or after 1<sup>st</sup> April, 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent.”*

In paragraph Nos.11, 12 and 13 it is observed and laid down as under:-

*“11. After we have heard counsel for the parties and with their assistance perused the material available on record, in our considered view, the premise on which the High Court has proceeded is not sustainable*

*for the reason that the Appellants along with other applicants had participated in the self-same selection process pursuant to advertisement dated 9<sup>th</sup> September, 2001 held for the post of APP Grade II and verification was made by the Commission in the case of the present Appellants on 3<sup>rd</sup> September, 2002.*

*12. In the given circumstances, when those who are lower in order of merit to the Appellants were appointed by an order dated 24<sup>th</sup> September, 2002, the Appellants have no right of say in the matter of appointment and no justification has been tendered by the State Respondent as to why their names were withheld for two/three years, when their names were cleared by the Commissioner on 3<sup>rd</sup> September, 2002 and sent to the State Government and finally appointment were made of the Appellants on 23<sup>rd</sup> August, 2005 and 23<sup>rd</sup> April, 2004 respectively and the delay indeed in making appointments in the case of the present Appellants in no manner could be attributable to them.*

*13. In the given circumstances, when all other candidates who had participated along with the Appellants pursuant to advertisement dated 9<sup>th</sup> November, 2001, on the recommendations made by the Commission we appointed on 24<sup>th</sup> September, 2002 including those who are lower in the order of merit, there appears no reason for withholding the names of the present Appellants and merely because they were*

*appointed at a later point of time, would not deprive from claiming to become a member of Tamil Nadu Pension Rules, 1978, which is applicable to the employees who were appointed on or before 1<sup>st</sup> April, 2003.”*

9. Learned Advocate for the applicant has also placed reliance on the decision of the Hon'ble Bombay High Court Bench at Aurangabad dated 30.11.2018 rendered in Writ Petition No. 4115/2016 in the matter of **Balasaheb Subrao Kale & Ors. Vs. State of Maharashtra & Ors.** In the case citations case the Petitioners therein were appointed as Assistant Teachers as per appointment orders dated 26<sup>th</sup> October, 2005. The Petitioners were directed to join duties on 16.11.2005, as during the interregnum there was Diwali Vacations and on the opening day of the Diwali Vacations they were directed to join the duties. In paragraph Nos.9, 10, 11 and 12 it is observed as follows:-

*“9. Sub rule 2 of Rule 2 of the Maharashtra Civil Services (Pension) Rules, 1982 provides that these Rules shall not apply to the government servants, who are recruited on or after 01<sup>st</sup> November, 2005. The emphasis is on the word “recruited”. Under the notification dated 31<sup>st</sup> October, 2005, viz. introducing the scheme of DCPS it is specifically stated in clause 2*

*that the scheme will apply to those employees, who were appointed after 01<sup>st</sup> November, 2005. Clause 4A of the said scheme also specifically provides that the scheme will apply to those who are appointed after 01<sup>st</sup> November, 2005.*

*10. In the present case, undisputedly the petitioners are appointed under the valid appointment orders dated 26th October, 2005. Subrule 2 of Rule 2 of the Maharashtra Civil Services (Pension) Rules, 1982, so also, Clause 2 and Clause 4 of the DCPS scheme introduced under notification dated 31st October, 2005 are unambiguous. When the provisions are unambiguous, literal interpretation is the rule.*

*11. The petitioners having been appointed prior to 01st November, 2005, they would be governed by the Old Pension Scheme, 1982 and not by the DCPS scheme introduced under notification dated 31st October, 2005.*

*12. In the light of above, both the writ petitions are allowed. The petitioners would be governed by the Old Pension Scheme, 1982 and not by the DCPS scheme. Rule accordingly made absolute in the above terms. No costs.”*

10. Learned Advocate for the applicant further placed reliance on the decision of the Hon’ble Bombay High Court, Bench at Aurangabad dated 06.09.2022 in Writ Petition No. 13702/2021 in the matter of **Gangu Murlidhar Zade Vs.**

