

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

WRIT PETITION NO.1353 OF 2017

Dr. Pradnya d/o Kisanrao Ingale,
Age-42 years, Occu:Service as
Assistant Professor in Physics
at Milind College of Science,
Nagsenvan, R/o-"Parishram",
Plot No.66/B, Nandanvan Colony,
Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through: The Secretary,
Higher & Technical Education
Department, Mantralaya
Extension Bhavan, Mumbai-400 030,
- 2) The Joint Director,
Higher Education, Aurangabad
Region, Aurangabad,
- 3) The Vice-Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University, University Campus,
Aurangabad.
- 4) The Director,
Board of College & University
Development, Dr. Babasaheb Ambedkar
Marathwada University,
University Campus, Aurangabad,

5) The Chairman,
Peoples Education Society,
Nagsenvan, Aurangabad,

6) The Principal,
Milind College of Science,
Nagsenvan, Aurangabad.

...RESPONDENTS

...
Mr.Sujeet D. Joshi Advocate for Petitioner.
Mr.S.S. Dande, A.G.P. for Respondent Nos.1 and 2.
Mr.S.G. Chapalgaonkar Advocate for Respondent Nos.3 and 4.
Mr.M.A. Khan Advocate for Respondent Nos.5 and 6.
...

**CORAM: SUNIL P. DESHMUKH AND
S.M. GAVHANE, JJ.**

DATE : 16TH OCTOBER, 2019

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. By this petition invoking Articles 14, 16, 21 and 226 of the Constitution of India, the petitioner questions propriety, legality and validity of communication by respondent No. 4 – the director, board of college and university development, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad dated 3/4-01-2017 purporting to restrict approval to her services to

academic year 2007-08 and to cancel and recall order dated 16/25-07-2016 regularizing services of the petitioner with effect from 03-04-2007.

3. Respondents No. 5 and 6 (Management) had sought permission from respondent No. 3 – Dr. Babasaheb Ambedkar Marathwada University for issuing advertisement to fill up sanctioned vacant posts of lecturers in their institution, namely, Milind College of Science at Aurangabad. On 11-09-2003 permission came to be granted for filling up various posts including three posts of lecturer in physics, comprising reserved posts, two for scheduled caste and one for Vimukta Jati (A).

4. Pursuant to permission, an advertisement came to be published on 17-09-2003 in daily *Lokmat* and daily *Sakal*. The advertisement refers to that candidate should have passed NET/ SET in concerned subjects or should have completed M.Phil by 31-12-1993 or should have submitted Ph.D thesis etc.

5. Selection committee comprising the composition as required for a duly constituted selection committee had evaluated credentials and performance of the candidates and

selected three persons to occupy the advertised posts in physics subject including the petitioner. She was the only lady candidate amongst the selected persons.

6. Since candidates did not fulfill all requisite criteria of qualifications, while institution was in need of the lecturers, appointments were made by respondents No. 5 and 6 of several selected candidates including the petitioner on contractual basis, for academic year 2003-04. The university had granted approval to these appointments on contractual basis for the academic year 2003-04. Said persons were continued in service by respondents No.5 and 6.

7. Government department of higher and technical education had issued instructions on 31-05-2005, to reappoint the persons selected for a further period of two years, subject to conditions referred to therein. There does not appear to be any dispute that pursuant to same, petitioner along with other selected candidates of physics and other subjects, appointed on contractual basis, were continued.

8. Ph.D. had been conferred on petitioner in 2007. It

was so informed and communicated by petitioner to respondents No.3 to 6.

9. There had been further instructions issued by aforesaid Government department on 06-07-2007 to aforesaid effect, albeit referring to that a nominal break in service be given. While the appointees were so continued, approval accordingly had been sought by respondents No.5 and 6 with respondents No.3 and 4.

10. In 2008, respondents No.3 and 4 were provided with information about contractual appointments which referred to the three lecturers appointed in 2003, including the petitioner.

11. While the petitioner had been conferred with Ph.D. in 2007, respondents No. 3 and 4 – the university had sent proposal seeking exemption for petitioner from National Eligibility Test (NET) referring to that she possesses qualifications required by University Grant Commission (UGC), particularly good academic record with B+ at masters level. It appears that proposal was for two employees which included petitioner's name.

12. Learned counsel Mr. Chapalgaonkar has fairly pointed out that subsequently, the powers were delegated to the universities by UGC for a decision with regard to Ph.D. and acquisition of requirements. Consequently proposal of petitioner with others was sent for approval on regular basis.

