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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4959 OF 2017

Uttam R. Patil ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

Mr. R.J. Dhond with Gangadhar Janardan Sabnis for Petitioner.
Ms. N.M. Mehra, Assistant Government Pleader Writ Cell
Respondent Nos.1 and 3.
Mr. Rui Rodrigues for Respondent No.2.
Mr. Railkar Saurabh Madhusudan for Respondent No.4.
Ms. Pallavi R. Naik (Law Officer), Department of Higher Technical
Education, Mantralaya, Mumbai.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

JUDGMENT RESERVED ON 24TH JANUARY, 2020.

JUDGMENT PRONOUNCED ON 31ST JANUARY, 2020

J U D G M E N T (Per R.I. Chagla, J.)

1. Rule. Rule made returnable forthwith. Heard by consent.
2. This Petition has been filed under Article 226 and 227 of the Constitution of India seeking a direction against Respondent No.3 to accord regular approval with effect from 1st July, 1992 for the appointment of the Petitioner as full time lecturer in Marathi in N.K. Varadkar Art and R.V. Belose Commerce College, Dapoli, Dist. Ratnagiri (for short "*the said College*").

3. The Petitioner has been working in the post of lecturer in Marathi in the said College since 1st July, 1992. The Respondent No.1 is the State of Maharashtra. Respondent No.2 is University of Mumbai through the Registrar, duly established under the provisions of Maharashtra Universities Act, 1994. Respondent No.3 is the Joint Director of Higher Education, who exercises overall control over the financial matters of the affiliated colleges in Mumbai, University area, in which the said college is situated. Respondent No.4 is the said college duly affiliated to the Mumbai University under the provision of Maharashtra Universities Act, 1994.

4. The Petitioner had been selected for the post of lecturer in Marathi in the said college after interview by the duly constituted Selection Committee against the open post. It is stated in the Petition that during the said year 1992 the Selection Committee although formed and interviews fixed, the subject expert did not attend the interview. Thus, the Selection Committee procedure was completed during the next year. However, the selection relates back to the initial appointment i.e. on 1st July, 1992. The Petitioner after working in the post of lecturer for about three academic years, the management of the college terminated his

services on 20th April, 1995. The Petitioner filed Appeal No.24 of 1995 before the University and College Tribunal, Mumbai challenging the said termination. The University and College Tribunal, Mumbai allowed the Appeal by an order dated 20th June, 1996 thereby setting aside termination and directed the management to continue the Petitioner's services and pay him the wages due to him.

5. The Petitioner was thereafter reinstated in the same post of lecturer. Upon being so reinstated, the Petitioner sent papers to the management for approval of the appointment. It is stated that approval was accorded on year to year basis and no approval on regular basis had been accorded.

6. The Petition refers to a letter dated 26th March, 2008 sent by the University of Mumbai by which the Respondent No.4 was intimated that the Petitioner was exempted from NET / SET qualification. It is stated in the said letter that since no NET qualified / NET exempted candidate was available at the time of interview, exemption may be granted for U.G. teaching only in respect of the two named candidates, which included the Petitioner as a teacher in the subject of Marathi.

7. The Petitioner completed his M.Phil on 10th August, 1994. The Petitioner was informed by the Respondent No.4 College that the University of Mumbai vide letter dated 15th February, 2012 approved appointment of the Petitioner w.e.f. the date he completed his M.Phil on 10th August, 1994.

8. It is then stated in the Petition that by the Government Resolution (for short “GR”) dated 19th September, 1991 and NET / SET qualification for lecturers in Universities and Colleges was introduced. However, this was not made a mandatory entry point qualification from the date of the GR. It was through a subsequent GR dated 11th December, 1999 when the fifth Pay Commission pay scales were introduced that the State Government made NET / SET a mandatory entry point qualification for lecturers in Universities and Colleges. The Respondent Nos.1 to 3 introduced that qualification of NET / SET retrospectively from 19th September, 1991. This was reiterated in a subsequent GR dated 18th October, 2001.