**State of Maharashtra & Ors.** The Petitioner therein sought declaration that she is entitled to be governed by the benefits of Old Pension Scheme envisaged under the provisions of Maharashtra Civil Services (Pension) Rules, 1982, Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and General Provident Fund Scheme. The Petitioner came to be appointed on the post of Shikshan Sevak vide letter dated 26.10.2005. However, on account of Diwali Vacation in the school, the appointment order was made effective from 16.11.2005. Meanwhile, new Defined Contributory Pension Scheme came to be introduced by the State Government vide G.R. dated 31.10.2005 effective from 01.11.2005. Since the petitioner joined the post of Shikshan Sevak on 16.11.2005, Defined Contributory Pension Scheme was made applicable to her. It is observed that the issue is no more *res-integra* and is covered by decisions of this Court in **Kishor Asaram Nirwal and Others Vs. The State of Maharashtra & Others, Writ Petitioner No. 2689 of 2014 decided on 27.08.2018** and **Balasaheb Subrao Kale & others Vs. State of Maharashtra & Others, Writ Petition No. 4115 of 2016 decided on 30.11.2018.** Moreover, in paragraph No.7 it is observed as follows:-

*“7. We may observe here that the Government of India, Department of Pension and PW has issued Office Memorandum dated 17.02.2020 directing that the Government servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against the vacancies occurring before 01.01.2004 and are covered under the National Pension System on joining service on or after 01.01.2004, may be given a **one time option** to be covered under the CCS (Pension) Rules, 1972. Thus, the Central Government has now formulated a scheme, where the Government servants whose selection process is complete prior to the date of coming into effect of the Defined Contributory Pension Scheme have been given option to switch over to the Old Pension Scheme. The case of the petitioner, in our opinion, stands on much better footings. Her selection was not only complete prior to the coming into effect of the Defined Contributory Pension Scheme, but she was issued appointment order on 26.10.2005. We, therefore, do not think that this is an appropriate case to defer from the consistent view taken by this Court.”*

11. In the circumstances, in view of the ratio laid down in the above said citations, it is evident that the applicant was selected in recruitment process on or before 31.10.2005. As on 31.10.2005, the Old Pension Scheme was available. What is stated in Sub Rule (2) of Rule (2) of Old Pension Scheme is

that the Old Pension Rules are not applicable for the Government servants who are recruited on or after 01.11.2005. The applicant admittedly is recruited and appointment order was issued on 31.10.2005. In view of the same, the ratio laid down in the abovesaid citations would be aptly applicable. Only because the applicant joined the services on 09.11.2005 he cannot be refused applicability of Old Pension Scheme. The applicant said to have received appointment order through post on 07.11.2005 and he joined on 09.11.2005. In the circumstances, the applicant succeeds. Hence, I proceed to pass the following order:-

### **ORDER**

The Original Application is allowed in terms of prayer clause B, C and D as follows:-

- “(i) “B. This Hon’ble Tribunal may be pleased to hold that, the Applicant is recruited prior to 1.11.2005 and therefore, he is entitled to get the benefits of old pension scheme i.e. the Maharashtra Civil Services (Pension) Rules 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and General Provident Fund

Scheme (G.P.F.) and for that purpose issue necessary orders;

C. This Hon'ble Tribunal may be pleased to direct the Respondent Authorities to extend the benefits to the Applicant under the Maharashtra Civil Services (Pension) Rules 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and General Provident Fund Scheme (GPF) and further direct them to make contribution towards the said Pension Scheme and General Provident Fund Scheme.

D. This Hon'ble Tribunal may be pleased to direct the Respondent authorities not to enforce and apply the New Pension Scheme i.e. Defined Contribution Pension Scheme to the Applicant in any manner and/or by any method.

(ii) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place:- Aurangabad**  
**Date : 21.12.2022**  
SAS O.A.141/2020