

their services with effect from 20th April, 1997 on account of the approval granted by the University as honorary teachers for the academic year 1996-1997. Pursuant to the amendments carried out consequential reliefs are prayed.

2. The relevant facts in brief for resolving the controversy can be stated thus :-

The Respondent No.1 is a Law College established by the Respondent No. 3 – Dayanand Institution. The Respondent No. 1- College was unaided. The Petitioners, except the Petitioner No.7, are all ex-students of the College. The Petitioners therefore without insisting for any legal formalities in the matter of their appointments joined the College and started discharging their duties. The Petitioners accepted the post with benevolent intention to repay to their own college and discharge the indebtedness felt by them towards their own college. Being an unaided College the Management claimed paucity of funds to pay the salary as per regular pay scale.

3. It is the claim of the Petitioners that the work available for the teachers/lecturers at the Respondent No.1 – College was of permanent nature. The College was required to appoint permanent teachers with at least minimum strength of 16 with one more Principal. Neither the Respondent No.1 – College nor the Respondent No.3 – Institute has appointed any permanent teacher/Lecturer at the College on part time or full time basis. The practice adopted by the Respondent Nos.1 and 3 was to appoint honorary teachers/lecturers and getting the work of permanent teachers done from them. The Petitioner No.1 was appointed on 15/7/1982 and was continuously appointed thereafter by issuing every year a separate appointment order till academic year 1995-96. The Petitioners have set out in the chart which is annexed at Exhibit 'A' to the Petition the dates of appointment of the Petitioners at the College. The other Petitioners also have been appointed every year by separate orders of appointment till the academic year 1995-96 and they have also been paid the amount of honorarium even for the vacations.

4. Learned Counsel for the Petitioners relied upon Rule 12 of the Bar Council of India Rules framed under Section 7 (h) and (i), 24 (1) (c) (iii) and (iiia), 49(1) (af)(ag) and (d) of the Advocates Act, 1961. Our attention is invited to the said rule which reads thus :-

“12. Full-time teachers of law including the Principal of the college shall ordinarily be holders of Master's degree in law and where the holders of Master's degree in law are not available, persons with teaching experience for a minimum period of 5 years in law may be considered. Part-time teachers other than one with LL.M. Degree shall have a minimum practice of 5 years at the Bar.”

Learned Counsel thus contends that as per minimum qualification prescribed by the Bar Council of India for the permanent part time teachers, the Petitioners are fully qualified to be appointed as permanent teachers. Learned Counsel for the Petitioners inviting our attention to paragraph 19-G of the Petition to submit that the Petitioners were appointed after they were interviewed by the Committee and selected by the Interview Committee. Learned Counsel submits that at the time

of the filing of the Petition on an average about 500 to 600 students were taking education in the College and on an average work load was 250 hours per week. Thus as per the requirement of work load, at least 16 permanent teachers with one Principal was needed. The Respondent No.1 never appointed any permanent teacher/lecturer in the College either on full time or part time basis. The appointment of the Petitioners were made on the honorary basis though the work load was of permanent teachers.

5. Learned Counsel for the Petitioners inviting our attention to paragraph 4 of the Affidavit-in-reply filed by the Respondent No.2 points out that the Respondent No.2 has admitted that only the Principal was appointed on full time basis and all other teachers were appointed as honorary.

6. Learned Counsel for the Petitioners submits that in view of the decision of the Apex Court in the case of **State of Maharashtra Vs. Manubhai Pragaji Vashi & others** reported in

AIR 1996 SC 1, the State Government issued a Government Resolution dated 10/1/1996 whereby the State Government was required to give grant-in-aid to the Respondent – College. The Petitioners had therefore since 13/6/1996 made various representations before grievance committee of the University and the State Government. Only with a view to deprive the benefits of the Government Resolution and avoid payment of salary in the scale prescribed, the Petitioners were victimized by effecting mass termination, except for the Principal. The Petitioners therefore prayed for the reliefs that the Respondent No. 5- University to grant approval to the Petitioners as part time permanent teachers and for setting aside the termination orders.

7. Learned Counsel for the Petitioners essentially submits that admittedly no permanent teachers were appointed and the work load admittedly was of 10 to 12 periods. The Petitioners were discharging the work load of the permanent teachers. She submits that it is unfair to treat the Petitioners as

honorary teachers/lecturers and in fact having regard to the work load discharged by them, the nature of appointment of the Petitioners can be said to be that of a permanent part time teacher. The petitioners were appointed by duly constituted selection Committee after following an appropriate procedure. She submits that the Petitioners worked as paper setters, examiners, Chairman of paper setters and examiners, senate member, member of board of studies, internal and external supervisors and therefore it can very well be said that their appointments have been approved. According to her, the stand taken by the Respondents is only to the effect that the appointments were made as honorary on temporary basis. Insofar as the work load and discharge of duties by the Petitioners are concerned, the same is not disputed in the Affidavit-in-reply.