9. The Petitioner then refers to GR dated 27th June, 2013. By the said GR, it was clarified that the prior GR dated 19th September, 1991 which was made applicable on 23rd October,

1992 cannot be applied with retrospective effect. The said GR dated 27th June, 2013 expressly states that the NET / SET requirement would not be applicable to the teachers who were appointed prior to 23rd October, 1992. The Petitioner having been appointed on 1st July, 1992 i.e. prior to 23rd October, 1992 is exempt from the NET / SET requirement.

10. The Petitioner through his Advocate issued notice to the Respondent No.2 on 13th October, 2016 calling upon them to grant approval to the Petitioner's appointment from the date of his appointment i.e. on 1st July, 1992. However, it is stated that inspite of the said letters and notice, proper approval was not accorded to the Petitioner's appointment nor other benefits were extended to the Petitioner in spite of repeated requests and claims made by him.

11. Being aggrieved by the decision of the University of Mumbai, granting approval to the appointment of the Petitioner with effect from the date he completed his M.Phil on 10th August, 1994 and the Respondent not according approval of the Petitioner from the date of his appointment i.e. 1st July, 1992, the Petitioner has filed the present Petition.

12. An Affidavit of Smt. Janaki Uday Belose has been filed on behalf of Respondent No.4. The deponent of the said Affidavit which is dated 9th December, 2019 is stated to be authorized by the Management of the Respondent No.4 – College to affirm the Affidavit. It is stated in the said Affidavit that since the Petitioner was appointed prior to 23rd October, 1992 and had required qualification of M.A. B+, the Petitioner was entitled to exemption from NET / SET requirement. The management had accordingly submitted proposal for exemption to the University Grant Commission (“**UGC**”) and exemption was granted to the Petitioner vide UGC letter dated 19th February, 2008 and the Respondent No.3 University of Mumbai intimated about the same to the Respondent No.4 management about the said exemption vide letter dated 26th March, 2008. Since the exemption was granted, the Respondent No.4 Management submitted proposal for approval to Respondent No.3 for granting approval on probation w.e.f. 1st July, 1992 i.e. the date of appointment. This is by proposal letters dated 19th July, 2011, 11th March, 2016, 21st July, 2016 and 21st August, 2017 which are annexed to the said Affidavit in Reply.

13. It is further stated in the said Affidavit in Reply in paragraph 9 as under:-

“9. I say that since the Petitioner was appointed prior to 23rd October, 1992, and had required qualification of M.A. B+, he held requisite qualifications at the time of his appointment on 1st July, 1992 and when the exemption from NET / SET was granted, he is entitled to the approval on probation from the date of appointment. I say that accordingly the management has submitted the proposal to that effect”.

14. The said Affidavit in Reply then states that the Petitioner is entitled for approval from the date of his appointment i.e. 1st July, 1992 but the University granted approval from the date of his M.Phil degree.

15. An Affidavit of Dr. Sanjay S. Jagtap, Joint Director Higher Education, Konkan Region, Panvel has been filed by on behalf of Respondent Nos.1 and 3. It is stated in the said Affidavit that, the Respondent No.2 – University of Mumbai had approved appointment of the Petitioner vide letter dated 2nd August, 1993 as Full time Lecturer on temporary (ad-hoc) basis for the period beginning on 1st July, 1992 to 20th April, 1993. There is some mention of the Selection Committee which recommended appointment of the Petitioner as part time lecturer for the subject of Marathi in open category was not duly constituted because

the Selection Committee did not comprise of the Government Nominee as well as the subject expert of the University. It is stated that the recommendation of the committee and consequent selection of the Petitioner becomes null and void as per University Act, 1974.

16. It is then stated in the said Affidavit that the University vide its letter dated 26th May, 1994, approved the Petitioner's appointment from 2nd July, 1993 to 20th April, 1994. Some issue is made of there being a contradiction between the appointment date i.e. 20th April, 1994 and the approval date of the Petitioner i.e. 2nd July, 1993. It has been stated that thereafter in the year 1994-95, the College appointed the Petitioner on reserved post for scheduled caste category from 24th November, 1994 to 19th December, 1994 which has been approved by the University vide letter dated 24th November, 1994. It is stated that all these appointments on Full Time posts were made without following the proper selection procedure.

