

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3796 OF 2010

Satish Krishnarao Bhosale (Since deceased)

1A. Surekha Satish Bhosale and others ..Petitioners

Versus

The Government of Maharashtra
and others

..Respondents

Mr. Mihir Desai, Senior Advocate I/by Mr. S. P. Sarnath,
Advocate for the Petitioners.

Mr. V. M. Mali, AGP for Respondent Nos.1, 3 & 4.

Mr. Tejpal S. Ingale, Advocate for Respondent No.2.

**CORAM : B. R. GAVAI &
DAMA SESHADRI NAIDU, JJ.
DATE : 18th APRIL 2019**

P.C.

1] The Petitioner, now retired and no more, joined the Second Respondent college as Physical Director on 09.06.1987. Initially filed by the deceased employee, and now maintained by his legal representatives, the writ petition first complained that the deceased employee was denied the benefit of UGC pay, though he had been paid full-time salary for over 27 years.

2] In the course of time, when the Writ Petition was pending, the Respondent authorities issued a communication holding that the deceased employee could not function as a full-time Physical Director; instead, he should be treated as part time. That necessitated the employee to amend pleadings and assert that he was a full-time employee, besides maintaining his claim for UGC pay scales. After the employee's death, his legal representatives came on record.

3] Mr. Mihir Desai, the learned Senior Counsel, submits that the employee continued full time for close to two decades. According to him, inexplicably the authorities have chosen to treat the employee as a part time Physical Director, and it has no basis whatsoever. On the issue whether the employee could get terminal benefits as full time employee, the learned Senior Counsel has drawn our attention to this Court's Division Bench judgment in *Mr. Vaijanath Maruti Kadam Vs. The Government of Maharashtra*, rendered on 3rd March 2008, in Writ Petition No.3838 of 2007. According to him, the facts are identical,

and the ratio of that judgment applies on all fours to this case.

4] In sum and substance, the learned Senior Counsel has submitted that the Government has unreasonably and capriciously treated the Petitioner, after many years of service, as a part-time lecturer. And that deprived the employee even his terminal benefits, for a part-time employee could claim neither the pension nor the gratuity. Therefore, the learned Senior Counsel has urged this Court to allow the Writ Petition.

5] On the other hand, the learned AGP with equal vehemence has tried to counter the employee's claim. He has drawn our attention to the Government's reply. According to him, the deceased employee's appointment had never been approved by the third Respondent. If at all the college erroneously treated him as a full-time Physical Director, the burden lies on the second Respondent college to pay salary accordingly. If an employee remained unapproved, the Government could legitimately treat his

services only as a part-time lecturer. Therefore, he has urged this Court to dismiss the Writ Petition.

6] The learned counsel for the second Respondent college, supporting the petitioner's claim, submits that as recently as on 18th May 2012, through an order, the Assistant Director, Ayurved, Pune, recognized the post held by the deceased employee as a full-time sanctioned post. He also further submits that in 2018, the Government appointed a Committee which examined all the appointments in Ayurved colleges. According to him, the Committee accepted and approved all the appointments, save the deceased Petitioner's; that was only because of the pending Writ Petition.

7] Heard Shri. Mihir Desai, the learned Senior Counsel for the petitioner; the learned AGP., for the official respondents; and Shri Tejpal S. Ingale, the learned counsel for the second respondent college.

8] Indeed, as has been rightly contended by the learned Senior Counsel, the facts are not in dispute. The

deceased employee continued to receive salary as a full-time lecturer for about three decades. For the first time, only on 15th June 2011, through the Ext.M, the Government informed the deceased employee and the college that the employee should be treated as a part-time lecturer. It was after the employee's filing the writ petition: an ex post facto assertion about the employee's altered status. Ext.M supplies no justification why the employee should be treated as part time after nearly three decades.

Granted, the Government may have felt justified, we assume, to treat the employee as a part-time one. Then, *ex debito justiae*, the employee is entitled to a notice on that count and hearing, too. For the employee, by then, put in about three decades of service and received salary as a full-time employee. He had, thus, a vested interest in the position he occupied and also had substantial rights accrued in his favour. But the Government adhered to none of these procedural safeguards, which are nothing but the facets of natural justice. So we must hold that the Ext.M

communication or order offends the principles of natural justice and is of no legal consequence.

9] So long as it remains indisputable that the employee continued as a full-time Physical Director in Ayurved college and received the salary as such, the Government is estopped from acting arbitrarily, especially after three decades. And more particularly without providing an opportunity to the affected employee, the Government would not have altered the employee's status unilaterally. Added to this, the very Government continued to pay to the employee salary, treating him as a full-time employee.

10] In these circumstances, going by the ratio of *Mr. Vaijanath Maruti Kadam (supra)*, we hold that the deceased employee ought to be treated as a full-time employee and he should have been paid salary and terminal benefits accordingly.

11] As a result, we allow the Writ Petition, directing the Respondent Nos.3 and 4 to treat the deceased

employee as a full-time employee and settle all the service benefits, including the salary, arrears, if any, and the terminal benefits. If the respondents have recovered, in the name of excess pay, any amount either from the deceased employee or from his estate in the hands of his legal representatives, it must be refunded to the petitioners now on record, forthwith.

We may note that the employee died long back and his legal representatives have been fighting for terminal benefits as well as other service benefits. So the authorities will expeditiously quantify the amounts due to the deceased employee and pay them to the petitioners within three months from the date this order is uploaded.

[DAMA SESHADRI NAIDU, J.]

[B. R. GAVAI, J.]