

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

WRIT PETITION NO. 7517 OF 2016

Dr. Sunita Sidramappa Girwalkar ...Petitioner

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. Pradeep Deshmukh, Advocate holding for
Mr. Y. P. Deshmukh, Advocate for Petitioner
Mr. S.K. Tambe, Assistant Government Pleader for
Respondent Nos. 1 and 2
Mr. B. S. Shinde, Advocate for Respondent No. 3
Mr. A.V. Hon, Advocate for Respondent No. 4

**CORAM : S.V. GANGAPURWALA AND
A.M. DHAVALA, JJ.**

DATE: 15th JANUARY, 2019

PER COURT

1. The petitioner claims to have been appointed initially on 04.07.1990 as a Lecturer in Commerce. Thereafter, she claims to have been appointed as a Lecturer in Physical Education of which approval was granted by the University on 12.02.1996 as a Lecturer in Physical Education on adhoc basis for the year 1995-1996. The same appears to have been continued further under the approval order dated 07.06.1999. It appears that as the petitioner did not

possess the National Eligibility Test (NET)/State Eligibility Test (SET), the petitioner was given approval on adhoc basis as is clear from the order of approval dated 07.06.1999.

2. It is not disputed by any of the parties that the petitioner is continuously in service as a Lecturer in Physical Education from the date of his appointment pursuant to the advertisement dated 30th May, 1994. The petitioner at the time when she was appointed as a Lecturer in Physical Education was possessing the qualification of M.P.Ed which was the necessary qualification, at the relevant time. The only dispute is about the applicability of NET/SET qualification. The petitioner subsequently in the year 2005, has acquired Ph.D. According to the affidavit filed by the Joint Director of Higher Education, the service of the petitioner would be counted from the date the petitioner has acquired the qualification of Ph.D. and as the Petitioner did not possess the NET/SET qualification, the service of petitioner was kept on ad-hoc basis only and cannot be considered from the year 1994.

3. In the year 1991, the petitioner was appointed by Local Selection Committee of the college and not duly

constituted Selection Committee by the University. It is submitted by the learned Counsel for the University that the appointment of the petitioner pursuant to the advertisement of the year 1994 was by duly constituted Selection committee as per Statute 4 (1) (5).

4. The issue as to whether the petitioner was required to possess the NET/SET, if the appointment is prior to 03.04.2000 was subject matter of consideration before this Court in Writ Petition No. 9494/2013 decided on 13th September, 2013. This Court in the said Judgment observed that if the appointment is prior to 03.04.2000, then the petitioner may not require to possess NET/SET qualification. The said decision was rendered on the basis of Government Resolutions dated 18.10.2001 and 27.06.2013.

5. In light of the aforesaid Judgment, the appointment of the petitioner from 1994 will have to be held to be proper.

6. In light of that, the impugned communication dated 30th March, 2016 and 16th April, 2016 are quashed and set aside. The petitioner will not be entitled for Career

Advancement Scheme (C.A.S.) benefits. The petitioner's service shall be computed considering his appointment in the year 1994-95 that is from the date of the appointment of approval order. However, the petitioner will not be entitled for C.A.S. benefits in view of the Judgment dated 23.12.2015 of the Special Bench of this Court (Coram : Anoop Mohta and A.A. Sayed, JJ.) in the case of ***Maharashtra Federation of University and College Teachers Organizations Vs. State of Maharashtra and Ors. in Writ Petition No. 2082 of 2013.***

7. In case, the Apex Court does not uphold the aforesaid Judgment, then the petitioner may agitate his claim for C.A.S. benefits subsequently as per the Judgment of the Apex Court.

8. The Writ Petition is accordingly disposed of. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

mta