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

WRIT PETITION NO.4354 OF 2017

Dr. Amol s/o Laxmanrao Shirphule,
Age: years, Occu: Service,
R/o. Shirmurupa Building,
142, Vivek Nagar, Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
 Through its Secretary,
 Medical Education and Drugs Department,
 MS, Mumbai
2. The Joint Director,
 Higher Education,
 Nanded Region,
 Nanded,
3. The University Grants Commission,
 Through its Additional Secretary,
 Bahadur Shah Zafar Marg,
 New Delhi – 002
4. Swami Ramanand Teerth Marathwada University,
 Nanded
5. Nanded Education Society,
 Through its Chairman,
 Snehnagar, Nanded
6. The Principal,
 Nanded Education Society's Science College,
 Snehnagar, Nanded

..RESPONDENTS

Ms. P. S. Talekar, Advocate for petitioner;
Mr S. M. Ganachari, A.G.P. for respondent Nos.1 & 2;
Mr S. B. Deshpande, Assistant Solicitor General of India for respondent
No.3;
Mr Y. V. Kakade, Advocate for respondent No.4;
Mr V. J. Dixit, Senior Advocate i/b Mr S. V. Natu, Advocate for respondent
Nos.5 & 6

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**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 21st August, 2018

ORDER:

Heard Ms. Talekar, learned Counsel appearing on behalf of the petitioner, learned A.G.P. appearing for respondent Nos.1 and 2, Mr Deshpande, Assistant Solicitor General appearing for respondent No.3, Mr Kakade, learned Counsel appearing on behalf of respondent No.4 and Mr Dixit, learned Senior Counsel appearing with Mr Natru, learned Counsel for respondent Nos.5 and 6.

2. Being aggrieved by the communication dated 17th April, 2014 as well as communication dated 3rd March, 2016, issued by the University Grants Commission to the Principal, Nanded Education Society's Science College, Nanded, the petitioner is before this Court by way of present writ petition with principal prayers i.e. prayer clauses (A), (B) and (C), which read thus:

“A. To quash the impugned communications dated 17.04.2014 and 03.03.2016 issued by the respondent No.3 thereby refusing to accord approval to the appointment and to release the salary of the petitioner by issuing a writ of certiorary, or any other writ, order or direction as the case may be;

B. To direct the respondent Nos.3, 5 and 6 to release and pay salary due and payable to the petitioner including arrears from 22.06.2013, i.e. the date of his joining the services as

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Assistant professor, by issuing a writ of mandamus or any other writ, order or direction as the case may be;

C. To direct the respondent Nos.3, 5 and 6 to continue the services of the petitioner on permanent basis alongwith all the emoluments even after the expiry of UGC funding of the program, by issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be;”

3. Facts emerged from perusal of the material placed on record as well as the submissions of Ms. Talekar, learned Counsel for the petitioner are as follows:

The petitioner, having requisite qualifications, was appointed as an ‘Assistant Professor’ in respondent No.6 – college in the department of Herbal Medicine initiated under the University Grants Commission funded program titled the scheme of Innovative Programmes. The scheme was renamed subsequently as ‘Teaching and Research in Interdisciplinary and Emerging Areas’ so as to support the students at undergraduate and postgraduate levels.

4. Ms. Talekar, learned Counsel for the petitioner invited our attention to the documents placed on record at Exh.’A’, namely, brochure under the caption “Guidelines for Innovative/Emerging Areas”, the exchange of communication between Director, Board of College and University Development of Swai Ramanand Tirth Marathwada University, Nanded and the Joint Secretary, University Grants Commission, dated 28th July, 2010, a communication between respondent No.6 - Principal and Joint Secretary,

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University Grants Commission, dated 26th July, 2010, a brochure/proposal submitted through respondent No.6 - college to respondent No.3 - University Grants Commission.

5. Our attention is also invited to the report of the Screening Committee to submit that the Screening Committee unanimously recommended the proposal of respondent No.6 – college to respondent No.3 – University Grants Commission. It is also submitted before us that in the proposal submitted by respondent No.6 – college, it was stated that respondent No.6 is the only college/institute which is going to start the programme in order to develop herbal drug industry in the region and to provide employment for the students. It is also stated in the proposal that respondent No.6 was having major infrastructural facilities to start the programme. The proposal submitted by respondent No.6 – college also refers to the financial capacity of the college to start the programme and to bear the burden of salary of the academic staff required for the course.

