

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4066 OF 2021
WITH
WRIT PETITION NO.6976 OF 2022

Shri. Sharanappa Chandramappa Hegde

Age : Adult, Occupation : Service

R/o. : Sadanand Nagar, Wasud Road,

Sangola, District Solapur-413 307

... Petitioner

Versus

1. The State of Maharashtra

2. Joint Director of Higher Education,
Solapur Region, Solapur.

3. Solapur University, Solapur
Through its Registrar

4. Sangola Taluka Shetkari Shikshan
Prasarak Mandal, Sangola

5. Vidyan Mahavidyalaya Sangola
District Solapur through
Principal

...Respondents

Mr. Chetan Patil for Petitioner in WP/4066/2021.

Mr. Mandar Bagkar, for Petitioner in WP/6976/2022.

Mr. S. B. Kalel, AGP for Respondent Nos. 1 and 2 – State.

Ms. Kumud Bhatia, for Respondent Nos.4 and 5 in WP/4066/2021.

Mr. Sanjay Thokade, for Respondent No. 3 in WP/4066/2021.

Mr. Rui A Rodrigues for Respondent No.7 UGS

Mr. I. M. Khairadi, a/w. Pramod Narayan Joshi for Respondent No.3 in WP/6976/2022.

CORAM : **SUNIL B. SHUKRE,**
SANDEEP V. MARNE, JJ.

RESERVED ON : **11 SEPTEMBER 2023.**
PRONOUNCED ON : **20 SEPTEMBER 2023.**
(THROUGH V.C.)

JUDGMENT : (Per – Sandeep V. Marne, J.)

Rule. Rule is made returnable forthwith. With the consent of parties, petitions are heard finally.

2. Petitioner, a Librarian working in Vyankat Mahavidhlaya, Sangola is aggrieved by the decisions of Respondents in denying him UGC Payscale and his premature retirement. Firstly, he is denied higher pay scale recommended by University Grants Commission from the date of acquisition of qualification of master's degree in library and information Science. His second grievance is about forcible retirement granted to him on 31 May 2022 on attaining age of 58 years, by treating him as non-teaching staff, when he has right to serve till attaining the age of 60 years as teaching staff.

3. Briefly stated, facts of the case are that Petitioner holds qualifications of master's degree in arts and bachelor's degree in library and information Science. On the strength of these qualifications, he came

to be appointed in Respondent No.5 college on 29 August 1992 on the post of Librarian and placed in the pay scale of Rs.2000-3500 in pursuance of approval granted by Shivaji University, Kolhapur. On 23 November 1994, Respondent No.5 college terminated his services on the ground of non-possession of qualification of master's degree in library and information science in B+ grade. However, his termination came to be set aside by Shivaji University, Kolhapur by order dated 28 November 1994 referring to the Circular dated 10 August 1994 issued by the University on the basis of Government Resolution dated 25 March 1994, under which Librarians holding educational qualifications as per GR dated 14 August 1986 were to be continued in service in the lower pay scale. It was suggested that upon acquisition of requisite qualifications by Petitioner, he would be granted revised pay scale. The college was therefore directed not to terminate services of Petitioner. This is how Petitioner came to be reinstated in service. He was however placed in lower pay scale of Rs.700-1100. He filed Writ Petition No.6229 of 1999 which was allowed by this Court on 10 August 2000, in pursuance of which he was restored to pay scale of Rs.2000-3500.

4. Petitioner acquired the master's degree in library and information science in the year 2000 and passed same in B+ grade. He applied for grant of pay scale recommended by UGC. His request was however turned down by letter dated 01 October 2013 which become subject matter of challenge in Writ Petition No.1861 of 2014. In that writ petition, a statement was recorded on behalf of management on 23

January 2019 that Petitioner's proposal would be sent for grant of UGC pay scale. The Government was directed to decide the proposal by this Court. Accordingly the proposal was sent by the Respondent management for grant of UGC pay scale to the Petitioner from the date of acquisition of qualification of M.Lib with B+ Grade. However by communication dated 28 March 2019, the Divisional Joint Director, Higher Education, Solapur rejected the proposal on the ground that Petitioner acquired M.Lib qualification on 29 September 2000 i.e. beyond the window period of 23 October 1992 to 03 April 2000 as provided in the Government Resolution dated 27 January 2013. Based on the State Government's communication, the University also rejected Petitioner's proposal by order dated 05 April 2019. These orders dated 28 March 2019 and 05 April 2019 are subject matter of challenge in Writ Petition No.4066 of 2021.

