

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 210 OF 2016

Girish S/o. Kesava Pillai,
Age: 46 Years, Occu.: Service,
R/o.: "Vrindavan", Prabhat Nagar,
Tawarja Colony, Latur, Dist.: Latur

.. Petitioner

Versus

1. The Union of India,
Through Secretary,
Ministry of Human Resource Development,
Department of Higher Education, New Delhi
2. The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi - 110002
3. The Registrar,
Swami Ramanand Teerth Marathwada
University, Nanded, Dist. - Nanded
4. The State of Maharashtra
through Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
5. Dayanand Law College,
Through Principal,
Latur, Dist.- Latur

.. Respondents

Mr. S. D. Tawshikar, Advocate for the Petitioner.
Mr. S. B. Deshpande, A.S.G. for Respondent Nos. 1
and 2.

Mr. U. S. Malte, Advocate for Respondent No. 3.
Mr. V. S. Badakh, A.G.P. for Respondent No. 4.
Smt. Anjali Bajpai Dube, Advocate for Respondent No. 5.

**Coram: S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

Reserved for Judgment on: 18.09.2018

Judgment pronounced on: 25.10.2018

Judgment (Per: S. V. GANGAPURWALA, J.):

1. Rule. Rule returnable forthwith. With the consent of learned counsel for respective parties matter is taken for final hearing.

2. The petitioner seeks declaration that he is entitled for Pay Band IV of Rs. 37400-67000 with Academic Grade Pay of Rs. 9000, and to redesignate him as an Associate Professor with effect from 10.08.2012.

3. The petitioner is appointed as a Lecturer at Dayanand Law College, Latur on a permanent aided post on 10.08.1998. In the year – 2004, the petitioner was promoted on the post of Lecturer

(Senior Scale). On or about 10.08.2009 the petitioner was promoted to the post of Lecturer (Selection Grade). On or about 09.08.2012 the petitioner completed three years of service on the post of Assistant Professor (Selection Grade). The petitioner claims that as per Clause 3.2 read with clarificatory letter dated 04.08.2015 of respondent no. 2, the petitioner is entitled for redesignation as Associate Professor with Pay Band of Rs. 37,400 – 67,000 from 10.08.2012. The petitioner submitted his proposal as such. The petitioner's proposal was not considered positively. As per the communication dated 17.06.2015 of respondent no. 3, an Assistant Professor can be promoted as Associate Professor only in tune with paragraph 6.3.3 of the UGC Regulations On Minimum Qualifications For Appointment of Teachers And Other Academic Staff In Universities And Colleges And Measures For The Maintenance Of Standards In Higher Education, 2010 (*hereinafter referred to 'UGC Regulations, 2010'*)

viz. only on recommendation of the Selection Committee. The petitioner, as such, filed the present writ petition.

4. Mr. Tawshikar, learned counsel for the petitioner submits that after having worked on the post of Assistant Professor (Selection Grade) for three years with effect from 10.08.2009, the petitioner would be required to be redesignated as an Associate Professor with the Pay Band IV of Rs. 37400-67000 from 10.08.2012. The learned counsel refers to Clauses 3.2, 3.3 and 3.4 of the Schedule for Clause 6.8.0 of the UGC Regulations, 2010. The learned counsel further relies upon the clarificatory letter of respondent no. 2 dated 04.08.2015. According to the learned counsel, the reliance placed by respondent no. 3 – University, on Clause 6.4.0 is inappropriate and would not apply to those who have completed three years as Assistant Professor (Selection Grade) on or before the year – 2010.

5. The learned counsel further submits that the State has also issued the Government Resolutions dated 12.08.2009 and 15.02.2011. The Government Resolution dated 12.08.2009 (Clause ix) also provides that the Lecturers (Selection Grade) who have completed three years shall be placed in the higher Pay Band of Rs.37400-67000, and redesignated as Associate Professor. The learned counsel relies on the judgment of the Calcutta High Court in *Writ Petition No. 4673 of 2014 (Dr. Ratnakar Pani and others Vs. The State of West Bengal and others)*, so also, the judgment of the Rajasthan High Court in *Civil Writ Petition No. 9264 of 2011 (S. P. Soni Vs. State of Rajasthan and others)* with connected writ petitions dated 08.04.2013 and another judgment of the Orissa High Court in a case of *Dr. Kshitendra Narayan Mishra Vs. State of Orissa and others* dated 06.04.2017.

