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WP-4774-2017 (SR.26)
Thursday, 23.11.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4774 OF 2017

Sharad N. Amate

....Petitioner

V/s.

Radhanagari Mahavidyalay, through
its Principal and Ors.

....Respondents

* * * * *

Mr. C.G. Gavnekar, Advocate for the petitioner.

Mr. C.P. Yadav, AGP for respondent no.1, 3 to 5 and 8.

Ms. Rimi Jain i/by. Mr. R.A. Rodrigues, Advocate for
respondent no.7.

CORAM :-

B.R.GAVAI &

SANDEEP K. SHINDE, JJ.

DATE :-

27TH NOVEMBER, 2017.

P.C. :-

1. Rule. Rule made returnable forthwith. Heard
by consent.

2. The petitioner, who was having qualifications of B.A. and M.P.Ed (Masters of Physical Education), vide order dated 27th July, 1993 came to be appointed in the Management of respondent no.1, College by the Local Selection Committee. Subsequently, the petitioner came to be appointed as Director of Physical Education on 18th July, 1994 after he was duly selected by the Selection Committee constituted under the provisions of the Universities Act. However, it appears that the petitioner was not treated as a qualified candidate since he had not passed the NET/SET examination. The petitioner has therefore approached this Court for a declaration that the petitioner was duly qualified to be appointed as the Physical Director and for consequential directions to respondent no.3 for making payment to the petitioner treating him to be qualified Director of Physical Education.

3. It is not in dispute that the petitioner was possessing the degree of B.A. and MPED (Masters of

Physical Education) at the time, he was appointed as such.

4. The perusal of the Regulations and the perusal of Notifications dated 19th October, 1995 at Exhibit-N, vide para-2, Schedule-I, issued by the University Grants Commission under the provisions of the University Grants Commission Act, 1956 provides for minimum qualifications required for the appointment for the posts of Assistant Director, Deputy Director and Directors of Physical Education and Sports in Universities/Colleges. Under Schedule-I, qualifying at the National Test conducted for the purpose by the UGC or any other agency approved by the UGC has been introduced. However, the second proviso to para-2 would be relevant. The same reads as under :-

“Provided further that these regulations shall not be applicable to such cases where selections through duly constituted selection committee for making appointments to the posts of Assistant Director, Deputy Director and Director of Physical Education and Sports in Universities, deemed to be

Universities, colleges have been made prior to the enforcement of these regulations.”

5. It could thus be seen that vide said Notification, appointments made prior to 19th October, 1995 through duly selected constituted committees have been protected and it has been provided that the said Regulation would not be applicable to the appointments made prior to that date. Admittedly, the petitioner has been appointed by a duly constituted committee prior to 19th October, 1995. As such, the said Regulations would not govern his appointment. We are therefore of the considered view that the stand of respondent no.3 that since the petitioner was not a qualified candidate since he had not passed the NET/SET examination, is not sustainable.

6. The Learned AGP has relied upon a communication dated 27th June, 2014 in support of his submission that the passing of NET examination is mandatory. However, the perusal of the said communication itself would reveal that the chart of the

examinations held shows that the examinations were held from the year 2010 onwards.

7. In that view of the matter, the petition deserves to be allowed. Rule is made absolute in the following terms :-

(I) It is held and declared that the petitioner was duly qualified to be appointed as Director of Physical Education on the date of his appointment i.e. 18th July, 1994. Respondents no.3 and 4 are therefore directed to fix the scale of the petitioner treating him as a qualified Director of Physical Education and make payment to him of the salary and pension on the basis of re-fixation as directed hereinabove.

(II) The payment of arrears and salary of the petitioner shall be made within a period of 6 months from today.

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)