

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

WRIT PETITION NO.11316 OF 2015

Shri. Bhanudas s/o Vithalrao Kale,
Age: 60 years, Occu: Retired,
R/o.: Sant Dnyaneshwar Nagar,
Behind Govt. I.T.I.,
Bhakti Construction Road,
Beed 431122

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Department of Higher and
Technical Education,
Mantralaya, Mumbai – 400 032
2. The Director of Higher Education,
Maharashtra State,
Central Building, Pune – 411 001
3. The Joint Director of Higher Education,
Aurangabad Region, Station Road,
Aurangabad
4. Jai Bhavani Shikshan Prasarak Mandal,
Georai, Dist. Beed,
Through its Secretary,

(2)

5. Jai Bhavani Shikshan Prasarak Mandal's

Arts and Science College, Patoda,

Dist. Beed, through its Principal

..RESPONDENTS

Mr A. A. Nimbalkar, Advocate for petitioner;

Mr S. P. Sonpawale, A.G.P. for respondent Nos.1 to 3;

Mr D. J. Choudhari, Advocate for respondent Nos.4 & 5

CORAM : PRASANNA B. VARALE

AND

AVINASH G. GHAROTE, JJ.

DATE : 28th August, 2019

JUDGMENT: (PER : PRASANNA B. VARALE, J.) :

Heard learned Counsel appearing on behalf of the petitioner, learned Asstt. Govt. Pleader appearing for respondents - State authorities and Mr Choudhari, learned Counsel appearing for respondent Nos.4 and 5.

2. The petitioner is before this Court and the principal prayer in the petition is prayer clause (B), which reads thus :

“B) By issuing a Writ of mandamus or any other appropriate writ, order or directions in the like nature, the respondent Nos.1 to 3 may kindly be directed to pay to the petitioner gratuity for the period of more than 26 years of service rendered by him at the respondent College within a period of four weeks with interest @ 18% p.a. from 1st

(3)

July, 2015 i.e., the date on which the amount became due till the date of release of the said amount.”

3. Few facts giving rise for filing present petition are summarized as follows :

The petitioner was appointed on 8th August, 1988 as a Junior Lecturer in one Balbhim College of Arts, Science and Commerce at Beed for teaching English subject. On 14th January, 1994, the petitioner joined the Mahila Arts and Commerce College, Beed as a Senior Lecturer and was finally transferred to Arts and Science College, Patoda, being run by respondent No.4 – Society. The petitioner stood retired by superannuation on attaining the age of 60 years. By communication dated 1st June 2015, respondent No.3 – Joint Director of Higher Education informed the petitioner that the petitioner would be covered by the Government Resolution dated 27th June, 2013 and more particularly as per the provisions in Clause 18 of the said Government Resolution, the petitioner would be covered by new pension scheme. The petitioner submitted the representations to respondent No.2 - Director of Higher Education to submit that as he has rendered continuous service without there being any break, his case would be governed by the earlier pension scheme and it was also submitted by him to grant him regular monthly pension. The petitioner forwarded the reminders to respondent No.3 – Joint Director of Higher Education on 18th September, 2015 as well as on 13th

(4)

October, 2015 and as no heed was paid to his representations and reminders, he had approached this Court by filing present writ petition.

4. Mr Nimbalkar, learned Counsel appearing on behalf of the petitioner, in his detailed submission, invited our attention to the Government Resolution dated 27th June, 2013 as well as the exchange of communications between the petitioner and the respondents-authorities. He also vehemently submitted that in view of the judgments of this Court, the insistence of the authority for not granting benefits to the petitioner on the ground that the petitioner had not passed National Eligibility Test/ State Eligibility Test (“NET/SET” for short), is unjustified and unsustainable. He also submitted that the petitioner had acquired Ph.D. degree on 2nd May, 2014 and this fact was not only made known to the respondents-authorities but was also accepted and admitted by the respondents-authorities in the exchange of communications.

