

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.948/2022(S.B.)

Dr.(Mrs.) Chhaya w/o Dilip Mahale,
aged about 61 years,
Occupation: Retired Asst. Professor,
Government B.Ed. College,
Yavatmal, Resident of Saivandan Apartment,
Opposite to Old Dharmashala,
Civil Lines, Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Higher and Technical Department,
Mantralaya, Mumbai-32.
- 2) Director of Higher Education
and technical Education,
Maharashtra State, Pune.
- 3) Government B.Ed. College,
Yavatmal through its Principal,
Yavatmal.

Respondents

Shri S.Y.Deopujari, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 07th March, 2024.

JUDGMENT

Judgment is reserved on 6th March, 2024.

Judgment is pronounced on 7th March, 2024.

Heard Shri S.Y.Deopujari, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. In September, 1994 the applicant was appointed as Lecturer on ad-hoc basis. Her services were continued on ad-hoc basis with technical breaks. Thereafter, from 20.01.2004 to 26.01.2006 she worked on contract basis (Annexure A-1). In response to advertisement dated 30.03.2005 issued by MPSC she applied for the post of Assistant Professor. She underwent selection process. By order dated 27.10.2005 (Annexure A-2) her name was recommended for appointment. By order dated 24.08.2006 (at PP.162 to 166) the applicant was appointed as Assistant Professor. She retired on superannuation on 31.11.2020. In these admitted facts the applicant prays that it be declared that she shall be governed by the Old Pension Scheme as well as General Provident Fund Scheme.

3. Aforesaid prayer of the applicant is fully supported by the Judgements of the Hon'ble Bombay High Court. In **Riyaz Ahmed Sadroddin and Others Vs. State of Maharashtra and Others 2023 DGLS (Bom.) 2108** it is held-

10. *The issue is no more res integra. In an elaborate judgment in the matter of Khilari Rajendra Eknath and Ors. Vs. The State of Maharashtra and Ors. (Writ Petition No.2270/2021 (Original Side of the Principal Bench) by the judgment and order dated 28.04.2023, this Court after taking into consideration the fact that the DCPS is based on the policies of the Central Government and pointing out the similarities in the rules and issuance of office memorandum by the Central Government dated 03.03.2023 and precisely making out a distinction between the word "recruitment" instead of word "appointment" used in Rule 2(2) and following the decision of the Supreme Court in the matter of Shivaji Nagnath Lokare and Ors. Vs. State of Maharashtra and Ors.; (2017) 5 Mh.L.J.854 and Prafulla Kumar Swain Etc. Vs. Prakash Chandra Misra and Ors.; 1993 SCC Supl. (3) 181, this Court has expressly held that the petitioners therein whose appointments were made after 01.11.2005 when the recruitment process had begun prior thereto were governed by the old pension scheme and not by the DCPS introduced vide Government Resolution dated 31.10.2005.*

11. *We are in respectful agreement with the view taken in the matter of Khilari Rajendra Eknath (supra). When admittedly the selection process in respect of the petitioners had even reached a stage of publication of select list and only the appointment orders had remained to be issued and were issued to them between 29.12.2005 and 02.01.2006 that is after 01.11.2005, they would still be governed by the old pension scheme and not by the DCPS.*

12. The Review Application is allowed. The order dated 9.08.2019 in WP No.4946/2014 (common judgment in WP/2894/2014) is recalled. The writ petition is allowed in terms of the directions in paragraph Nos.30 and 31 in the matter of Khilari Rajendra Eknath (supra) which read thus :

“30. Resultantly, the Writ Petition succeeds. It is declared that Petitioners shall be governed by the provisions of the Old Pension Scheme in vogue prior to 1.11.2005, as well as General Provident Fund Scheme. Petitioners shall not be governed by the provisions of the Defined Contributory Pension Scheme introduced vide G.R. dated 31.10.2005. The Petitioners’ contribution to DCPS be credited to their GPF Accounts. The modalities as suggested in para-8 of the Office Memorandum dated 03.03.2023 issued by the Government of India be adopted while switching over Petitioners from DCPS to Old Pension Scheme.

4. In common judgment dated 11.08.2023 (in W.P.Nos. 1893/2020 and 3746/2023) the Hon’ble Bombay High Court held and observed as follows:-

“(9) We direct the Chief Executive Officers of the Respondent - Zilla Parishad, to examine the case of each of the members of Petitioner - Association within five weeks from the date the order is uploaded (after amendment is carried out to the Petitions) and if the recruitment process in respect of each of these Gramsevak has commenced before 1 November 2005, then they shall proceed to extend the benefits as were directed to be given by the Division Bench in the cases of Khillari Rajendra Eknath and Ors. vs. The State of Maharashtra and Ors. and Rahul Laxmikant Kontamwar. In case, the Chief Executive Officer, upon examination, finds that any individual case is not covered by the above mentioned position of law, then a speaking order giving detailed reasons be passed and communicated to the concerned individual Gramsevak.

(10) We must observe here that the Division Bench in the case of Khillari Rajendra Eknath has issued general directions to the State of Maharashtra for issuance of a Government Resolution similar to the

Office Memorandum of the Central Government dated 3 March 2023 directing that all employees whose recruitment process commenced before 1 November 2005 would be governed by the provisions of Old Pension Scheme under the Rules of 1982, notwithstanding their actual appointments taking place after 1 November 2005. We reiterate such directions as they will prevent needless litigations by similarly placed employees. We expect the State Government to issue necessary Government Resolution within a period of six weeks from today."

5. On 02.02.2024 Finance Department of Government of Maharashtra has issued a G.R. which *inter alia* states:-

दि. ०१.११.२००५ पूर्वी पदभरती जाहिरात/अधिसूचना निर्गमित झालेल्या प्रकरणी शासन सेवेत दि. ०१.११.२००५ रोजी किंवा त्यानंतर रुजू झालेल्या शासकीय अधिकारी/कर्मचारी यांना केंद्र शासनाच्या धर्तीवर महाराष्ट्र नागरी सेवा निवृत्तीवेतन नियम, १९८२, महाराष्ट्र नागरी सेवा (निवृत्ती वेतनाचे अंशराशीकरण) १९८४ व सर्वसाधारण भविष्य निर्वाह निधी व अनुषंगिक नियमाच्या तरतुदी लागू करण्यासाठी एक वेळ पर्याय (One Time Option) देण्यात येत आहे.

6. This being the factual and legal position, the O.A. is allowed in the following terms.

It is declared that the applicant shall be governed by the provisions of Old Pension Scheme in vogue prior to 01.11.2005, as well as General Provident Fund Scheme. Her contribution to Defined Contributory Pension Scheme (DCPS) be credited to her G.P.F. account. Exercise necessitated by this determination shall be completed within two months from today. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 07/03/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 07/03/2024.
and pronounced on
Uploaded on : 07/03/2024.