

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13166 OF 2017

Shri Maruti Dattatraya Patil	.. Petitioner
Vs.	
The State of Maharashtra and ors.	.. Respondents

Mr.Prashant Bhavake, for the Petitioner.
Mr.S.B.Kalel, AGP for Respondents No. 1, 3, 5 & 6 – State.
Mrs.Lata Patne a/w Mr.Vinod Joshi, for Respondent No.2.
Mr.U.H.Pawar, for Respondents No. 7 & 8.

**CORAM : B.R.GAVAI &
M.S.KARNIK, JJ.
DATE : 03rd OCTOBER, 2018**

ORAL JUDGMENT (PER B.R.GAVAI, J.) :

. Rule. Rule is made returnable forthwith.

Heard by consent.

2. The Petitioner has approached this Court being aggrieved by the order dated 17/04/2017 passed by the Respondent No.3 whereby it is held that the Petitioner is not entitled to the pensionary benefits.

The facts in brief giving rise to the present Petition are as under :

3. The Petitioner was appointed as a Junior Clerk with one Mahatma Phule High School which is under the management of Respondent No.7 on 10/06/1971. From time to time, the Petitioner was promoted to the promotional posts. On 07/12/1998, Respondent No. 7 issued an advertisement to fill up certain posts. The Petitioner applied in response to the said advertisement for full-time lecturer in Education. The Petitioner came to be appointed as a full-time lecturer in the Respondent No. 8 - college under the management of Respondent No. 7 on 20/09/1999. The Petitioner got superannuated on 30/09/2012.

4. However, since the proposal for grant of pensionary benefits to the Petitioner was not forwarded by Respondent No.4, the Petitioner approached this Court by way of Civil Writ Petition No. 1411 of 2014. Vide judgment and order dated 16/04/2015, the Division Bench of this Court directed the

Respondents to consider the case of the Petitioner for grant of pensionary benefits in accordance with law. Thereafter again the Respondent No.2 returned and rejected the proposal vide order dated 14/12/2015. The Petitioner was therefore required to approach this Court by way of Writ Petition No. 727 of 2017. Vide the judgment and order dated 09/03/2017, this Court directed to reconsider the claim of the Petitioner. By the impugned order, the claim has been again rejected.

5. The perusal of the impugned order would reveal that the claim of the Petitioner has been rejected on the ground that the appointment of the Petitioner from 1999 was ad-hoc since the Petitioner did not possess the requisite qualification. The other reason given is that the Government Resolution vide which the requirement of having passed net-set examination is exempted has been issued on 27/06/2013 and the Petitioner has retired on 30/09/2012 i.e. prior to the said G.R. coming into effect.

6. We find that the contention raised on behalf of the Respondents are wholly untenable. Undisputedly, the Petitioner when he was appointed in 1999 was possessing the requisite qualification except the net-set examination. Not only this but the Petitioner's appointment was already approved by the Competent Authority and as such requisite scale was made applicable to the Petitioner till his retirement.

7. Taking into consideration the difficulties of various lecturers being appointed but were not possessing the net-set examination, the Government has come out with the resolution dated 27/06/2013. It will be relevant to refer to translated part of the said G.R. which reads as under :

Government Resolution:-

14. Considering the facts mentioned in the preface, the notification dt. 19.9.1991 of the University Grant Commission was made applicable in the state under a Govt. Resolution dt. 23.10.1992. Therefore, the provisions of the said Government Resolution cannot be made applicable with retrospective effect i.e. from the date 19.9.1991. Hence, the qualifications mentioned in the notification dt. 19.9.1991 of the

University Grant Commission shall not be applicable to the lecturers appointed prior to the date 23.10.1992.

15. The Government hereby grants approval to hold the services of those non-Net/Set teachers, appointed during the period from the date 23.10.1992 to 3.4.2000, who during their service period, have not acquired the educational qualification / eligibility (Net / Set / Ph. D. / M. Phil.) prescribed for the post of lecturer, by the University Grant Commission, valid for all purposes, from the date of issuance of said Government Resolution, subject to following conditions.

