

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

20 WRIT PETITION NO. 7361 OF 2015

DEVIDAS PUNDLIK MUNESHWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. Pradeep Deshmukh h/for Mr.
Yogesh P. Deshmukh And Mr. Kulthe S. S
AGP for Respondents 1, 3 and 4 State: Mr. M. B.Bharaswadkar
Advocate for Respondent No.2 :Mr. S.S. Thombre

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

DATE : 5th January, 2017

ORDER:

1. Mr.Deshmukh, the learned counsel for the petitioner submits that the petitioner was appointed on 3rd September, 1999 as a Lecturer in Russian subject. The said appointment was temporary and as it was against the post approved for NT/DNT category. Candidate from the said category was not available and as such, the petitioner was appointed on the said post and the appointment was continued for further years and thereafter, in 1994, the petitioner was appointed on probation which was subsequently confined. The University has condoned the break in service. Proposal was submitted to Respondent No.3- Director of Higher Education. The Director of Higher Education rejected the said proposal only on the ground that the appointment of the petitioner was on contract basis.

The same is erroneous. The appointment of the petitioner was by duly appointed selection committee and by following due selection process. As the appointment of the petitioner is of 3rd September, 1991, condition of lecturer possessing NET/SET qualification does not apply. The university has condoned the break in service. As such, the petitioner is entitled to selection grade pay and also pensionary benefit considering the service from 3rd September, 1991.

2. Mr. Thombre, the learned counsel for the petitioner submits that the petitioner was appointed on temporary basis on 3rd September, 1991. The learned AGP submits that the appointment of the petitioner was not regular on 3rd September, 1991. As such though appointment of the petitioner was prior to 23.10.1992, the petitioner is not entitled for the benefit of exemption from passing NET/SET and the said aspect has been rightly considered.

3. It would appear that the premise on which the order is passed by the Director of Higher Education is that the appointment of the petitioner on 3rd September 1991 is on contract basis. The same does not appear to be so. The appointment of the petitioner was temporary initially and the same has been regularized

subsequently. The University has also condoned the break in service as per its order dated 26.08.2005 (Exh.C).

4. The Director of Higher Education is required to consider the appointment of the petitioner being temporary on 3rd September, 1991 and not on contract basis.

5. Considering the above, the impugned order dated 10.04.2015 (Exh.0 page 38) is quashed and set aside. The Director, Higher Education shall consider the proposal of the petitioner afresh considering the appointment of the petitioner on 3rd September, 1991 as temporary and not on contract basis.

6. The petitioner is at liberty to represent himself before the Director of Higher Education. The Director, Higher Education shall take decision on the said proposal, expeditiously preferably within three months.

7. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC