

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12249 OF 2017

Dr. Shivaji Bhagwanrao Yadav .. **Petitioner**

Versus

The State of Maharashtra and others.. **Respondents**

Shri Shambhuraje V. Deshmukh, Advocate for the
Petitioner.

Shri P. N. Kutti, A.G.P. for Respondent Nos. 1 to
3.

Shri Pradeep L. Shahane, Advocate for Respondent
No. 4.

Shri Satish B. Parnere, Advocate for Respondent
No. 5.

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATE : 12th July, 2018

PER COURT :

1. The petitioner assails the order thereby
refusing to confirm the pay scale as per CAS
Stage – IV (Career Advancement Scheme).

2. Mr. Deshmukh, learned counsel submits that
the appointment of the petitioner was approved on
probation with effect from 31.12.2003. For all
practical purpose that would be the initial date
of appointment of the petitioner. The petitioner
possesses M.Phil. qualification, as such, he is

entitled for exemption from passing NET / CET examination and the same would relate to the date of appointment. The learned counsel submits that the reason given in the impugned communication is erroneous and is not in consonance with the circular dated 7th January, 2005, issued by the State.

3. Learned Assistant Government Pleader submits that as exemption has been granted in the year – 2006, the services of the petitioner for CAS benefit would be considered from the year – 2006. On the date of appointment, petitioner did not possess the NET / CET qualification, so also, is appointed on contract basis.

4. The impugned communication only refers to that the petitioner was appointed on contract basis and as such considering the date of appointment the pay fixation has not been properly done. It is not disputed that on the date of appointment the petitioner was possessing M.Phil. qualification. As per the policy of the Government dated 7th January, 2005, those who are appointed between the period 25th July, 2002 to 19th July, 2003, and were possessing the qualification and were selected through properly constituted selection committee were considered to be on probation. In view of that, the appointment of

the petitioner on and from 31.12.2003 will have to be considered on probation and not on contract basis. The same would be a deeming fiction as per the circular dated 7th January, 2005. The University has also approved the services of the petitioner w.e.f. 31.12.2003 on probation.

5. In the light of above, the impugned communication is quashed and set aside. The Joint Director of Higher Education, Aurangabad Division, Aurangabad shall decide the pay fixation with regard to the CAS benefit to the petitioner afresh, expeditiously and preferably within a period of three (3) months.

6. Writ Petition accordingly stands disposed of.
No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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