17. It has then been stated in the said Affidavit that the Petitioner's post came to be reserved for Scheduled Caste and for which the Petitioner was continued till 20th December, 1995. The

management of the Respondent No.4 then terminated the present Petitioner on 20th April, 1995. One Mr. Kasbe who was NET qualified Scheduled Caste candidate was appointed on that post on 1st July, 1995 till 20th April, 1995. Then reference is made to the Appeal filed by the Petitioner before University and College Tribunal, Mumbai which appeal was successful and the Petitioner's services was directed to be continued w.e.f. 20th April, 1995. The Petitioner's services was thereafter approved by the Respondent No.3 University till the passing of the NET / SET examination on temporary basis. It is stated that Respondent No.4 continued the services of the present Petitioner on reserved post without following de-reservation procedure of the post which is against Government Reservation Policy. It is stated that on the basis of UGC notification dated 14th June, 2006, (University Grant Commission (Minimum Qualifications required for the appointment and Career Advancement of Teachers in Universities and institutions affiliated to it) Second Amendment Regulations, 2006), the University of Mumbai approved the Petitioner's appointment as Full Time lecturers for the subject Marathi on probation by letter dated 15th February, 2012 as the Petitioner had acquired a M.Phil degree on 10th August, 1994. It is stated that the UGC vide its letter dated 24th February, 2009 clarified to the State Government

that the aforementioned amendment of 14th June, 2006 (i.e. exemption from NET / SET for M.Phil) was applicable only for those candidates who were recruited on or after 14th June, 2006 and did not have retrospective effect. Accordingly, it is stated that the Probation Approval issued by the University in favour of Petitioner which is dated 15th February, 2012 is contrary to the Notification dated 14th June, 2006 issued by UGC and therefore, invalid and bad in law.

18. It is stated in paragraph 11 of the said Affidavit in Reply that in the year 2009, after vacancy to open post in Marathi subject, the management had wrongly shifted the Petitioner on Open post without prior approval of the University and the office of Joint Director of Higher Education. In paragraph 12 of the said Affidavit in Reply it is stated as under:-

"12. I say and submit that the claim of the present Petitioner in respect of approval from 1st July, 1992 is not valid even though, the Petitioner is exempted from NET / SET examination. If, he fulfills the criteria as per the Government Resolution dated 27th June, 2013, as the Petitioner is entitled to get monetary benefit from the date of regular appointment but, the said Government Resolution dated 27th June, 2013 is challenged before the Hon'ble Apex Court by Special Leave Petition (C) No.4534 of 2016 (arising out of impugned final judgment and order dated 23rd December, 2015 in W.P.No.2082 of 2013 passed by the

Hon'ble High Court at Bombay by Asha Ramdas Bidkar & Anr V/s. State of Maharashtra with effect to Government Resolution is not given to the Petitioner unless and until the Hon'ble Court gives further direction in this regard. Hereto annexed and marked as Exhibit 11 is the copy of Government Resolution dated 27th June, 2013. Hereto annexed and marked as Exhibit 12 is the copy of order dated 14th March, 2016 passed by the Hon'ble Supreme Court in Special Leave Petition (C) No.4534 of 2016.

In view of the aforesaid facts and circumstances, I respectfully say and submit that in the present writ petition appropriate order may be passed in the interest of justice.