8. Learned Counsel for the Petitioners moreover submits that the present Petition has been long pending and most of the Petitioners have either retired or resigned. The

Petitioner Nos.1,2,5,6,7,9 and 10 have filed an Affidavit restricting their claim only to service benefits during the period they worked and not pressing for any retirement benefit.

9. Learned Counsel for the Petitioners on instructions of the Petitioners states that they are pressing for service benefits as regard pay scale only as permanent part time lecturers for the respective service tenure and all the Petitioners are not pressing any retirement benefits.

10. Per contra, learned Counsel for the Respondents pointed out that the Petitioners are not qualified in terms of the qualification prescribed by the Respondent No. 8 – University Grants Commission (UGC). In support of his contention he relies upon the decision of the Apex Court in the case of **Apangshu Mohan Lodh and others vs. State of Tripura and others** reported in (2004) 1 SCC 119. Relying on the observations of the Hon'ble Apex Court, learned Counsel would submit that the Petitioners have no legal right to maintain a

Petition for a writ directing the Respondents to grant minimum scale of pay of teachers/lecturers. Learned Counsel also relied upon the decision of the Apex Court in the case of **State of Karnataka vs. C.K. Pattamashetty and another** reported in (2004) 6 SCC 685 to contend that the Petitioners who have been admittedly appointed on an honorary basis cannot be placed in the same class as that of the salaried employees. In his submission, honorary teachers formed a separate class.

11. We have heard learned Counsel for the respective parties at some length. At the outset, it would be material to reproduced the chart which has been submitted by the Petitioners showing the details of their appointment.

No.	Name of Petitioner	Date of Appointment	Date of Retirement / Resignation
1.	Mhetras Ramchandra Gopal	15 th July 1982	Retired on 1 st May 2004
2.	Kulkarni Jayant Jagannath	June 1984	Resigned on 1 st June 2003
3.	Shrisunder Alisha Jopes	17 th July, 1984	Retired on 30 th September 2009
4.	Jinde Vasudeo Ambadas	11 th August, 1987	Working 16 th August 2019
5.	Ujalambe Siddharam Veerpakshappa	2 nd July 1990	Resigned on 31 st December 2016

6.	Kulkarni Ganesh Vishambhar	4 th August 1992	Resigned on 13 th July 2009
7.	Agarwal Mahesh Mangaldas	June 1993	Resigned on 13 th October 2006
8.	Nhavkar Nagesh Vithalrao (Deleted as per order dated 8/2/2013)		
9	A.G. Kulkarni	6 th July 1987	Resigned in June 1997
10.	Surekha J. Raichurkar	2 nd July 1990	Resigned in 1997

It would thus be seen that all the Petitioners are appointed prior to 10th January, 1996 viz. before the issuance of the Government Resolution dated 10th January, 1996 whereby the Respondent No.1 – College was granted grant-in-aid by the State of Maharashtra. The chart would reveal that Petitioner No.1 was initially appointed on 15th July, 1982 and eventually retired on 1st May, 2004. Most of the Petitioners have either retired or resigned.

12. It is pertinent to note that the contention of the Petitioners as regards availability of the work load and that they were discharging the work load of permanent teachers is not controverted. The Respondents have also not controverted that

the requirement was of at least 16 permanent teachers and one Principal. Except for the appointment of the Principal on a full time basis, no permanent teachers have been appointed. Thus the position is that, the Petitioners whom the Respondent No.1 claim to have appointed as honorary teachers/lecturers, were discharging the entire work load which was supposed to be discharged by permanent teachers. We therefore have no hesitation in holding that the petitioners herein have discharged the entire work load of permanent teachers of Respondent No. 1 – College.

13. Upon issuance of the Government Resolution dated 10th January, 1996, the College was entitled to receive the grant-in-aid. However, the Respondents proceeded to terminate the services of the Petitioners on the ground that the services were approved only for the period 1996-97.

14. While issuing Rule in the present Petition this Court had directed that the Petitioners would continue to teach as

honorary teachers with the Respondent No.1 – College.

15. Insofar as Petitioner Nos. 1 to 5, 9 and 10 are concerned they are appointed prior to the UGC Regulations, 1991 dated 19th September, 1991 prescribing minimum qualifications for appointment of teachers in Universities and Colleges. The Petitioner Nos. 6 and 7 though are appointed after the said UGC Regulations dated 19th September, 1991, they have minimum qualifications prescribed by the Bar Council of India Rules framed under the Advocates Act, 1961 as permanent part time teachers. The Petitioners were given work load of permanent part time teachers during their entire service tenure.