6. Mr. Malte, learned counsel for respondent no. 3 – University, submits that reliance placed by the petitioner on paragraph 3 of Clause 6.8.0 and

the Schedule for Clause 6.8.0 is misplaced. Said Clause is not applicable to the petitioner. The Clause 6.8.0 is part of Clause 6.7.0 and the same relates to stages of promotion under Career Advancement Scheme for physical education and sports personnel and is not applicable to the petitioner. The petitioner's claim will have to be considered under Clause 6.4.0 of the UGC Regulations, 2010 that specifically provides about the stages of promotion under Career Advancement Scheme of the incumbents and the newly appointed Assistant Professors / Associate Professors / proposed Professors. The stages referred to in Clause 6.4.0 onwards are described in Appendix - III - Table - III. The case of the petitioner for the post of Associate Professor has to be recommended by the Competent Committee and then only can be considered. The petitioner's case is not recommended by the Competent Committee. The petitioner in his proposal Part - B which relates to Academic Performance Indicators in Column "Self

Appraisal Score" and verified API Score, only stated "NA". Same is the position in category - II and Category - III. As the Committee has not recommended the petitioner's proposal, the petitioner is not entitled for the relief claimed.

7. Mr. S. B. Deshpande, learned Assistant Solicitor General for respondent nos. 1 and 2 submits that the University Grants Commission has issued the notification for appointments on minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of the standards in higher education, 2010. Clause 3.2 of Schedule for Clause 6.8.0 would be applicable to the petitioner. The letter has been issued by the University Grants Commission (*hereinafter referred to 'UGC'*), on 04.08.2015, that the Readers appointed on or after 01.01.2006 till issuance of the UGC Regulations, 2010 i.e. 30.06.2010 shall move to Pay Band IV with academic Grade Pay of Rs. 9000 after completing three years of service,

without insisting on the requirements of API based PBAS system, and it would apply to the Lecturers (Selection Grade) promoted during the above period. The case of the petitioner would be governed by the clarification dated 04.08.2015.

8. We have also heard the learned A.G.P.

9. The petitioner undisputedly is appointed as a Lecturer on 10.08.1998 on permanent aided post. The petitioner was promoted to the post of Lecturer (Senior Scale) in the year – 2004. The post of Lecturer is redesignated as an Assistant Professor. On or about 10.08.2009, the petitioner was promoted to the post of Lecturer (Selection Grade), that would be Assistant Professor (Selection Grade), and completed three years on the said post on 09.08.2012. The matter of dispute between the parties is the entitlement of the petitioner to be redesignated as an Associate Professor with Pay Band IV of Rs. 37400-67000 with AGP of Rs. 9000 with effect from 10.08.2012.

10. The petitioner undisputedly is brought on the post of Lecturer (Selection Grade) on or about 10.08.2009, before the implementation of the UGC Regulations, 2010. Under the Government Resolution dated 12.08.2009 guidelines are issued with regard to the revision of pay scales of teachers and equivalent cadres in the higher education as per UGC Scheme (6th Pay Commission). Clause 2 - a (ix) and (x) of the Government Resolution reads thus -

".....

(ix) Incumbent Readers and Lecturers (Selection Grade) who have completed 3 years in the current pay scale of Rs. 12000-18300 on 1.1.2006 shall be placed in Pay Band f Rs. 37400-67000 with AGP Pay of Rs. 9000 and shall be re-designated as Associate Professor.

(x) Incumbent Readers and Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs. 12000-18300 on 1.1.2006 shall be placed at the appropriate stage in the Pay Band of Rs. 15600-39100 with AGP of Rs. 8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade)/Reader, and thereafter shall be placed in the higher Pay Band of Rs.37400-67000 and accordingly re-designated as Associate Professor."

11. Paragraph 3.1, 3.2 and 3.3 of the Schedule for Clause 6.8.0 of the UGC Regulations, 2010

reads thus -

"...