19. An Affidavit of Dr. Ajay Deshmukh, Registrar of University of Mumbai – the Respondent No.2 has been filed in Reply to the Petition. In the said Affidavit in Reply, it is stated that approval was granted to the Petitioner's appointment on a temporary basis by the University from 1st July, 1992 to 20th April, 1993 (ad-hoc appointment). Thereafter, the services of the Petitioner as full time lecturer in Marathi were continued by the college on temporary basis from 2nd July, 1993 to 20th April, 1994 and from 20th June, 1994 to 19th December, 1994 (ad hoc appointment), 21st April, 1995 to 20th April, 1996 (as per the Order dated 20th June, 1996 passed by the University Tribunal) and from 17th June, 1996 to 19th April, 1997, and thereafter from 20th April, 1997 till the Petitioner passes the NET / SET examination. It is then stated by

Respondent No.2 in the said Affidavit in Reply that the University issued a letter dated 14th November, 2008 granting approval to the Petitioner on probation basis from 19th February, 2008 i.e. from the date of UGC letter exempting the Petitioner from passing NET / SET since the Petitioner had passed the M.Phil degree examination on 10th August, 1994. Then reference is made to the University circular dated 30th September, 2006. It is stated in paragraph 5 that in the light of the subsequent University circular dated 19th November, 2014 approvals granted to those which would include the Petitioner who have passed their M.Phil degrees after 31st December, 1993 are required to be revoked. It is stated that the grant of approval from the date of acquisition of M.Phil degree and further action in that regard is regulated by the said University circular dated 19th November, 2014.

20. The Petition had come up before this Court on 18th December, 2019 when this Court had observed that the Joint Director, Higher Education, Respondent No.3 had joined issues with the University as in his Affidavit in Reply, he has stated that the approval granted by the University to the Probationary appointment of the Petitioner is contrary to the Notification dated 14th June, 2006 issued by the UGC.

21. Mr. R.J. Dhond, the learned Counsel for the Petitioner has submitted that the Petitioner has been working in the post of lecturer since 1st July, 1992 and has excellent academic and teaching record. He has submitted that the Petitioner is entitled to all benefits including appointment as Principal. He has submitted that the Petitioner was paid regular salary as per the scale from the year 1992. He has placed reliance upon the judgment dated 20th June, 1996 of the University and College Tribunal, Mumbai which had set aside the termination of the Petitioner and directed the management to continue the Petitioner's services and pay the wages to him. He has submitted that the action of the Respondent not to approve the appointment of the Petitioner on regular basis is illegal and violates the Petitioner's fundamental rights as well as the said judgment of the University and College Tribunal which has attained finality. The Petitioner is entitled to the approval for the post of lecturer with effect from 1st July, 1992. He has submitted that the approval after the Petitioner had obtained the M.Phil degree is not in accordance with Government Resolution dated 27th June, 2013 and therefore, the approval letter of the Respondent No.2 dated 10th August, 1994 is liable to be withdrawn and fresh letter approving the appointment with effect from 1st July, 1992 is required to be issued.

22. He has submitted that it is in view of the insistence of the NET / SET qualification condition on the Petitioner by Respondent Nos.1 to 3, though not applicable to the Petitioner, the proper approval was not accorded nor other benefits were extended to the Petitioner in spite of repeated requests and claims made by him. He has submitted that the Petitioner is not required to clear NET / SET inasmuch as in Maharashtra the said qualification condition was not made a mandatory entry point qualification with the issuance of the GR dated 19th September, 1991. It was only after the issuance of GR dated 11th December, 1999 i.e. when the fifth pay commission pay scales were introduced in the State that NET / SET was made a mandatory entry point qualification condition for lecturers in the Universities and Colleges.

23. He has relied upon the GR dated 27th June, 2013 wherein it was clarified that the NET / SET requirement mentioned in the GR dated 19th September, 1991 which was made applicable on 23rd October, 1992 shall not be applicable to the teachers who were appointed prior to 23rd October, 1992. He has accordingly submitted that in view of the Petitioner having been appointed prior to 23rd October, 1992 i.e. on 1st July, 1992, the NET / SET requirement is not applicable to the Petitioner. He has submitted

that it is settled law that once the advertisement had been issued on the basis of circular obtaining at that time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria made subsequently. He has accordingly submitted that the Petitioner being appointed on 1st July, 1992 would be entitled to be accorded approval on the date of appointment. He has further submitted that the approval given from the date of M.Phil degree is not in accordance with the said GR and the settled law and therefore, the letter of the Respondent No.2 granting approval from the date of M.Phil degree is required to be withdrawn and fresh letter according approval of the appointment of the Petitioner w.e.f. 1st July, 1992 is required to be issued.

