IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4787 OF 2012

Vijay S/o Digambar Hande
Age : 34 years, Occ : Service,
R/o Lecturer Colony, Ausa,
Tq. Ausa, Dist. Latur.

..PETITIONER

-VERSUS-

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

2. The Joint Director of Higher Education,
Nanded Region, Nanded.

3. Swami Ramanand Teerth
Marathwada University,
Nanded, Thrugh its Registrar.

4. Sharadopasak Shikshan Sanstha
Aurad Shahjani, Tq. Nilanga,
Dist. Latur, through its Secretary.

5. Master Dinanath Mangeshkar Senior College,
Aurad Shahjani, Tq. Nilanga,
Dist. Latur
Through its Principal

..RESPONDENTS

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Advocate for Petitioners : Mr. A.V. Patil
A.G.P. for Respondent nos. 1 and 2 : Mr. A.G. Magre
Advocate for Respondent No.3 : Mr. U.S. Malte
Advocate for Respondent Nos.4 and 5 : Mr. V.D. Gunale

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CORAM : S.S. SHINDE &
A. M. BADAR, JJ.

RESERVED ON : 14th October, 2015
PRONOUNCED ON : 29th October, 2015.

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JUDGMENT (PER S.S.SHINDE, J.) :

Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, heard finally.

2. This Petition is filed with the following prayers :-

> "C) By issuing appropriate writ, order or directions, the impugned communication dated 02.03.2012 issued by respondent no.3 University be quashed and set aside. Consequently, the appointment of petitioner be approved from his initial date of appointment and he be paid arrears of salary as well as regular salary admissible for the post of Director of Physical Education and for that purpose, necessary directions may be issued."

3. It is the case of the petitioner that, the petitioner possesses the qualification of M.A., M.P.Ed. in first class. The petitioner has also qualified the fitness test conducted by U.G.C. The petitioner has participated in national level volleyball competition, wherein he was

conferred with Silver medal. Similarly, he had participated in Ashwamegh Inter University Volleyball tournament, wherein he was conferred with Gold medal. The petitioner has worked as a Coach of Volleyball tournaments at National as well as State level. The petitioner has also cleared the Maharashtra State Volleyball Referee examination. It is the case of the petitioner that, the petitioner was in need of service, came across with the advertisement issued by respondent nos. 4 and 5 wherein the requisition for the post of Director of Physical Education alongwith other posts admissible in respondent No.5 college was made. The petitioner being qualified and eligible for the post of Director of Physical Education applied for the said post, which is the isolated post. In the said advertisement, the requisite qualification and the terms and conditions are mentioned. In the said advertisement, it has been mentioned that, the eligibility criterion and pay-scales would be as per U.G.C. guidelines and circulars issued by Government of Maharashtra. In so far as the post of Director of Physical Education, the clause no. 2 *(e)* of the advertisement states that, minimum qualification prescribed by U.G.C. for the post of Director of Physical

Education will be applicable from the date on which the Government of Maharashtra implements the same rules and regulations.

4. It is the case of the petitioner that, in pursuant to the advertisement, the petitioner applied for the post of Director of Physical Education. After verification of certificates in respect of his educational qualification, the petitioner was called for oral interview before the duly constituted selection committee of the University. The petitioner had appeared before the duly constituted selection committee alongwith another candidate. The duly constituted selection committee, after oral interview of the petitioner and another candidate, gave first preference to the petitioner for the post of Director of Physical Education.

It is the case of the petitioner that, in view of the first preference given by the duly constituted selection committee to the petitioner, the respondent No.5 college pleased to issue appointment order to the petitioner for the post of Director of Physical Education on probation. Accordingly, the petitioner joined the service on 14.02.2011.

It is the case of the petitioner that, in view of above appointment and joining of the petitioner on the post of Director of Physical Education, the respondent nos.4 and 5 forwarded the proposal of the petitioner and others for approval to respondent No.3 University. It is the case of the petitioner that, the Respondent No.3 University refused to grant approval to the services of the petitioner and others vide order dated 10.05.2011. In so far as the petitioner is concerned, the approval was rejected on the ground that, the petitioner is not possessing the qualification of NET/SET, whereas the approval of the other lecturers was rejected for different reasons.

