

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

**WRIT PETITION NO.3602 OF 2018**

- 1 The Secretary,  
Vidya Prasarak Mandal, Gadhinglaj,  
Tal. Gadhinglaj, District Kolhapur
- 2 The Principal  
Dr. Ghali College, Gadhinglaj .... Petitioners

Vs.

- 1 Shri. Annasaheb Sadashiv Magar  
At Post Bahirewadi, Tal. Gadhinglaj
- 2 The Director,  
Board of College & University Devp.,  
Shivaji University, Pune
- 3 The Joint Director (Higher Education)  
Kolhapur Division, Rajaram College  
Campus, Kolhapur
- 4 The State of Maharashtra .... Respondents

Ms. Sandhya Nanaware I/by M. Janardhanan for the Petitioners.  
Mr. Y.B. Lengare for Respondent no.1.  
Ms. Mansi Bane, AGP for Respondent nos. 3 and 4.  
Dr. Ajay Bhagwan Sali, Regional Joint Director, Higher Education,  
Kolhapur present in the Court.

**Coram : SMT. SADHANA S. JADHAV, J.  
Date : 11<sup>th</sup> October 2018.**

P.C.:

1            Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2            By this Writ Petition, the petitioner-Management herein impugns the order dated 31<sup>st</sup> October 2017 passed by the University and College Tribunal, Pune whereby the order of termination of services of the respondent no.1 dated 6<sup>th</sup> September 2016 is quashed and set aside. Petitioner no.1, Vidya Prasarak Mandal runs a College by name Dr. Ghali College, Gadhinglaj, District Kolhapur.

3            Respondent no.1 herein was holding qualification as M.Sc. with 56% marks and M.Phil in “A” grade. He had applied for the post of Lecturer in the said College, pursuant to the advertisement for the post of Lecturers published in “Daily Sakal” dated 8<sup>th</sup> October 1995. He was interviewed by the Selection Committee and was appointed in a clear vacancy as a “Lecturer” of Zoology subject. Respondent no.1 belonged to open category and was appointed on full time basis.

4           By an order dated 19<sup>th</sup> May 1997, his services were terminated. Being aggrieved by the termination, the respondent no.1 had approached the College Tribunal, Pune (Camp : Kolhapur) by filing an appeal bearing Appeal No. 28 of 1997. The said appeal was dismissed on merits and hence respondent no.1 was constrained to challenge the same before the High Court at Bombay.

5           In the course of hearing of the writ petition, this Court was of the opinion that the University and College Tribunal had not considered several resolutions and therefore the matter was remanded for rehearing before the Tribunal. The Tribunal had then proceeded to hear the matter on merits.

6           On 22<sup>nd</sup> August 2012, the respondent no.1 herein was allowed to join the services on the same post on condition that he would waive his back-wages. The petitioner and respondent no.1 had arrived at an amicable settlement and had filed a purshis to that effect before the Tribunal. One of the condition for allowing

respondent no.1 to join the services was that he would not claim continuity in service. It is clear from the records that he was reinstated in view of the amicable settlement with continuity in service from the date of appointment and he had waived the claim of back-wages.

7           In the year 2003-2004, the petitioner had started receiving aids from the Government and had become an aided College. The salaries of the Teachers and their other emoluments were to be in consonance with the University Grants Commission (“UGC”) Rules and the posts were to be sanctioned by the Government of Maharashtra.

8           By a letter dated 22<sup>nd</sup> February 2013 addressed to the Joint Director, the petitioner had sought approval to the post on which the respondent no.1 was working, especially in view of the amicable settlement between the parties. The Office of the Joint Director by letter dated 10<sup>th</sup> January 2013 informed the petitioner-College that the post of respondent no.1 cannot be approved. The

Office of Joint Director of Education had on several occasions called for the papers from the office of the petitioner and finally by letter dated 31<sup>st</sup> August 2016, the Secretary, Vidya Prasarak Mandal through Principal Dr. Ghali College, Gadhinglaj was informed that the said post cannot be approved, since the petitioner was not holding the eligibility criteria of National Eligibility Test/State Eligibility Test (NET/SET) at the time of of appointment. The petitioner was informed that the office of the Joint Director of Education was not a party to the proceedings before the College Tribunal and therefore they need not approve the said post and moreover compromise was drawn between respondent no.1 and the Management. According to the Joint Director of Education, respondent no.1 was not entitled to regularisation of services and salaries. Hence, the petitioner College could not abide by either the terms of compromise or the orders passed in terms of compromise by the College Tribunal.

9            Learned counsel for the petitioners candidly submits that the Management has no objection to abide by the compromise

subject to approval by the State Government i.e. by the Education Department, since it happens to be an aided College.

10            Learned counsel for respondent no.1 has placed on record a letter dated 6<sup>th</sup> October 2016 of Dr. Ghali College, Gadhinglaj. The Joint Director of Education has granted approval to 9 posts of Teachers, who were similarly posted. Out of them, Dr. Poojari, Dr. Masal, Professor Patil, Dr. Masti and others were exempted from passing NET/SET degree since they were the holders of M.Phil. prior to 2009. For the reasons best known to the Joint Director, Education, the exemption was not considered only as far as the present respondent no.1 is concerned. Learned counsel for respondent no.1 submits that there is violation of Article 14 of the Constitution of India.