13. It further transpires that pursuant to the same, cases of a few appointees were considered for approval on regular basis and approval had been granted. No communication in respect of approval to petitioner's appointment had been issued to respondents No. 5 and 6.

14. According to counsel for petitioner, petitioner continued to serve in the institution on clock hour basis after 2008-09, and such a case is not met with by respondents.

15. It is the case of petitioner that petitioner was being given assurances that one day or the other approval to her appointment would come through and she shall wait patiently. It appears that in 2016, the assurance given had come true as

university under letter/order dated 16/25-07-2016 had indeed communicated, with reference to correspondence and proposal by respondents No. 5 and 6, that, petitioner's services stand regularized from 03-04-2007. Petitioner accordingly has been serving in the institution.

16. The petitioner contends that while the cases of persons who were appointed along with her on contractual basis pursuant to 2003 advertisement, around 2008-09 approvals to their appointments had been given by respondents No. 3 and 4. Since petitioner had been conferred with Ph.D., she carried an impression that approval to her case would also be given to upon exemption being given by UGC from passing NET examination. However, it now transpires that the powers had been delegated to the university and university accordingly had examined her case and had considered that petitioner qualifies to the requirements of qualifications for the post of lecturer.

17. Learned counsel for the petitioner points out the communication dated 13-08-2009 refers to that the committee constituted for selection, which had selected the petitioner and

others, is a selection committee equivalent to duly constituted selection committee. He further purports to refer to that the communication also refers to, so far as selection is concerned it is not within the ambit of State authorities. Learned counsel for petitioner also points out certificate issued by respondents No. 3 and 4 on 20-04-2010 shows that Ph.D. awarded to petitioner is pursuant to UGC directives and as per decision of academic council held on 22/23-12-2009.

18. Petitioner had been making correspondence with respondents for grant of approval to her post as lecturer in physics in Milind College of Science and one of such communication appears to be of 29-09-2011 which was followed by communication dated 04-10-2011 from the college.

19. Learned counsel for petitioner passionately submits that in the circumstances, it would be seen that petitioner's case for approval to her appointment, while no fault can be found with petitioner, is receiving differential treatment from the ones who were appointed along with her pursuant to advertisement of 2003 and were continued. Their cases had been processed and

approval was also granted. Material on record would depict that respondent institution and university had proceeded further to some extent in that direction, yet the process for no reasons had not been carried to logical end. He submits that it is intriguing as to what had kept back granting approval. It took rather too long for granting approval to her. After taking into account all the relevant aspects the approval order had been issued in July, 2016. Taking back and cancelling and restricting the same to academic year 2007-08, is an action not only detrimental to petitioner but the same is patently in breach of principles of natural justice.

20. Learned counsel submits that it is the petitioner who is the only affected party and no other person has been affected. He, therefore, urges to quash and set aside the impugned communication with directions to respondent authorities for granting approval to the employment of petitioner from 03-04-2007, the date on which she acquired requisite qualification. Learned counsel, on instructions, states that for the period from April, 2007, i.e. when petitioner acquired requisite qualifications, to July, 2016, i.e. till the time when

communication of approval to appointment came to be issued, the petitioner will give up the claim of monetary benefits.

21. Learned AGP submits that State authorities would seldom be concerned with the appointment and regularization to a post in this matter and particularly refers to the affidavit in reply, where it has been stated that the authorities are required to implement grants in aid scheme and to verify workload and sanction teaching posts to the aided colleges. It is the management which is competent to take proper steps for filling up posts and university is competent authority to grant or refuse approval to their appointments. Thus, it is contended that the issue arising in the petition would not be a concern for the State authorities.

22. Learned counsel Mr. Chapalgaonkar appearing for respondents No. 3 and 4 submits that it has been referred to in the affidavit in reply that petitioner's appointment had been made through a duly constituted selection committee against a permanent and vacant post, however, since she did not possess NET/SET qualification, having regard to government policy, she

was appointed on consolidated pay of Rs.8000/- per month and said appointment was approved as per the conditions mentioned in government resolution dated 19-07-2003.

23. Learned counsel submits that besides initial year of appointment, approval had not been granted to petitioner's further continuation in the post. He submits that while proposal had been forwarded in June, 2015 by the management seeking approval to the post of petitioner, it was incomplete proposal. Deficiencies in the same were removed around February, 2016. It had not been clarified in the proposal as to whether the petitioner had been working on the date of proposal. Having regard to the proposal, communication came to be issued by the university granting approval to the petitioner and others from the date of their initial appointments.