24. Ms. Mehra, the learned AGP appearing for Respondent Nos.1 and 3 has relied upon the Affidavit of Dr. Sanjay S. Jagtap filed on behalf of Respondent Nos. 1 and 3. She has submitted that the Petitioner is not entitled to the exemption from NET / SET examination. This would be so despite the GR dated 27th June, 2013 having been issued as the said GR is challenged before the Supreme Court in S.L.P. (C) No.4534 of 2016 and the effect of the GR is not given to the Petitioner unless and until the Supreme

Court gives further direction in this regard. She has submitted that the Probation approval given by the University in favour of the Petitioner dated 15th February, 2012 is contrary to the Notification dated 14th June, 2006 issued by the UGC (i.e. exemption from NET / SET for M.Phil) as it was made applicable only for those candidates who were recruited on or after 14th June, 2006 and did not have any retrospective effect. She has accordingly submitted that there is no merit in the present Petition.

25. Mr. Rodrigues, the learned Counsel appearing for the Respondent No.2 has relied upon the Affidavit of Dr. Ajay Deshmukh dated 17th December, 2019. He has submitted that In the light of the aforementioned University circular approvals granted to those who have passed the M.Phil degrees after 31st December, 1993 are required to be revoked. He has submitted that as the Petitioner having passed his M.Phil degree post 31st December, 1993 would be governed by the said policy decision and accordingly, the Probation approval granted to the Petitioner is required to be revoked.

26. Having considered the rival submissions, it appears that although the Petitioner who was appointed on 1st July, 1992 and

working in the post since 1st July, 1992 as well as receiving regular salary as per the scale from that date, has not been accorded regularly approval from the date of his appointment as full time lecturer in Marathi in the said College.

27. In the judgment of the University and College Tribunal, Bombay which allowed the Appeal filed by the Petitioner being Appeal No.24 of 1995 and by which the termination of the Petitioner was set aside and the management directed to continue the Petitioner's services and pay him wages due to him, it was held in paragraphs 2, 8 and 9 as under:-

"2. It is not disputed that the Appellant, Prof. Patil was first appointed by letter dated 27th August, 1992 against open category after giving an advertisement in the news paper. It is however, contended that this appointment was a for a period from 1st July, 1992 to 20th April, 1993 on purely temporary basis and as per 100 point roster. The Appellant states that he was selected by the Selection Committee against an open category post. It is seen though the approval was sought for part-time post the University accorded approval for full-time post. The appellant further states that thereafter another appointment order was issued and he was continued upto 10th October, 1993 and thereafter from 11th October, 1993 till 20th April, 1994. This in both these orders of appointment however, it has been mentioned "appointment against Scheduled Caste" on purely temporary basis. This was also approved by the University. Thereafter it appears that one Shri Kasbe was appointed in place of the Appellant with effect from

1st July, 1995 till 20th April, 1996 and for which University approval was sought and granted.

"8. Submission on behalf of the Appellant is that the management could not have terminated the services of the Appellant on the ground that he had not passed the NET / SET examination\ nor could the management had termed his appointment as ad hoc appointment on that ground. The relevant circulars have been produced on record and they could be referred to for that purpose. The first circular dated 9th February, 1994 mentions that some Universities while making appointment or giving approvals between 1989-90 and 1993-94 have not observed the criteria of passing NET examination. While approving the advertisement also the Universities have not enforced this condition. However, by this circular the teachers appointed were allowed to be continued upto 31st of March, 1994 eventhough they had not appeared strictly observed this condition. Another circular dated 20th April, 1994 with Exhibit – 3 refers to yet another circular of 7th March, 1994 extending this period to 31st March, 1995, further extended that period to 31st March, 1996. Therefore those persons who were appointed in the year 1992 who continued till the year 1994 as is the case of the present Appellant will be governed by these three Circulars and they would get the benefit of the extended dates for passing the NET / SET examination. As I have noticed already the University while according approval had not mentioned that the appointment is either ad hoc or on temporary basis because of the non-passing of the NET / SET examination and that continued until for the first time the University mentioned while according approval by Exhibit – 5. The reason for ad hoc appointment on temporary basis is as he / she has not passed NET examination. The termination therefore on this ground could not be justified more so because of the last circular dated 22nd December, 1995 which reviewed the entire position with regard to the non-passing of NET / SET examination and its effect on the services of teachers and directed deletion of the last date for passing the examination which was 31st March, 1996. It further stated that they should not be removed form services on that ground and the only consequence