5. During pendency of Writ Petition No.4066 of 2021 Petitioner was made to retire on 31 May 2022 on attaining age of 58 years on account of a directive issued by the Divisional Joint Director, Higher Education dated 10 February 2021. The only reason cited in the said communication dated 10 February 2021 was non-grant of UGC pay scale to Petitioner and his consequent treatment as non-teaching staff. Thus, Petitioner has been treated as a non-teaching staff on account of non-grant of UGC pay scale to him and is made to retire on attaining age of 58 years, when in fact he could have continued in services till the age of 60 years as teaching staff. Based on the directions of the State

Government dated 10 February 2021, the Respondent College issued communication to Petitioner on 30 May 2022 for his retirement with effect from 31 May 2022. It appears that the Respondent college requested Accounts Officer, Higher Education, Solapur for issuance of Petitioner's last pay certificate however by letter dated 24 May 2022, the Accounts Officer communicated that Petitioner was holding non-teaching post and Writ Petition No.4066 of 2021 for grant of UGC scale is pending and that therefore the last pay certificate could be issued only after decision in all the litigation. Communications dated 10 February 2021, 24 May 2022 and 30 May 2022 are subject matter of challenge in Writ Petition No.6976 of 2022.

6. Appearing for Petitioner Mr. Patil, the learned counsel would submit that rejection of proposal for grant of UGC pay scale to Petitioner by the Divisional Joint Director, Higher Education, Solapur is *ex facie* illegal. That the Divisional Joint Director has erroneously mixed up the issue of passing NET / SET with the issue of grant of UGC pay scale. That the window period from 23 October 1992 to 03 April 2000 as per GR dated 27 June 2013 is applicable only for grant of exemption from NET / SET. He would take me through GRs dated 18 October 2001 and 27 June 2013 and would submit that the requirement of passing NET / SET is not applicable to those who are recruited prior to 23 October 1992. That Petitioner has been initially recruited on 29 August 1992. That therefore he has stands exempted from the requirement of passing NET / SET. However, issue of grant of higher pay scale recommended by

UGC has nothing to do with the requirement of passing NET / SET. Relying University's letter dated 28 November 1994 and Circular dated 10 August 1994, Mr. Patil would submit that the University had specifically agreed for grant of UGC pay scale immediately upon acquisition of requisite qualification of M.Lib. That the Divisional Joint Director has failed to take into consideration said Circulars of the University and has erroneously rejected Petitioner's proposal for grant of UGC pay scale by mixing issue of passing NET / SET.

7. So far as Writ Petition No.6976 of 2022 is concerned, Mr. Patil would contend that Petitioner has erroneously been treated as non-teaching staff only on account of non-grant of UGC pay scale. He would submit that even if Petitioner is not held entitled to grant of UGC pay scale, he cannot still not be treated as non-teaching staff. Without prejudice, he would submit that if Petitioner is held entitled to grant of UGC pay scale, his age of retirement would automatically be extended to 60 years.

8. Mr. Kalal the learned AGP would oppose the petition on behalf of State Government. He would submit that in paragraph 2(b) of the GR dated 18 October 2001, it was specifically directed that employees not passing NET / SET cannot be granted any financial benefits including higher pay scale. That since Petitioner has not passed NET / SET, he is bound by the said condition. He would also rely upon GR dated 27 June 2013 in support of his contention that the said GR is

required to be read in conjunction with the earlier GR dated 18 October 2001 and that therefore Petitioner cannot claim the benefit of UGC payscale. He would further submit that window period granted in GR dated 27 June 2013 is only between 23 October 1992 to 03 April 2000 and since Petitioner has acquired M.Lib qualification on 29 September 2000, he has rightly been rejected from the benefit of UGC pay scale. He would further submit that the Divisional Joint Director has passed impugned order after due consideration of applicable GRs and the same does not suffer from the vice of perversity. He would further submit that Petitioner has rightly been treated as non-teaching staff on account of failure to acquire requisite qualifications required for the post of Librarian and has been correctly retired on attaining the age of 58 years.