6. On 20th June, 2012, respondent No.6 – college got approval from University Grants Commission to run M. Sc. Herbal Medicine course under the said scheme pursuant to the proposal submitted by respondent No.6 – college. A copy of approval order is placed on record at Exh.'C'. It would be necessary to refer to certain important features of the approval order and they are the objectives referred to in Clause 4. Then there is an assurance from the college/institute that the approved course will be continued even after the University Grants Commission assistance to the programme ceases (Clause 5-C thereof). Clauses 9 and 10 read thus :

“9. The University/College/State Government will take over the recurring liability of the staff sanctioned, if any, under the programme and other recurring liabilities after the UGC assistance to the programme ceases on completion of the approved duration.

10. Since the posts approved, if any, under this programme are not Plan posts, the financial liabilities of the UGC will be from their date of appointment under the programme upto the date of completion of the programme duration.”

(Emphasis supplied).

7. Ms. Talekar also invited our attention to Clause 24 to submit that the University Grants Commission cautioned the institute that if the institute/college fails to implement the programme within six months from the date of approval, the University Grants Commission would take serious action. Clause 24 reads thus:

“24. In case where University / Institute / College is unable to obey and reasonably complied with the guidelines and the programme is not implemented within six months from the date of approval / first sanction / effective date as noted by the UGC, serious action will be taken and the grants will be withheld or the programme will be withdrawn with the refund of sanctioned amount with interest.”

8. An advertisement was issued for inviting the applications for the post of ‘Assistant Professor’ for M.Sc. Herbal Medicine under the scheme sanctioned by University Grants Commission in the local newspaper. A

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copy of the advertisement is placed on record at Exh. 'E'. Then it is submitted before this Court that the petitioner was appointed by an order dated 21st June, 2013 on the post of Assistant Professor in Herbal Medicine. A copy of the appointment order is placed on record at Exh. 'I' pursuant to which, the petitioner expressed his willingness to join the duties as an Assistant Professor on 22nd June, 2013. A copy of the communication dated 22nd June, 2013 as well as copy of communication dated 7th October, 2013 about jointing report of the petitioner is placed on record.

9. Ms. Talekar, learned Counsel for the petitioner invited our attention to the series of communications from the year 2013 to 2016 between respondent No.6 - college and the University Grants Commission for release of salary of the petitioner. It is submitted before this Court that the University Grants Commission, by communication dated 17th April, 2014 informed respondent No.6 expressing its inability on the ground that the petitioner was appointed on the post on tenure basis. It is the submission of Ms. Talekar that the ground raised by the University Grants Commission was nothing but a curable defect and respondent No.6 – college, by communication dated 16th December, 2013 forwarded an assurance letter. Perusal of the said letter which is placed on record at Exh. 'N' shows that respondent No.6 gave an assurance of continuation of the course i.e M.Sc. Herbal Medicine even after the programme ceases on 31st March, 2017.

10. Then Ms. Talekar invited our attention to the communications forwarded by the petitioner and other similarly situated employees,

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requesting respondent No.5 – society and respondent No.6 - college for release of salary. It is also stated in the said representation that as the salary is not paid to the petitioner, he is facing financial hardship. It is then submitted by Ms. Talekar that the petitioner is working in respondent No.6 – college till filing of the petition and in spite of he discharging the duties, no salary is paid to him.

11. Ms. Talekar, learned Counsel for the petitioner, in support of the documents placed on record, such as, the communication submitted to the Director, Board of College and University Development, Swami Ramanand Tirth Marathawada University, Nanded through respondent No.6 - college that the petitioner had completed a research project titled as “Bioassay guided isolation of unerase inhibitors form some medicinal plants and their possible antibacterial activity against Urinary Tract Infecting (UTI) Pathogens” as well as experience certificate and a copy of the communication dated 6th October, 2016, whereby the petitioner was informed to submit the assessment of answer sheets of examination of 1st and 2nd year of M.Sc. conducted at the college level. She also invited our attention to the communication, whereby the petitioner was allotted invigilation duties for the UG and PG Theory examination of summer 2017. Our attention is also invited to the copy of attendance sheet. Then Ms. Talekar vehemently submitted for allowing the petition.