5. It is the further case of the petitioner that, the respondent No.5 college, by letter addressed to respondent No.3 University, informed that the order by which approval to the draft advertisement submitted by respondent No.5 college was granted, specifically mentioned that, in the said advertisement clause 2 (d) should be incorporated. As such, it was informed that the petitioner at the time of his appointment, and at the time of issuance of the advertisement, was very well qualified for the post of

Director of Physical Education and therefore, only the concerned duly constituted selection committee, after verifying the advertisement proceeded to make selection of the petitioner on merits. With the aforesaid specific explanation, the respondent No.5 college requested for approval to the appointment of the petitioner.

It is the further case of the petitioner that, after above explanation, the respondent No.5 college again, vide reminder letter dated 03.09.2011 informed that, as per the conditions stipulated in the advertisement in question, the State of Maharashtra has made applicable the service conditions and eligibility criterion for the post of Director of Physical Education in the State of Maharashtra vide circular dated 15.02.2011 i.e. after the appointment of the petitioner as Director of Physical Education and therefore, requested to grant approval to the services of the petitioner.

6. It is the case of the petitioner that, inspite of above explanation followed by the reminder letter, no steps were taken to accord approval to the appointment of the petitioner, therefore, by representation/application dated

07.12.2011, the respondent No.5 college pointed out that the minimum qualification of NET/SET introduced by the U.G.C. for the post of Director of Physical Education has been made applicable in the State of Maharashtra w.*e*.f. 15.02.2011, therefore, in view of the recommendations made by the duly constituted selection committee, the petitioner is rightly appointed as he being qualified and eligible and hence it was requested to grant approval.

It is the case of the petitioner that, one Mr. Ganesh Prakash Mangire who was appointed on the post of Director of Physical Education on 04.10.2010 working in Kumarswami Mahavidyalaya, Ausa, Tq. Ausa, Dist. Latur, has been granted approval by respondent no.3 University though he is not possessing the NET/SET qualification. It is the case of the petitioner that, without considering the representations made by respondent no.5 and the actual position, the respondent no.3 University has been pleased to reject the approval to the petitioner vide order dated 02.03.2012 on the ground that the petitioner is not possessing the

qualification of NET/SET which is not legal and proper.

7. It is the further case of the petitioner that, the conduct of respondent no.3 University to refuse approval to the services of the petitioner without considering the facts and circumstances of the matter is highly illegal and improper. Therefore, the impugned order issued by respondent no.3 is against the facts, circumstances and legal position and therefore, deserves to be quashed and set aside.

8. The learned counsel appearing for petitioner submitted that, the petitioner's appointment is in pursuant to the advertisement, after verification of the educational certificate by the selection committee, the petitioner was called for oral interview before the duly selection committee of the University and thereafter, first preference was given to the petitioner for appointment on the post of Director of Physical Education. The learned counsel appearing for the

petitioner invited our attention to the copies of various certificates showing participation of the petitioner in various sports. It is submitted that, the petitioner joined the services on 14th February, 2011. However, the University by letter dated 10th May, 2011 refused to grant approval to the petitioner and other lecturers on the ground that, the petitioner is not possessing qualification of NET/SET. It is submitted that, at the time of appointment and issuance of advertisement the petitioner was very well qualified for the post of Director of Physical Education, and therefore, the University ought to have granted approval to the services of the petitioner. The learned counsel appearing for the petitioner also invited our attention to the pleadings and grounds taken in the Petition and submits that, the Petition deserves to be allowed.

9. On the other hand, the learned counsel appearing for Respondent No.3, relying upon the averments in the affidavit in reply, made following

submissions.