9. Mr. Thokade, the learned counsel would appear on behalf of Respondent No.3 University in Writ Petition No.4066 of 2021 and would support the order passed by the Divisional Joint Director as well as by the University in rejecting Petitioner's claim for UGC pay scale. That Petitioner was not qualified to be appointed on the post of Librarian and therefore now he cannot claim higher pay scale. That the decision for rejection of proposal for grant of UGC pay scale has rightly been taken on account of Petitioner's failure to acquire the requisite qualifications within prescribed period.

10. Mr. Khairadi would appear on behalf of University in Writ Petition No.6976 of 2022. In support of decision to retire Petitioner on

attaining the age of 58 years, he would submit that in absence of holding requisite qualification for appointment to the post of Librarian, Petitioner has rightly been treated as non-teaching staff. That UGC is the ultimate authority to decide eligibility criteria to hold the post of Librarian. Since the Petitioner failed to get the UGC pay scale, he cannot work till the age of 60 years which age limit is applicable only to qualified teaching staff.

11. We have also heard Mr. Rodrigues learned counsel appearing for UGC in Writ Petition No.6976 of 2022.

12. Rival contentions of the parties now fall for our consideration.

13. We first proceed to examine whether Petitioner is entitled to grant of UGC pay scale applicable for the post of Librarian. There is no dispute about the applicable eligibility criteria for filling up the post of Librarian. Petitioner was appointed on 29 August 1992. By GR dated 25 March 1994, the essential qualifications were prescribed as under:

- i) Good Academic record with atleast high second class Master's decree in a subject other than Library Science.
- ii) Master's degree in Library Science with first class or High second class.

Shri. Hegade was confirmed on the services on 28th August 1994. Before the confirmation of his services, Maharashtra government has come out with essential qualification with the resolution no.USG/1494/(2713)UNI-4 dated 25th march 1994. The essential qualification prescribed were:

- iii) Qualifying the national level test conducted for the purpose by the UGC or any other agency approved by the UGC.
- iv) Masters Degree in Library Science/information Science/ Documentation or an equivalent professional degree with atleast fifty five percent Marks or its equivalent grade plus at consistently good academic record.

OR

Masters Degree in Art/ Science/ Commerce or equivalent degree with atleast fifty five percent Marks or its equivalent grade plus a consistently good academic record.

14. At the time of his initial recruitment as a Librarian, he was lacking qualification of M.Lib. as required under the GR dated 25 March 1994. The college attempted to terminate Petitioner's services for not holding qualification of M.Lib prescribed in the GR dated 25 March 1994 by issuing termination letter dated 23 November 1994. The University had however issued a Circular on 10 August 1994 which reads thus:

SHIVAJI UNIVERSITY, KOLHAPUR

Ref 3U/Affi/T-1/704

Date: 10-8-1994.

To,
The Principals
Of Affiliated Arts, Science,
Commerce and Education Colleges and
The Directors of Recognized Institute.

In continuation of this office order No. SU/Affi/T-1/2084 dated 26/11/93 I am directed to inform you that recently the

Government of Maharashtra has accepted the revised qualifications for the post of Librarian in affiliated colleges prescribed by the U.G.C. vide their letter No. F. 1-9/84/(CPP-I) dated 20/2/90 vide their G.R.No.1) USG 1494/(2713)/UNI-4 dated 25-3-1994 2) USG-1494/(2713)/UNI-4 dated 16-4-1994. (Copies of the revised resolution are enclosed herewith for information)

These qualification are applicable to the Librarians whose appointments are made after 1/1/86. The scales prescribed by the U.G.C. and accepted by the Government of Maharashtra are applicable to all those incumbents from 1/1/86 or from the date of which they fulfill the revised qualifications.

Similarly those who are appointed as a Librarian previously on lower scale will become eligible for the U.G.C. revised scale as and when they acquire new U.G.C. qualifications.

This may please be brought to the Notice of the Librarian working in your college.

