

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3989 OF 2012

Shri Ashok Akaram Patil

..Petitioner

Vs.

The State of Maharashtra & Ors.

..Respondents

Mr. Mihir Desai, Senior Advocate, with Mr. Sukumar Ghanavat for
Petitioner.

Mr. C.P. Yadav, AGP for Respondent Nos.1 and 2.

Mr. A.B. Borkar for Respondent No.3.

Mr. S.P. Sarnath for Respondent Nos.4 and 5.

Mr. R.A. Rodriques for Respondent No.6.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**

DATE : 17th JULY 2017

ORDER:

1. Rule, returnable forthwith.

Learned counsel for the respective respondents waive service.

Heard the learned counsel for the parties.

2. This petition arises out of the peculiar facts and circumstances.

3. Undoubtedly, in pursuance of the advertisement issued by the respondent-College, the petitioner came to be appointed as a Librarian in Degree College in the year 2005. However, since the petitioner did not possess the NET/SET qualification, the respondent-

University rejected the proposal for approval as submitted by the management.

4. The petitioner has approached this Court for a direction to the respondent-University to grant approval to his appointment which was made in the year 2005 on the basis of various judgments of the Division Bench including the one in Writ Petition No.357 of 2010 dated 20th October 2010 at Aurangabad Bench and Writ Petition No.5630 of 2011 dated 30th July 2012 at Nagpur Bench.

5. Mr.Borkar, learned counsel for the respondent-University, vehemently opposes the petition. He submits that the relevant date would be the date of advertisement. He submits that since the advertisements were issued in the year 2005 and since at that point of time qualifying NET/SET examination was the mandatory qualification, which the petitioner did not possess, no fault could be found with the decision of the University in rejecting approval. The learned counsel relies on the judgment of the Apex Court in case of **Rakeshkumar Sharma v/s. State (University of Delhi) & Ors.**

6. The learned counsel further submits that the rejection of approval on earlier two occasions having not been challenged by the petitioner, the present petition would not be tenable.

7. As already discussed hereinabove, the present petition arises out of peculiar facts and circumstances. Undoubtedly, in the year 2005 possessing of NET/SET qualification was mandatory. However, the University Grants Commission itself vide notification dated 14th June

2006 has exempted the candidates who would get degree of M.Phil or Ph.D., from acquiring the NET/SET qualification. No doubt that vide a subsequent notification dated 10th July 2009, the said concession was withdrawn and again the qualification of NET/SET was made mandatory.

8. The Division Bench of this Court at Nagpur in Writ Petition No.1489 of 2010 vide judgment and order dated 2nd July 2010, relying on the judgment of Apex Court in case of **Madan Mohan Sharma and another v/s. State of Rajasthan and others** reported in **2008 (3) S.C.C. 724** has held that the subsequent notification dated 11th July 2009 would not disentitle the teachers who are appointed prior to that date. In terms, it has been held that only such of the teachers appointed in pursuance of the advertisement issued after 10th July 2009 would be required to have qualification of NET/SET, however, if a candidate appointed prior to that date possesses Ph.D. or M.Phil, such a candidate would be exempted from having qualification of NET/SET. Undisputedly, the present petitioner is working since 2005.

9. The learned counsel for the management submits that in the selection process conducted during that year, no candidate possessing NET/SET qualification was available and, as such, the petitioner came to be appointed. He further submits that the petitioner is continuously working from 2005 and his performance is also found to be satisfactory. We find that if the contention of learned counsel for respondent nos.4 and 5 is accepted then an anomalous situation would arise. Though various persons appointed between 19th August

2008 and 10th July 2009 would be granted approval even if they do not possess NET/SET qualification, but possess M.Phil or Ph.D., the petitioner would be deprived of the same merely because he has been appointed prior to 19th February 2008 though otherwise he falls in the same category. We find that such an anomalous position would lead to unequal treatment, which amounts to denial of justice to a person like the petitioner who has put in 12 years of service, whereas many other teachers have already been granted the benefit of notification dated 14th June 2006. No doubt, had the petitioner diligently approached this Court immediately after 14th June 2006, but prior to 10th July 2009, the stand which is available to the University would not have been available.

10. In that view of the matter, we are of the considered view that the petitioner is also entitled to same treatment. The Division Bench of this Court in Writ Petition No.5630 of 2011 (Rekha d/o Tarachand Zalke Vs. State of Maharashtra thr. Secretary Department of Higher & Technical Education & Ors.) has also taken a similar view. The petitioner therein was appointed in the year 2003, i.e. much prior to the petitioner's appointment.

11. In so far as the judgment of the Supreme Court on which Mr. Borkar relies, undoubtedly, the learned counsel is justified in placing the reliance on the judgment of the Apex Court. However, as we have already discussed hereinabove, the petition arises out of peculiar facts and circumstances and denial of the relief in favour of the petitioner would amount to giving him discriminatory treatment as against other similarly circumstanced employees.

12. In the result, rule is made absolute in terms of prayer clauses (b), (c) and (d).

[RIYAZ I. CHAGLA J.]

[B.R. GAVAI, J.]