11            On the last occasion, the matter was heard on merits and the learned counsel for respondent no.1 as well as learned counsel for the petitioner had placed implicit reliance upon the Government Resolution dated 27<sup>th</sup> June 2013, wherein the

Government had resolved that all the persons, who were holders of M.Phil, Ph.D. degree prior to 3<sup>rd</sup> April 2000 would be exempted from the criteria of passing NET/SET at the time of the appointment and that they would be appointed on regular basis by following due procedure of law. There is no doubt that the present respondent no.1 was appointed by following due procedure of law.

12            Perused the University Grants Commission (“UGC”) Rules. Clause 2.08, Sub-clause 3 reads as follows :

“Clause 2.08 .....

“(iii) The Commission further resolved that since both the above mentioned Regulations are prospective and not retrospective in nature, therefore, all candidates having M.Phil degree on or before 10<sup>th</sup> July 2009 shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor. Further, all candidates who have either obtained Ph.D. degree on or before 31<sup>st</sup> December 2009 and such candidates who had registered themselves for Ph.D. degree on or before 31<sup>st</sup> December 2009 and are subsequently awarded Ph.D. degree shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor.

Since proviso to UGC (Minimum qualifications required for the appointment and Career Advancement of teachers for Universities and Institutions affiliated to it) Regulations 2000 remained in force until the notification of UGC (Minimum Qualifications for appointment of teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations 2010, therefore, all applications received by UGC seeking exemption from requirement of NET may be considered and disposed off in accordance with the prevalent norms/ regulations.

The Committee further decided that this may be sent to the Government of India for their concurrence in view of earlier Order No. F.5-4/2005-U.I. (A) dated 30<sup>th</sup> March 2010 issued under Section 20(1) of the UGC Act, 1956.”

13           As against all above facts, today the Joint Director of Higher Education, Kolhapur Region, Kolhapur pursuant to the orders of this Court is present in the Court and has filed an affidavit. In paragraph 7, the Joint director has contended as follows:

“7    I say and submit that the UGC has issued Regulations 1991 thereby prescribed qualification i.e. Master Degree with more than 55% marks prescribes for the first time

NET/SET as eligibility criteria for Degree college Lecturers. Under this Regulation even those having Ph.D. or M.Phil is required to pass NET/SET.

It is clear from the affidavit that the affidavit has not only been filed without application of mind, but has also been filed carelessly and only to support the order dated 31<sup>st</sup> August 2016. The Joint Director has not given explanation as to how the other members of the same institution could be granted exemption from NET/SET criteria as they were also holders of M.Phil and Ph.D. prior to 2000. It appears from the contention raised in the affidavit that being annoyed by the fact that the office of the Joint Director was not party to the appeal before the College Tribunal, such orders are passed without application of mind and resultantly there is multiplicity of proceedings. The department of Higher Education shall take note of this order and issue circulars to the respective officers that the orders in respect of approvals shall be passed only on proper application of mind and inconsonance with the UGC Rules and Regulations and the prevalent Government

Resolutions. In the case of Sudhir s/o Sharadrao Hunge and Others Vs. State of Maharashtra and others, reported in [2010(4) Maharashtra Law Journal, page 572], the Division Bench of this Court has held as follows:

“The subsequent insertion of compulsory NET/SLET by gazette notification dated 11-7-2009 would be prospective in its operation as all advertisements were duly approved and sanctioned by the University and well published before the cut-off date, namely 11-7-2009. Therefore, selections and appointments made pursuant to advertisements published prior to 11-7-2009 would not be affected by introduction of compulsory NET/SLET eligibility criteria as the gazette notification dated 11-7-2009 was prospective in nature”.

14 In view of the above discussion, the order dated 31<sup>st</sup> August 2016 is hereby quashed and set aside.

15 The Management is willing to allow the respondent no.1 to join the services subject to salaries approved by the Department of Higher Education.

16 The Respondent no.1 is present in person. Learned counsel for respondent no.1, upon instructions submits that the

respondent no.1 would waive the back-wages upto 27<sup>th</sup> June 2013. However, he would claim continuity in service from the date of appointment i.e. from 5<sup>th</sup> January 1996 notionally for the purpose of service benefits.

17            Since the Teachers other than respondent no.1 granted approval vide G.R. dated 27<sup>th</sup> June 2013, the respondent no.1 would also be treated as working on approved post from 27<sup>th</sup> June 2013.

18            In view of the orders passed in the present writ petition, the learned counsel for respondent no.1 submits that he would withdraw Special Civil Suit No. 29 of 2016 pending before the Civil Judge, Senior Division, Gadhinglaj. Learned counsel for respondent no.1 submits that he would also withdraw the contempt petition pending before the College Tribunal at Pune.

19            In view of aforesaid observations, the Joint Director, Higher Education shall approve the post of respondent no.1 on/ or before 31<sup>st</sup> October 2018.

20            The petition is allowed in terms of prayer clause (b).  
The petition is disposed of in above terms.

**(SMT. SADHANA S. JADHAV, J.)**