3.1 Incumbent Readers and Lecturers (Selection Grade) who have completed three years in the current pay scale of Rs. 12,000 - Rs. 18,300 on 1 January, 2006 shall be placed in Pay Band IV of Rs. 37,400 - Rs. 67,000 with AGP of Rs. 9,000 and shall be redesignated as Associate Professor.

3.2 Incumbent Readers and Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs. 12,000 - Rs. 18,300 on or after 1 January, 2006 shall be placed at the appropriate stage in the Pay Band of Rs. 15,600 - Rs. 39,100 with AGP of Rs. 8,000 till they complete three years of service in the grade of Lecturer (Selection Grade)/ Reader, and thereafter shall be placed in the higher Pay Band IV of Rs. 37,400 - Rs. 67,000 and accordingly re-designated as Associate Professor.

3.3 Readers/ Lecturers (Selection Grade) in service at present shall continue to be designated as Lecturer (Selection Grade) or Readers, as the case may be, until they are placed in the Pay Band of rs. 37,400 - Rs. 67,000 and re-designated as Associate Professor in the manner described in 3.1 and 3.2 above."

12. The University Grants Commission has issued a clarificatory letter to Clause 3.2 of the Schedule for Clause 6.8.0 of the UGC Regulations, 2010

clarifying that the Readers appointed on or after 01.01.2006 till the formation of UGC Regulations, 2010 i.e. 30.06.2010 shall move to Pay Band IV with academic Grade Pay of Rs. 9000 after completing three years of service without insisting on the requirements of API based PBAS scheme, and the same shall also apply to the Lecturers (Selection Grade) promoted during the said period. Relevant excerpt of the letter dated 04.08.2015 by the UGC reads thus -

"....

UGC has received queries from some stakeholders seeking clarification as to whether the API based PBAS system will be applicable in such placements.

In this connection, it is clarified that the Readers appointed on or after 01.01.2006 till the issue of aforementioned UGC Regulations, 2010 i.e. 30.06.2010, shall move to Pay Band - 4 with Academic Grade Pay of Rs. 9000 after completing three years of service without insisting on the requirement of API based PBAS system. This shall also apply to the Lecturers (Selection Grade) promoted during the above period."

13. The affidavit has also been filed by the UGC through its Under Secretary in the office of the Secretary UGC clarifying that the petitioner would

be entitled to be governed by Clause 3.2 of the Schedule for Clause 6.8.0 of the UGC Regulations, 2010.

14. It appears that the distinction has been made amongst those who have been brought on the scale of Lecturer (Selection Grade) prior to the enforcement of the UGC Regulations, 2010, and those who are brought in the scale of Lecturer (Selection Grade) after the UGC Regulations, 2010. The same appears to be as per the clarificatory letter of the UGC, so also, the affidavit filed by the UGC and paragraph 3.2 of Schedule to Clause 6.8.0 of the UGC Regulations, 2010. As such the contention of the respondent no. 3 – University that the said clause would apply only to Lecturers in physical education may not be proper.

15. If the petitioner would have been designated as Lecturer (Selection Grade) after 30.06.2010, then the question of API score would be relevant. The petitioner was already designated as a

Lecturer (Selection Grade) in the Pay Band of Rs. 15600-39100 with AGP of Rs. 8000 on 10.08.2009 viz. prior to the introduction of the UGC Regulations, 2010. As per the clarificatory letter of the UGC dated 04.08.2015, the affidavit filed by the UGC and paragraph 3.2 of the Schedule for Clause 6.8.0 of UGC Regulations, 2010 the petitioner is required to be designated as Associate Professor in the Pay Band of Rs. 37400-67000. The petitioner completes three years as Lecturer (Selection Grade) on 10.08.2012. In view of that, the petitioner would be entitled for redesignation as an Associate Professor in Pay Band of Rs.37400-67000 with AGP of Rs. 9000. with effect from 10.08.2012.

16. Respondent no. 3 – University, shall place the petitioner in the Pay Band IV of Rs. 37400-67000 with Academic Grade Pay of Rs. 9000 with effect from 10.08.2012.

17. Rule is accordingly made absolute in above terms. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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