Yours faithfully,
Sd/-
Dy. Registrar

15. Referring to its Circular dated 10 August 1994, the university issued letter dated 28 November 1994 to the College directing reinstatement of Petitioner's services. Letter dated 28 November 1994 reads thus:

शिवाजी विद्यापीठ, कोल्हापूर
फोन नं. मोनोग्रॅम विद्यानगर
कोल्हापूर ४१६ ००४.
भारत
संदर्भ : अॉफि/टे६/९३३७ दिनांक : २८ नोव्हें. १९९४
अध्यक्ष,
सांगोले तालुका शेतकरी शिक्षण
प्रसारक मंडळ,

द्वारा विज्ञान महाविद्यालय,
सांगोला ४१३ ३०७, जि. सोलापूर.

विषय : श्री. एस. सी. हेगडे, ग्रंथपाल यांना सेवामुक्त न करण्याबाबत.

महोदय,

उपरोक्त विषयास अनुसरून आदेशान्वये कळविण्यात येते की, प्राचार्यांना दिनांक १०/०८/१९९४ च्या परिपत्रकासोबत ग्रंथपालांच्या सुधारित वेतनश्रेणी व शैक्षणिक अर्हतेबाबतचा दिनांक २५/३/१९९४ चा शासन आदेशपाठवून कळविले आहे की, याप्रमाणे सुधारित शैक्षणिक पात्रता ग्रंथपाल धारण करित नसतील तर त्यांना दि. १४/८/१९८६ च्या शासनादेशानुसार शैक्षणिक अर्हता धारण करित असल्याने त्यांना मान्यता दिलेली आहे व ती लोअर स्केलमध्ये दिलेले आहे. म्हणून ते जेव्हा सुधारित शैक्षणिक पात्रता धारण करतील तेव्हा त्यांना सुधारित स्केल मिळेल.

तेव्हा श्री. एस. सी. हेगडे यांना सेवामुक्त न करता दि. २५/३/१९९४ च्या शासन आदेशानुसार शैक्षणिक पात्रता धारण करतेपर्यंत दि. १४/८/१९८६ च्या शासन आदेशानुसार वेतन देउन सेवेत ठेवावे.

आपला विश्वासू,
सही /—
उपकुलसचिव

प्रत :

१. प्राचार्य
विज्ञान महाविद्यालय, सांगोला
यांना माहितीस्तव व योग्य त्या कार्यवाहीसाठी.
२. श्री. एस. सी. हेगडे
द्वारा — भिमराव पाटोळे, परीट गल्ली, सांगोला — यांना माहितीसाठी.

16. Based on the Circular dated 10 August 1994, the University directed Petitioner's reinstatement with further directions that he would be granted UGC pay scale immediately upon acquisition of qualifications prescribed in GR dated 25 March 1994. Petitioner accordingly acquired the requisite qualification of M.Lib. With B+ grade on 29 September 2000. Therefore, as per the Circular dated 10 August 1994 read with letter dated 28 November 1994 issued by the University, Petitioner was

required to be granted UGC pay scale with effect from 29 September 2000.

17. However, Petitioner's proposal is rejected by making a reference to GRs dated 18 October 2001 and 27 June 2013. It would therefore be necessarily to consider the effect of those GRs.

18. UGC issued Notification dated 19 September 1991 for prescribing eligibility criteria for appointments of Lecturers, which included *inter alia* passing of National Eligibility Test / State Eligibility Test. The Government of Maharashtra adopted the said qualification prescribed by UGC by GR dated 11 December 1999 by prescribing qualification of NET / SET for appointment of Librarians. However, several Lecturers were appointed without possessing the qualification of passing NET / SET during the period from 19 September 1999 to 11 December 1999. An issue thus arose as to whether services of such Lecturers appointed during 19 January 1991 to 11 December 1999 were to be terminated or not. Therefore, GR dated 18 October 2001 was issued for continuation of services of Lecturers recruited without passing NET / SET during 19 September 1991 to 11 December 1999. Their services were continued subject to condition of passing NET / SET before December 2003. However they were not to be granted any financial benefits (promotion, higher pay scale, selection grade) without passing NET / SET.

19. The State Government thereafter issued one more GR on 27 June 2013 for grant of exemption from passing NET / SET to various Lecturers. It was directed that those Lecturers who are appointed prior to 23 October 1992 need not possess the qualification of passing NET / SET. It was further directed that Lecturers appointed during 23 October 1992 to 03 April 2000 without passing NET / SET would be regularized in services subject to conditions laid down in the GR.