(A) The appointment of the concerned teacher should have been made on regular basis:-

(B) The appointment of the concerned teacher should have been made by complying with all the procedures prescribed.

(C) The approval to appointment of concerned teacher should have been granted by the University, by making compliance of all other prescribed qualifications and conditions, except the condition of Net / Set qualification.

(D) The proposal of the concerned teacher should have been submitted by the University, for the approval of University Grant Commission.

16. The concerned Divisional Jt. Director, Higher Education, should set up a committee under his chairmanship, for checking the cases of teachers, appointed during the period from the dt. 23.10.1992 to the dt. 03.04.2000, on merit. The said scrutiny committee should scrupulously check all the aspects as to whether all the procedure, right from the advertisement for selection of the concerned teachers up to their appointment orders has been followed as per the rules or else, as well as whether the said posts have fallen vacant, compliance of social reservation has been made and other similar aspects and should submit the self explanatory report to that effect to the Director, Higher Education, Maharashtra State, Pune and thereafter final approval should be granted on the Director level.

17. Moreover, if the teachers, appointed during the aforesaid period, have already been given appointment to the post of principal or similar post by holding their earlier service valid, their appointment and the increments admissible as per the existing rules as well as the salary being paid in accordance therewith, shall remain unaffected and separate orders shall be issued as regards these two points.

18. As the decision has been taken to hold the

services of said teachers valid for all the purposes, from the date of issuance of this Government Resolution, the new Defined Contributory Pension Scheme shall be applicable to these teachers from the date of issuance of this Govt. Resolution.

19. This Government Resolution is being issued with the concurrence of Finance Department, General Administration Department and Law and Judiciary Department, given under their unofficial reference Nos. – URN-85/ 13/Service -4, dt. 17 June 2013, URN. 873/2012/Twelve, dt. 22.5.2012 and URN 399-2012-E, dated 22 May 2012, respectively.

8. It can be thus seen that vide aforesaid G.R., the State Government has exempted the lecturers who are appointed between 23/10/1992 to 03/04/2000 and who were not possessing the net-set examination, M.Phil. and Ph.D. qualification. Only requirement is that the appointment of these lecturers is required to be made after following due selection process. The other requirement is that appointment of such lecturers ought to have been approved by the University and University should have submitted the proposal for grant of

approval of such teachers to the University Grant Commission.

9. Undisputedly, the Petitioners' appointment was made after following due selection process. Not only University as well as the Respondent -Joint Director of Education had also granted approval to the appointment of the Petitioner. As such, it can be clearly seen that the Petitioner is entitled to the benefits of the said G.R. Undisputedly, the Petitioner's date of appointment is 20/9/1999 i.e. the date which falls between 23/10/1992 to 03/04/2000.

10. The reason which is given that since G.R. is issued on 27/06/2013 and the Petitioner has retired prior to the coming into force of the said G.R. is also absolutely untenable. G.R. provides for grant of protection to the employees who are appointed between the aforesaid two dates. Merely because the Petitioner has superannuated prior to the date of the said Government Resolution cannot be a ground to deny the pension to the Petitioner to which the Petitioner is otherwise entitled in

accordance with the said G.R. We are therefore of the considered view that the impugned order dated 17/04/2017 is not sustainable. Hence, the following order.

ORDER

i) The impugned order dated 17/04/2017 is quashed and set aside.

ii) The Respondents are directed to make the pension applicable to the Petitioner on the basis of his last drawn salary.

iii) The pension is to be paid to the Petitioner from the month of November 2018. All the arrears between the date of superannuation till 31/10/2018 shall be cleared within a period of 3 months from today.

11. Needless to state that while making pensionary scheme applicable, the date of the appointment of the Petitioner shall be construed as 20/09/1999.

12. The Writ Petition is disposed of in the aforesaid terms.

(M.S.KARNIK, J.)

(B.R.GAVAI, J.)