

UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT

BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO.1317 OF 2012.

Sukhlal S/o Shamrao Rathod,
Age 43 years, Occ.Service,
R/o Nutan Vasahat, Thakur Nagar,
Ambad, Tq.Ambad, Dist.Jalna. ... Petitioner.

Versus

1. The State of Maharashtra,
through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai.

2. The Director of Higher
Education, Maharashtra State,
Pune.

3. The Joint Director,
Higher Education, Aurangabad
Division, Near Deogiri College,
Railway Station Road,
Aurangabad.

4. Dr.Babasaheb Ambedkar
Marathwada University,
Aurangabad.

5. The President,
Godavari Arts Junior &
Senior College,
Running under Saraswati
Shikshan Prasarak Mandal,
Ambad, Dist.Jalna.

6. The Principal,
Godavari Arts Junior &
Senior College, (Running
under Saraswati Shikshan
Prasarak Mandal), Ambad,
Dist.Jalna.

7. The University Grant
Commission, through its
Secretary, Bahadurshaha
Zafar Marg, New Delhi. ... Respondents.

...

Mr.P.M.Nagargoje, advocate holding for
Mr.P.R.Katneshwarkar, advocate for the
petitioner.
Mr.K.J.Ghute Patil, Asstt. Govt. Pleader for the
State.
Mr.C.V.Thombre, advocate for Respondent No.6
Mr.Alok Sharma, Standing counsel for Respondent
No.7. ...

**CORAM : S.V.GANGAPURWALA &
V.K.JADHAV, JJ.**

Date : 06.07.2015.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Heard.

2. Rule. Rule returnable forthwith. With
the consent of the parties, the petition is taken
for final hearing.

3. The petitioner impugns the order dated
7.1.2012, thereby directing removal of the name

of the petitioner from the persons entitled to be paid regular salary.

4. The learned counsel for petitioner submits that the petitioner was appointed on 1.10.2003 after following due selection process and selected by duly constituted Selection Committee. The said appointment was also approved by the University vide order dated 27.5.2004. At the relevant time as the petitioner did not possess NET/SET, he was given appointment on contract basis. Thereafter again the petitioner was given appointment on 28.9.2005. The said appointment was also approved by the University. The same was the position for appointment order dated 9.10.2007. The University approved the appointment vide order dated 18.1.2008. On 16.2.2008, the petitioner forwarded proposal to the UGC seeking exemption from NET/SET. On or about 10.6.2009, the petitioner got the M.Phil qualification. Again on 26.7.2010, the petitioner is appointed as Librarian. On 18.5.2011 approval is granted by the University. The learned counsel submits that

right since 1.10.2003 the petitioner is in continuous service with the Respondent Institution without any break. Even the petitioner is entitled for exemption from NET/SET in view of the fact that the petitioner has acquired M.Phil qualification before the cut off date. According to the learned counsel, the impugned order is erroneous and does not stand to reason.

5. Mr.Thombre, learned counsel for the employer does not dispute the case put forth by the petitioner.

6. Mr.Sharma, learned standing counsel for the UGC and Mr.Ghute Patil, learned Asstt. Govt. Pleader submit that as the petitioner is appointed in the year 2010 and does not possess NET/SET, his appointment can not be said to be regular nor the petitioner is qualified to be appointed as Librarian. As such the impugned order has been rightly passed by the Joint Director of Education.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. It is evident from the documents placed on record that the petitioner was appointed for the first time on 1.10.2003 by following due selection process and after having been selected by duly constituted Selection Committee. The same was pursuant to advertisement. Subsequently, also the petitioner was appointed and it is not disputed that the petitioner is continuously working since his initial date of appointment. It is only because at the relevant time, the petitioner was not possessing Net/SET qualification, the petitioner was given appointment on contract basis.

9. It is also a matter of fact that the petitioner has acquired M.Phil qualification before the cut off date as laid down by the UGC. In the impugned order, reliance is placed on the notification dated 1.6.2009 published in the Gazette on 11.6.2009, so also the notification of

the State Government dated 12.11.2009. The impugned order is issued on the premise that the appointment of the petitioner is on 26.7.2009 and as per aforesaid notification dated 11.7.2009, it is only those who are possessing Ph.D qualification, they are exempted from passing NET/SET. The authorities have failed to consider that the petitioner was appointed in the year 2003 and is working continuously since 2003. The appointment of the petitioner was by a duly constituted Selection Committee and by following due selection process, it can not be said that the petitioner was appointed for the first time in the year 2010. The notifications referred to in the impugned order is published on 11.7.2009 and 12.11.2009 i.e. after the petitioner has acquired the qualification of M.Phil. At the relevant time when the petitioner has acquired the qualification of M.Phil the position as it stood then would apply, considering the appointment of the petitioner as of the year 2003.

10. In light of the above, the impugned

order is quashed and set aside. Rule accordingly made absolute. No costs.

(V.K.JADHAV, J.)

(S.V.GANGAPURWALA, J.)

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