

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.10160 OF 2015.

Dinesh S/o Bhaidas Patil,
Age 45 years, Occ.Service,
R/o Plot No.47, Shashtri Nagar,
Shripur,Tq.Shirpur,
Dist.Dhule. ... Petitioner.

Versus

1. The State of Maharashtra,
through its Secretary,
Higher and Technical
Education Department,
Government of Maharashtra,
Mantralaya, Mumbai-400 032.
2. The Director of Higher
Education, Maharashtra
State, Pune-01.
3. The Joint Director of Higher
Education, Jalgaon Region,
Jalgaon, Maharashtra Jeevan
Pradhikaran Office Building,
(1st floor), Behind
Consumer Court, Jalgaon-425001.
4. North Maharashtra University,
Jalgaon-425 001,
through its Registrar.
5. Smt.Parvatibai Dalpat Mali
Art, Shri Bandu Bhagwan and
Smt.Hirabai Dalal Commerce

and Shirpur Merchant Association
Science College (S.P.D.M.Arts,
S.B.B. and S.H.D.Commerce and
S.M.A. Science College)
Shirpur, Tq. Shirpur, Dist.
Dhule, through its Principal. ... Respondents

...

Mr.V.J.Dixit, Senior advocate i/by
Mr.A.N.Nagargoje, advocate for the petitioner.
Mrs.M.A.Deshpande, Addl. G.P. for the State.
Mr.A.B.Girase, advocate for Respondent No.4.

...

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 26.10.2016.

PER COURT :

1. Heard.

2. The petitioner is assailing the order dated 29.7.2015, passed by the Respondent No.4 and the order dated 3.7.2015, passed by the Respondent No.3, whereby, the benefit of condonation of break in service granted to the petitioner earlier under order dated 23.8.2012 and 22.10.2013 was cancelled.

3. Mr.Dixit, learned Senior advocate for the petitioner submits that the petitioner was

appointed as a lecturer in Statistics with Respondent No.5 College with effect from 1.10.1992. The appointment of the petitioner was by following due procedure of law. The petitioner had undergone the selection process and thereafter was appointed. Since 1.10.1992, the petitioner is in continuous service. The petitioner possessed the necessary qualification at the time of his appointment. The petitioner possess the post graduate degree in first class.

4. According to the learned senior advocate, the petitioner is entitled for the benefit of Career Advancement Scheme. Passing of NET/SET was made compulsory with effect from 23.10.1992. The petitioner is entitled for the benefit of the Government Resolution dated 27.6.2013 for the benefit of CAS. According to learned Senior advocate Shivaji University, Kolhapur has granted benefit of CAS to the candidates appointed prior to 23.10.1992 though not possessing NET/SET qualification. Learned Senior advocate submits that three of the candidates similarly situated as that of the

petitioner have also been granted CAS benefit. Only the petitioner is being discriminated. According to learned senior advocate, the ground on which the benefit of CAS is refused is unsustainable. Even the ground on which the impugned orders are passed thereby, revoking the order in favour of the petitioner of condonation of break in service is unsustainable. The Ordinance of the University nor UGS rules required a lecturer to be appointed to possess graduate degree having more than 50%. The petitioner had 50% marks at graduation and was possessing first class Master's degree, as such the said ground is not tenable.

5. The learned Senior advocate further submits that though the appointment is made under 415(3) of the University Statute, the same was legal and valid. The petitioner was appointed by following due procedure of law and after having undergone selection process before the validly constituted Selection Committee. The learned Senior advocate submits that the Joint Director of Higher Education has the powers to condone the

break in service. The Government Resolution dated 17.5.1994 specifically empowers the Joint Director to consider the cases for condonation of break in service.

6. Mrs.Deshpande, learned Addl. Government Pleader submits that powers to condone the break in service only rests with the Director of Higher Education. The Joint Director can exercise his powers for condonation of break in service only for the purpose of computing pension. Learned A.G.P. further submits that the petitioner has secured 50% marks in graduation with the benefit of grace marks. Learned A.G.P. further contend that in respect of two persons named by the petitioner the CAS benefit was wrongly given. There is no discrimination as against the petitioner. According to learned A.G.P. initial appointment of the petitioner was as against the reserved seat for one year only. The appointment in the second year was by the Local Committee and without undergoing selection process as contemplated. As such the break in service was rightly not condoned. The learned A.G.P. further

submits that as the petitioner is not possessing NET/SET qualification and there is break in service, the petitioner is not entitled for CAS benefit.

7. Mr.Girase, learned counsel for the University submits that the petitioner was not possessing required marks at the graduation level.

8. We have considered the submissions. As per notification dated 19.9.1991 published by UGC, a person to be appointed as a lecturer should have a good academic record with at least 55% marks or equivalent grade at the Master's degree level in the relevant subject from Indian University or equivalent degree from Foreign University. The said qualification is also prescribed by the University.

9. The petitioner possessed first class at Master's degree level and the petitioner also had 50% at the graduation level. There is nothing to show that for appointment of a lecturer at under

graduation level, the person should possess minimum marks. The requirement is at least 55% marks at the Master's degree level. The petitioner did possess the same. It is also not disputed that the petitioner is appointed with effect from 1.10.1992 and NET/SET qualification was made applicable to the State of Maharashtra from 23.10.1992. Even as per the judgment of Division Bench of this Court in a case of **"Maharashtra Federation of University and College Teachers Organisations Vs. The State of Maharashtra and others"** decided at the Principal seat on **December 23, 2015**, the candidates who have not acquired NET/SET qualification and who are appointed during 23.10.1992 to 3.4.2000 (except 19.9.1991 to 23.10.1992) are not entitled for CAS benefit. As such the candidates appointed prior to 23.10.1992 and not possessing NET/SET however, possessing the required qualification as on the date of their appointment would be entitled for CAS benefit. The petitioner as such would fulfill the requirement for the grant of CAS benefit if the break in service is condoned.

10. The petitioner's break in service was condoned in the year 2013. However, by the impugned order the same has been cancelled. The requirement of 55% at the graduation level is not required under the UGC Regulation. The petitioner possesses 50% at the graduation level.

11. Considering the above, it would be appropriate for the Joint Director, Higher Education to reconsider the said order.

12. In light of the above, the impugned order dated 3.7.2015 and the order dated 29.7.2015 are quashed and set aside. The Joint Director of Higher Education shall reconsider the case of the petitioner for condonation of break in service. The petitioner may place on record before the Joint Director of Higher Education all the relevant facts. The petitioner may appear before the Joint Director, Higher Education, Jalgaon on 28.11.2016. The petitioner is at liberty to place on record the document on which he chooses to rely. The Joint Director, Higher Education shall decide the aspect about

condonation of break in service expeditiously, preferably within four (4) months from the date of appearance of the petitioner.

13. Depending upon the order passed by the Joint Director, Higher Education, the orders with regard to the benefit of CAS to the petitioner be passed.

14. The Writ Petition is accordingly disposed of. No costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

asp/office/wp10160.15