12. Per contra, Mr Dixit, learned Senior Advocate appearing with Mr Natu, learned Counsel for respondent Nos.5 and 6 vehemently opposed the

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petition. The sum and substance of the submissions of Mr Dixit, learned Senior Advocate is, the petitioner was appointed for a period of twelve months and there was a specific clause in the appointment order that the financial liabilities of the post will be subject to approval by the University Grants Commission. It is also the submission of Mr Dixit that the letter of acceptance issued by respondent No.6 – Principal was an unilateral act of the Principal. It is also submitted by Mr Dixit that respondent No.6 - Principal, without any intimation, approval or information to respondent No.5 – institution submitted letter of assurance. It is also the submission of Mr Dixit that respondent No.5 –institution, after getting the knowledge of the assurance letter submitted by respondent No.6 – Principal, made bona fide attempts for continuation of the said programme with financial assistance of State or University and submitted representation to respondent No.3 – University Grants Commission. An attempt is also made by Mr Dixit to submit before this Court that the petitioner was not regular in attending the duties and he was attending the duties intermittently i.e. as and when required.

13. Mr Dixit, learned Senior Advocate then submitted that as no financial assistance was provided by University Grants Commission and the petitioner was appointed for a specific period and for a specific course, the petitioner cannot claim any right of continuity in service. He further submitted that except academic year 2012-13 and 2014-15, respondent No.6 did not get full strength of the admission.

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14. In view of the submissions advanced by learned Counsel for the respective parties, particularly learned Counsel for the petitioner and learned Counsel for respondent Nos.5 and 6, we are of the opinion that learned Counsel for the petitioner made out a case for allowing the petition partly.

15. The facts which were not disputed by respondent No.6, who had appointed the petitioner are, respondent No.6 - college had submitted its proposal for the course, namely, "Teaching and Research in interdisciplinary Innovative and Emerging Areas". In the proposal, it was specifically submitted that respondent No.6 – college is interested to introduce the innovative programme course in M.Sc. Herbal Medicine. Respondent No.6 also submitted the proposal showing the infrastructural facilities and the ability of bearing financial burden for appointment of the academic staff required for the course. An assurance was also given in the proposal that the college/institute will continue the course even after University Grants Commission assistance to the programme ceases. The petitioner was appointed by way of due selection process.

16. Though an attempt was made by learned Counsel for respondent Nos.5 and 6 to submit that the petitioner attended the duties intermittently, there is sufficient material placed by the petitioner to show that the petitioner worked with respondent No.6 from the date of his appointment till year 2017. At the cost of repetition, we state that the documents, such as, the experience certificate, attendance sheet, the documents that the petitioner was allotted the work of assessment of the answer sheets and an invigilator

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in examination are placed on record. On a lame excuse of respondent No.6 – college that the petitioner was appointed for a period of twelve months and there was shortage of students in the said course, the claim of the petitioner for salary for the period for which he worked with respondent No.6, cannot be rejected.

17. Though learned Counsel for the petitioner prayed for allowing the petition with prayer of continuity of service and permanency in service, we are unable to grant those reliefs in view of the fact that no material is placed on record by the petitioner to show that after expiry of the period of appointment i.e. from June 2013 to July 2016, there was a continuation of the course with requisite number of students and the approval granted by the University Grant Commission for continuation of the course. Resultantly, the petition stands partly allowed.

The petitioner would be entitled for the salary from the date of his appointment i.e. from 21st June, 2013 till 24th July, 2016. The respondent - institute to bear the burden of the salary for the said period.

We reject the claim of the petitioner for grant of permanency and further benefits. Though Mr Dixit, learned Senior Counsel submitted that certain amount is paid to the petitioner and that amount is to the tune of Rs.2 lakhs and the institute will pay the salary to the petitioner after the finance is made available through the University Grants Commission, we are unable to accept this submission in view of the appointment order and award which

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are placed on record. The respondent - institute cannot throw its burden on the University Grants Commission for the period the petitioner worked with it and it is the responsibility of the respondent - institute to pay the salary for the period mentioned above.

The respondent - institute may claim those finance from University Grants Commission, if it is entitled to. The respondent - institute cannot take a stand that the payment of salary as directed by us is subject to receiving the finance from the University Grants Commission. The respondent - institute to pay the salary as directed by us, as expeditiously as possible and preferably within a period of twelve weeks from the date of order of this Court.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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