University Grant Commission (hereinafter referred to as "UGC") was established in November 1956 as a statutory body for coordination, determination and maintenance of standards of University Education in India. UGC mandate includes (a) Promoting and coordinating University Education; (b) Determining & maintaining standards of teaching examination and research Universities; (c) Framing regulations on minimum standards of education; (d)Monitoring development in the field of Colleges and University Education, disbursing grant to the University and Colleges, (e) Serving as a vital link between the Union and State Govt. and Institutions of higher learning and (f) Advancing Central and State Govt. an the measures necessary far improvement and University Education.

10. The UGC was entrusted with the task of co-

ordination, formation and maintenance of the Standard of University education. It engaged itself. in, among other things, framing regulations on minimum standard of education, determining standards, of teaching, examination and research in Universities, monitoring development in the field of colleges and University Education, disbursing Grants to Universities and Colleges and setting up common facilities, services and programmes far a group of University in the form of Inter University centers.

The Committee formed by UGC in 1983 on revision of pay scales of teachers in the universities and colleges under the Chairmanship of Prof. R C Mehrotra recommended for the post of Lecturer (i) qualifying at the National test conducted for the purpose by UGC or any other agency approved by UGC and (ii) Master's degree with at least 55% marks or its equivalent grade.

The qualifications should not be relaxed

even far candidates possessing M.Phil/Ph.D. at the time of recruitment. The Mehrotra Committee also found that, the stipulation of M.Phil/Ph.D. as an essential qualification for Lecturers. Neither the same has been followed faithfully nor contributed to the raising of teaching and research standards. In fact, it was of the view that, if at all, it had led to the dilution of research standards on account of the rush to get a research degree in the shortest possible time. In view of the diversity of standards among universities, the Mehrotra Committee recommended that passing a national qualification examination before recruitment be made an essential pre-condition. The National Commission of Teachers on Higher Education headed by Prof. Rais Ahmed observed that, it is extremely important to make a rigorous merit based selection for the entry level of teaching profession.

11. The National Policy on Education, 1986, it was suggested that, "the teachers will be recruited on

the basis of a common qualifying test, the details of which will be formulated by UGC. Efforts will be made to move towards the objective of making recruitment of teachers on all India basis in consultation with the State Governments". With a view to working out the modalities for the conduct of such a test, the Commission had constituted a Committee, which evolved strategies for the conduct of a national level eligibility test (or the recruitment of teachers in universities and colleges. Consequently, the Government of India, through a notification in 1988 entrusted the task of conducting the eligibility test for lectureship to UGC.

The National Educational Testing Bureau of University Grants Commission (UGC) conducts National Eligibility Test (NET) to determine eligibility for lectureship and for award of Junior Research Fellowship (JRF) for Indian Nationals in order to ensure minimum standards for entrance in the teaching

profession and research. The test is conducted twice in a year, generally in the month of June and December in various subjects including History & Hindi. It was felt that, eligibility test at the national level may not be completely able to represent the subjects which are original in their character. Moreover the demand for enabling the candidate, who appears for the test in their own mother-tong, was also being made. The State Government and Union Territory were therefore given option of conducting their own test for eligibility for lectureship at the State level and it is called as State Entrance Test (SET). State level test is based on the pattern of the NET conducted by UGC. SET is being conducted in the various States including the State of Maharashtra. The State of Maharashtra and the UGC from time to time issued various regulations thereby it was made mandatory for passing of NET/SET examination for appointment as teacher in university & affiliated colleges.

The UGC (minimum qualifications required for the appointment & career advancement of teachers in universities & institutions affiliated to it) (3rd Amendment) Regulation 2009, which is published in the Gazette of India on 11/07/2009 contemplates that, for the appointment of teacher in Universities & Institutions affiliated to it NET/SET is compulsory. As such passing of NET/SET is mandatory condition applicable to petitioners also. The Respondent No.3 has placed on record the copy of UGC (minimum qualifications required for the appointment & career advancement of teachers in universities & institutions affiliated to it) (3rd Amendment) Regulation, 2009. The learned counsel submitted that, as per Sub Clause 34 of Section 2 of Maharashtra Universities Act teacher includes Director of Physical Education.