5. Mr Nimbalkar, learned Counsel for the petitioner placed heavy reliance on the judgment and order dated 3rd October, 2018, passed by the Division Bench of this Court at Principal Seat in Writ Petition No.13166 of 2017 as well as the judgment and order dated 17th October, 2013, passed by the Division Bench of this Court in Writ Petition No.10149 of 2010.

6. The claim of the petitioner was opposed by learned Asstt. Govt. Pleader and Mr Choudhari, learned Counsel for respondent Nos.4 and 5.

7. The basic facts, namely, the appointment of the petitioner in the year 1988 and his continuous service till attaining the age of superannuation i.e. till 30th June, 2015 and the petitioner acquired the higher qualification i.e. Ph.D. are not disputed. The copy of the Government Resolution dated 27th June, 2015 is placed on record at Exh.'B'. The title of the said Resolution states about the regularization of the services of such lecturers, who are not cleared NET/SET examination and then to grant the consequential benefits to them. It may not be necessary to refer to the details of the Resolutions, suffice it to say that the consistent demand of the lecturers, who have acquired the qualification of NET/SET within the prescribed time limit was under consideration as well as the issue of granting benefits to such lecturers, who have failed to acquire the requisite academic qualification within the prescribed period was addressed to. Clause 15 of the Resolution deals with the grant of benefit to such lecturers, who have failed to acquire the academic qualifications, namely, NET/SET/ Ph.D./M.Phil. between 23rd October, 1992 to 3rd April, 2000, subject to certain conditions. Clause 18 deals with the applicability of the new

(6)

pension scheme. It may not be out of place to refer to the representation of the petitioner, dated 10th August, 2015 to respondent No.3, whereby by submitting the necessary facts, the attention of the authority was invited to the judgment and order of this Court, dated 17th October, 2013, passed in Writ Petition No.10149 of 2010. The copy of the said judgment is also placed on record at Exh. 'F'. In this petition, the issue was raised about the exemptions granted from NET/SET was for consideration. The judgment also refers to the Government Resolution dated 27th June, 2013. It may be useful for our purposes to refer to the observations of the Division Bench, which read thus:-

“24. After taking into account government resolution dated 27-06-2013, the court has considered that the government of Maharashtra had decided to hold the lecturers appointed during 1991-2000 who do not possess NET/SLET/Ph.D. eligible for all purposes on fulfillment of following conditions:-

- (a) Their appointments should be on regular basis
- (b) Their appointments should be made after following the prescribed procedure
- (c) The lecturers shall have all other qualifications except NET/SET
- (d) Proposals of such lecturers should have been forwarded to the UGC for approval.”

25. In the present case as well, the position is undisputed that the petitioners have been appointed during the period 19-09-1991 to 03-04-2000 by following due procedure viz. their selection by duly constituted committee; possessing of the educational qualifications as were applicable then save they had not passed NET/SLET examination and further that their appointments had undergone requisite scrutiny and had received approval. Majority of the petitioners have also improved their qualification during service period.

29. In view of this and having regard to the earlier decisions of this court and particularly the subsequent resolution by UGC after 30-03-2010 as referred to above, keeping away the petitioners cases from being considered for the benefit of exemption with reference to the directions of the HRD Ministry would give rise to invidious discrimination among similarly situated persons under the capricious decisions leaving the petitioners in lurch.

30. We are, therefore, of the view that the petitioners' cases would be required and eligible to be legitimately considered for the benefit of exemption on analogy with resolutions referred to earlier hereinabove. The decision / directions dated 30-03-2010 of the HRD Ministry, Union of India, would not be able to hold back the benefits under the decision of the UGC. It would, therefore, not be necessary for us to go into the propriety and legality of the directions issued by the HRD Ministry dated 30-03-2010 which are purportedly impugned in the present petition.

31. We, therefore, direct the concerned authorities to consider petitioners' cases for grant of exemption from passing NET/SLET with reference to observations herein-above and give them consequential and incidental benefits. We expect that such exercise would be done expeditiously, preferably within a period of four months without being trammled by decision/direction dated 30-03-2010 of HRD Ministry."