24. However, subsequently, a communication has been received by the university from a teachers association to the effect that three persons including petitioner, to whom approval had been granted, were not working in respondent No.6 college and that, their services were discontinued. Learned counsel

refers to letter dated 10-08-2016 issued by respondent No.6 – principal of Milind College of Science referring to that services of said three employees, including petitioner, were interrupted from 2007. With reference to the same, he submits the order issued in July, 2016 had been recalled substituting the same with the communication impugned in present petition.

25. After hearing learned counsel for appearing parties, it emerges that the petitioner admittedly is from scheduled caste category, possessing validity certificate from scrutiny committee. Her educational qualifications are M.Sc. B.Ed. She has acquired doctorate of philosophy (Ph.D.) in 2007.

26. Having regard to aforesaid, in the first place it may have to be pointed out that there is no dispute over that since 2007 petitioner holds requisite educational qualifications for a lecturer's post and that she is eligible and qualified to be appointed on the post of lecturer in physics with respondents No. 5 and 6 since 2007. It is also not disputed that several persons who were appointed pursuant to advertisement of 2003 under which petitioner came to be initially appointed, had been

continued in employment and their services were regularized by the university. During the course of hearing, one such case had been referred to along with photocopies of documents who had been working in another college run by respondent No.4. It transpires that initially as in the case of petitioner he was appointed on contractual basis. For him also initial approval had been granted for one academic year. Subsequently in 2007-08 his services came to be regularized.

27. It also appears from the record, while petitioner had acquired requisite qualifications which were considered to be proper by the university authorities and while it appears from the documents annexed to the petition and also referred above, her case also has been proposed for regularization and even exemption has also been given, however, further progress in respect of the same has not come forth neither there is any explanation. The documents to large extent also depict that petitioner had continued to serve the institution up to 2010-11. Institution had espoused her cause as would appear from the documents, for grant of approval and till 2012 the matter was being followed up. Communications and correspondence by

petitioner does not appear to have been responded to at any point of time. While proposal had been sent as referred to in the reply of university, in 2016 the same had been responded to by issuing approval to appointment of the petitioner from the date of acquisition of qualifications.

28. Based on a complaint by some organization, it appears that under some correspondence rendered amongst the respondents, without giving any idea of whatsoever nature to the petitioner, suddenly, under impugned communication earlier order regularizing her services had been cancelled. It appears to be accepted position that petitioner's selection had been from a competent committee. The petitioner possesses qualifications for the post of lecturer in physics. There is also no explanation and it has not been denied that quite a few appointees who were initially appointed pursuant to advertisement of 2003 under which petitioner had also been appointed, approval to their services had been granted upon proposal submitted by the management. It is also not the case that petitioner's proposal had not been received after she had acquired qualification for regularization of her services. As a matter of fact it emerges, her

case was being processed, however, no further progress for no plausible reason appears to have been made. Service disruption, if any, would hardly be attributable to petitioner. In such a case, petitioner appears to have been given differential treatment which is undesirable and unsustainable. The communication in August, 2016 by the principal of Milind College of Science, appears to be incongruous in the circumstances.

29. Having regard to facts and circumstances, we deem, it would be appropriate to consider petitioner's case for grant of proper approval, while seldom any fault appears to lie with her. The reason of a complaint by an organization regardless of facts and circumstances, while the cause appears to have been prosecuted, is unsustainable and is arbitrary and capricious in given facts and circumstances. Impugned communication is in stark breach of noble principles of natural justice. On that count as well the same is unsustainable.

30. In view of aforesaid impugned communication stands quashed and set aside to the extent of petitioner. The university authorities to pass appropriate order in respect of approval for regularization of petitioner's employment taking into account

that she has acquired requisite qualifications and had been found to be proper by the university as per the directions by UGC and that she had been selected by the committee comprising constitution of a duly constituted selection committee which has received approval and confirmation from concerned authorities. It will be worthwhile to refer to that petitioner does not insist upon actual monetary benefits for the intervening period from 03-04-2007 i.e. the date of acquisition of requisite qualification till 25-07-2016, when communication of approval to her appointment came to be issued.

31. Rule is made absolute accordingly. Writ petition stands disposed of.

32. In view of aforesaid, civil application No.8118 of 2018 does not survive and the same stands disposed of.

(S.M. GAVHANE, J.)

asb/OCT19

[SUNIL P. DESHMUKH, J.]