16. Insofar as Petitioner Nos. 3 and 4 are concerned, they were given work load of full time teachers. The Petitioner Nos. 3 and 4 never practiced as Advocates and in fact their names have been listed as the non-practicing lawyers with effect from June, 1998. Learned Counsel for the petitioners submits

that though they have virtually discharged the work load of full time teachers, they are restricting the claim and benefits only as part time teachers during the period of their service.

17. The facts of the present case are indeed peculiar. The Petitioners are appointed long before Government Resolution dated 10th January 1996 is issued whereby grant-in-aid was given to the Respondent No.1 – College. Till then the Petitioners were discharging their duties on the basis of appointment letters which treated them as honorary teachers/lecturers. Pursuant to the interim orders passed by this Court they have continued discharging their duties. It is an admitted fact that only the Principal has been appointed on full time basis and there are no other teachers appointed by the college on a full time basis though there was sufficient work load to appoint at least 16 teachers/lecturers on full time basis. It is apparent from the record that the Petitioners have discharged entire work load which in ordinary case 16 permanent part time teachers were required to be discharge. Though two of the Petitioners claimed

to have discharged duties on a full time basis, nonetheless they are restricting their claim to the pay scale of permanent part time lecturers. Considering the fact that most of the Petitioners have either retired or resigned and only one lecturer is on the verge of retirement, we are of the opinion that it would be unfair to deprive the Petitioners of the benefit of pay scale of permanent part time teachers as prescribed by UGC for law teachers.

18. In our opinion, the decision of the Apex Court in the case of **Apangshu Mohan Lodh** (*supra*) is rendered in a different set of facts where parties therein were engaged purely on contractual basis, the post of part time lecturers was not contemplated as a cadre post under the rules. In the instant case, we are inclined to grant reliefs to the Petitioners in the peculiar fact situation where the Petitioners though were appointed on an honorary basis, have nevertheless discharged entire work load expected to be discharged by the permanent teachers as admittedly, except for the appointment for a full

time Principal, no other teacher on permanent basis has been appointed by the Respondent No.1 – College. The decision of the Apex Court in the case of **State of Karnataka** (*supra*) is also not applicable. The Apex Court in the facts of that case has held that upon perusal of the definition in the statute which defines “appointed teachers” has considered the distinction between the salaried employees and those appointed by the University to work on honorary basis to come to the conclusion that those lecturers/teachers appointed to work on honorary basis cannot be placed in the same class as of salaried employees. It is in that view of the matter that the Apex Court held that the Respondent therein who was appointed as Visiting Professor, could not claim the financial benefits of the salaried employee of the University as a Lecturer or other teachers of the University.

19. In our humble opinion the fact situation in the present case is different. In the present case the Petitioners are not claiming any parity with the permanent teachers as except for the Principal, no permanent lecturers/teachers were

appointed. The Petitioners appointed on an honorary basis discharged the entire work load of permanent teachers.

20. In this view of the matter without going into the larger issue raised by the Petitioners, as we find that the Petitioners are qualified in terms of Rule 12 (iv) of the Bar Council of India Rules framed under the Advocates Act, 1961, as permanent part time teachers and as the Petitioners were given the work load of permanent part time teachers during their entire service tenure, in the absence of any other permanent teachers appointed by the Respondent No.1 in the College except the Principal, we feel that the following order is necessitated in the interest of justice.

ORDER

1. We hold that the Petitioners are entitled to the pay scale of permanent part time lecturers/teachers as prescribed by UGC for Law Teachers for their respective service tenures mentioned in the chart in paragraph 11 as per

Government Resolution dated 10th January, 1996.

2. The Petitioners to be treated as in continuous service without any break during this service period and the Respondents are directed to grant approval to the Petitioners as permanent part time lecturers/teachers.

3. The Respondent No.1 – College shall within the period 10 weeks from today forward to the Joint Director of Higher Education, proposal containing approval papers of the Petitioners along with fixation of the salary with effect from 1st January, 1996 till the date of retirement / resignation of the Petitioners as mentioned in the chart as per UGC pay scale for law teachers read with Government Resolution of 1996 as applicable to the part time Law College Lecturers

4. The Respondent No.5 and 9 shall grant necessary approval to the proposal for pay fixation of the Petitioners within a period of four weeks from the

date of the submission of the necessary proposals by the Respondent No.1.

5. The Joint Director of Higher Education to pay to the Petitioners the arrears of salary due and payable to the petitioners upon pay fixation within a period of six weeks from the date of pay fixation. The Undertakings of the Petitioners that they will not be claiming any retirement benefits whatsoever is accepted.

6. In this view of the matter, the termination letters dated 19th April, 1997 are set aside.

21. The Petition is allowed in above terms.

22. Rule partly made absolute in the above terms with no order as to costs.

(M.S. KARNIK, J.)

(A.A. SAYED, J.)