8. The claim of the petitioner is opposed by the respondents – authorities by way of the affidavit-in-reply only on the ground that the petitioner, though had joined service as a Lecturer in senior college on 14th January, 1994 and was transferred to Arts and Science College, Patoda, Dist. Beed, at the time of his selection, the petitioner was not possessing NET/SET qualification as required by the UGC norms. A heavy reliance was placed on the judgment of this Court at Principal Seat, dated 3rd October, 2018, passed in Writ Petition No.13166 of 2017, by submitting that the present petitioner is similarly situated with the petitioner in Writ Petition No.13166 of 2017. The petitioner had approached this Court being aggrieved by the order, whereby it was held that the petitioner is not entitled to pensionary benefits raising the rider of Government Resolution dated 27th June, 2013. In the present petition also, though the petitioner was not possessing the qualification of NET/SET examination at the time of his appointment,

(9)

he had acquired Ph.D. degree and his appointment was approved by the competent authority. In view of these facts, it may be necessary for us to refer to the observations in the judgment and order dated 3rd October, 2018 and the same read thus:

“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.

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.

(11)

- 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.”

9. The judgment of this Court, dated 3rd October, 2018, was subjected to Special Leave Petition (Civil) Diary No(s).14703 of 2019, preferred before the Honourable the Apex Court, but the Honourable the Apex Court could not find any favour with the petitioners i.e. the State of Maharashtra and others and the same was dismissed by an order dated 1st July, 2019. Similar view was taken by the Division Bench of this Court at Principal Seat in another writ petition, namely, Writ Petition No.755 of 2019 and the said writ petition was allowed by the judgment and order dated 9th April, 2019. The Division Bench of this Court, by adopting the judgment of the Principal Seat of this Court, dated 3rd October, 2018, disposed of the bunch of the petitions, namely, Writ Petition No.3293 of 2019 and other connected writ petitions by an order dated 18th June, 2019. In this bunch of petitions, the State of Maharashtra reiterated its stand by placing heavy reliance on Government Resolution dated 27th June, 2013 and more particularly condition No.18. It may be useful to refer to the observations of this Court in judgment and order dated 18th June, 2019, which read thus:

“2. The petitioners herein are appointed in the year 1993-1995 as Lecturers in various colleges. They have retired on attaining the age of superannuation. The contention of the learned counsel for petitioners is that these petitioners have put in pensionable service. The pension proposal is denied to them only on the ground that the petitioners did not pass NET/SET qualification. According to the learned counsel the benefit of Government Resolution dated 27/6/2013 would be available to the petitioners and would be entitled for the benefit of pension.

3. Mr. Karlekar, Additional Government Pleader submits that the Government pursuant to the Government Resolution dated 27/6/2013 has regularised services of those persons appointed between 23/10/1992 to 3/4/2000 though had not completed NET/SET but did not allow them regular pensionary benefits. In condition No.18 it has been mentioned that the incumbents are not eligible and entitled for pensionary benefit and they are eligible for DCPS.

5. The issue involved in the present matters is no longer res-integra in view of the catena of judgments delivered by this Court. Reference can be had to the judgment at the Principal Seat in Writ Petition No.13166/2017 decided vide order dated 3/10/2018. The said judgment has been followed in various matters.

8. In the light of the above, the impugned communication is quashed and set aside. The respondents

(13)

shall consider the case of the petitioners for sanction of pension as per rules after verifying the details of the appointment of the petitioners, the date of retirement and if they have put in pensionable service, shall accord sanction for pension to the petitioners.”

10. Considering the consistent view of this Court, we see no reason to adopt any other view than the view taken by the Division Bench of this Court. Resultantly, the present writ petition is allowed.

11. The respondents are directed to make the pension applicable to the present petitioner on the basis of last drawn salary. The benefits to which the petitioner is entitled be paid considering the date of superannuation of the petitioner i.e. 30th June, 2015. The benefits/arrears be cleared within a period of three months from the date of receipt of copy of the judgment and order of this Court.

The writ petition is disposed of accordingly. Rule is made absolute.

(AVINASH G. GHAROTE, J.) (PRASANNA B. VARALE, J.)