20. Perusal of the impugned order dated 28 March 2019 and 05 April 2019 would show that the Divisional Joint Director as well as the University have placed heavy reliance on GR dated 18 October 2001 and 17 June 2013 for the purpose of deciding Petitioner's entitlement for grant of UGC pay scale. However, both the Government Resolutions do not relate to the issue of grant of UGC pay scale in any manner. The objective behind issuance of said two Government Resolutions was to exempt / regularize services of Lecturers appointed without passing NET / SET. As far as the Petitioner is concerned, he was appointed on 29 August 1992 and is exempted from passing NET / SET as per paragraph No.14 of the GR dated 27 June 2013. Once Petitioner is exempted from requirement of passing NET / SET, GRs dated 18 October 2001 and 23 October 1992 become totally irrelevant for the purpose of deciding his entitlement for grant of UGC pay scale.

21. Therefore, window period from 23 October 1992 to 03 April 2000 prescribed for regularizing services of Lecturers appointed without

passing NET / SET is inapplicable for deciding Petitioner's entitlement for grant of UGC pay scale. We therefore find that the decisions taken by the State Government as well as the University for rejecting proposal for grant UGC pay scale to Petitioner are totally faulted.

22. Petitioner was given specific promise vide letter dated 28 November 1994 that UGC pay scale would be extended to him immediately upon acquisition of qualification prescribed in GR dated 25 March 1994. The said promise was based on University's Circular dated 10 August 1994. However, the effect of the said circular is not at all taken into consideration by the State Government or by the University while rejecting Petitioner's request.

23. We therefore find impugned orders dated 28 March 2019 passed by the Divisional Joint Director as well as 05 April 2019 of the University to be unsustainable. We hold that Petitioner is entitled to grant of UGC pay scale with effect from 29 September 2000 when he acquired the qualification M. Lib. with B+ grade.

24. Having arrived at a conclusion that Petitioner is entitled to be granted UGC pay scale with effect from 29 September 2000, the very cause behind decision dated 10 February 2021 in treating Petitioner as non-teaching staff would no longer survive. The only reason for treating Petitioner as non-teaching staff is non extension of UGC pay scale. Once it is held that Petitioner is entitled to be granted UGC pay scale with effect from 29 September 2000, the decision to retire him on attaining

age of 58 years would be automatically rendered illegal. Therefore, we are not entering into the debate whether a Librarian not holding qualifications or who is denied UGC payscale can be treated as teaching or non-teaching staff. In the present case, Petitioner is held entitled for grant of UGC payscale and both State Government and University don't dispute the position that the age of retirement of a Librarian with UGC payscale is 60 years. Petitioner is thus wrongfully made to retire on attaining age of 58 years. He is apparently denied pension on the pretext of pendency of this Petition. He is thus without any pay or pension since 1 June 2022. He was willing to discharge his duties but has been unlawfully prevented from working. In these circumstances, he is entitled to be paid salary and allowances from 1 June 2022 till reinstatement.

25. Resultantly, both the Writ Petitions succeed. We proceed to pass the following Order:

- i) Orders dated 28 March 2019 and 05 April 2019 in Writ Petition No.4066 of 2021 are set aside.
- ii) Petitioner is held entitled for grant of UGC pay scale with effect from 29 September 2000. Respondents are directed to pay the arrears of salary and allowances arising out of extension of UGC pay scale to Petitioner within a period of 08 weeks from today.

- iii) Orders/communications dated 10 February 2021, 24 May 2022 and 30 May 2022 in Writ Petition No. 6976 of 2022 are set aside.
- iv) Petitioner is entitled to serve on the post of Librarian in the Respondent college till attaining age of 60 years. Petitioner shall be accordingly reinstated in the services and shall be paid full salary and allowances during the period from 01 June 2022 till the date of his reinstatement with intervening period being treated as duty for all purposes.

26. Writ Petition Nos.4066 of 2021 and 6976 of 2022 are accordingly allowed. There shall be no order as to costs. Rule is made absolute.

SANDEEP V. MARNE, J.

SUNIL B. SHUKRE, J.

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