12. As per Government Resolution dated 12th August, 2009 issued by the State of Maharashtra made compulsory for passing of NET/SET examination for

teaching and non-teaching posts. Sub-Clause (iii) of Clause 6 of said resolution contemplates that all existing conditions of eligibility and academic qualification laid down by the UGC shall continue to be applicable for direct recruitment of Assistant Director of Physical Education/College Director of Physical Education. The learned counsel relied upon the clause 6(a) of the Government Resolution dated 12.08.2009, which is reproduced in para 9 of the Affidavit in reply filed by Respondent No.3 – University.

13. The UGC issued regulation dated 30.06.2010 namely UGC regulations on minimum qualification for appointment of teachers and other academic staffs in Universities and Colleges and measures for the maintenance of standards in Higher Education 2010. The clause 4.6.3 states about the qualification for the post of College Director of Physical Education and Sports. Sub-clause – III specifically states about passing of national level test conducted for

the purpose by the UGC or any other agency approved by the UGC. Sub-clause – V has given exemption to the candidates, who are, or have been awarded Ph.D. degree in accordance with the UGC. The learned counsel appearing for the Respondent No.3 relied upon the clause 4.6.3 of the Regulations dated 30.06.2010 which is quoted in para 10 of the Affidavit in Reply filed by Respondent No.3 – University. The learned counsel relying upon the said regulations submitted that, it is mandatory on the part of University, State Government and UGC to appoint the candidates, who are fulfilling the required qualification as contemplated under Government Resolution dated 12th August, 2009 and UGC Regulations, 2010.

14. The learned counsel submitted that, the petitioner is appointed on 14th February, 2011. The petitioner, at the time of appointment, was not holding required/prescribed qualification i.e. passing of NET/SET. The learned counsel submitted that, as per

advertisement dated 30th November, 2010 calling application for the post of Director, Physical Education issued by the College and approved by the University, specifically contemplates passing of NET/SET examination. Hence petitioner is not entitled for appointment on the said post. The learned counsel further submitted that, in view of this, respondent-University refused to grant approval to the petitioner and the action of Respondent- University is in accordance with law. The learned counsel appearing for Respondent No.3, therefore, submitted that, there is no substance in the Writ Petition and therefore, Writ Petition may kindly be rejected.

15. Upon hearing the learned counsel appearing for the petitioner, the learned A.G.P. for State and the learned counsel appearing for the remaining respondents, we are of the considered view that, the Petition deserves no consideration for the reasons set out hereinafter. Admittedly, the petitioner has not

passed NET/SET examination, which is mandatory. Upon perusal of the Regulations of 2009, which are brought in to force by 3rd Amendment, which is published in Gazette of India on 11th July, 2009, for the appointment of teachers in Universities and Institutions affiliated to it, NET/SET is compulsory. As such passing of NET/SET is mandatory condition applicable even in the case of the petitioner. As per sub-clause 34 of Section 2 of the Maharashtra Universities Act, the teacher includes Director of Physical Education. As rightly contended by the learned counsel appearing for Respondent No.3 that, the said issue is also dealt with by the Bombay High Court bench at Nagpur in Writ Petition No. 1489 of 2010 and other connected matters.

16. In the light of discussion hereinabove and in view of the fact that, the petitioner has not passed the NET/SET examination, we do not see any reason to entertain the prayer of the petitioner and direct

Respondent No.3 to grant approval to the services of the petitioner. As per Regulation of 2009, which have come into force w.e.f. 11th July, 2009, the change that is made from the said date namely 11th July, 2009 is as under :-

> "NET/SET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions.
>
> Provided, however, that candidates, who are or have been awarded Ph.D. Degree in compliance of the "University Grants Commission (minimum standards and procedure for award of Ph.D. Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET / SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities /Colleges / Institutions."

17. Admittedly, the petitioner has neither passed NET/SET nor awarded Ph.D. degree. In that view of the

matter, the Petition sans merit, and hence rejected.

Sd/- Sd/-

(**A. M. BADAR, J.**) (**S.S. SHINDE, J.**)

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