is that they would not be entitled to annual increment which should be released only after passing of that examination. It also says that their appointments should be on ad hoc basis.

9. The justification of termination given is that the post according to twenty point roster became available to a Scheduled Caste candidate and Scheduled Caste candidate was available and therefore he came to be appointed. Thus the vacancy went to that candidate and the Appellant could not have been appointed or continued. The reply given by the Appellant to this line of argument is that the post was advertised for open category candidate when he was first appointed in the year 1992. He went through selection process and after that though appointed on part-time basis the University approved his appointment on full-time basis. He stated that thereafter he continued to serve till 20th April, 1994 come out with a case that the roster indicated that the post should go to the Scheduled Caste and thereby make the Appellant ineligible to hold that post and give it to a Scheduled Caste candidate. It is further submitted that this is not permissible under the Statutes which prescribe the procedure for appointment. The procedure for appointment of teachers is given in Statute 416 which prescribes that there shall be a Selection Committee for making recommendations to the Governing Body for appointment of teachers in a college. It further say how the appointment to the post of teachers have to be made and says that they shall be made on merit and on the basis of an advertisement published in the news paper. The qualifications have also to be observed. It then deals with probation and confirmation of teachers appointed after a selection. Clause (iii) of Statute 417 deals with filling in of temporary vancies. They have to be filled in on the recommendation of the Local Selection Committee which is different that the Selection Committee under (i) of Statute 417. The period for which this temporary vacancies is to be filled in shall not exceed one term viz., of six months. The submission made on behalf of the Appellant is that therefore so far as the Appellant is concerned his appointment was after a selection by the

Selection Committee under Clause (I) of 417 and the appointment order has been also issued in the form prescribed therefore. It was against an open category advertised and it was not then stated that it was subject to passing of NET / SET examination and therefore, it ought to have been on probation as contemplated by the Statute (I) of 418. It is further submitted that the subsequent stance take by the college management that the post was reserved as per the now roster since the management found the candidate belonging to the reserved category for which it was meant to be reserved category candidate was appointed and he was Mr. Kasbe cannot be allowed to prevail. In my opinion, it is difficult to reject this line of argument. For the first time on 27th June, 1994 the management while making an appointment adds a line appointed against Scheduled Caste. It repeats it while issuing continuation order dated 20th April, 1995, and yet so far as the approval is concerned it does Caste category. It mentions as foot note that it is because he has not passed NET examination. The appointment of Shri Kasbe mentions that it is a local appointment and probably that has a reference to 417 (iii) which speaks of an appointment on the recommendation of Local Selection Committee constitute for recommending appointments for filling in temporary vacancies. This could not be case of a temporary vacancy. It has been manned by the Appellant right since 1992. It is filled in under Statute 417(i) after giving advertisement and making the candidate to go through selection process by a committee constituted under that clause. Use of the word temporary, ad hoc appears to be a device to enable the management to throw out an employee as has been done in this particular case. I therefore, find that the justification given by the management for terminating the services of the present Appellant is not sound."

28. Thus, the judgment of the University and College Tribunal which had attained finality clearly held that there was no dispute in so far as the Petitioner being appointed by letter dated 27th

August, 1992 against open category after giving advertisement in the newspaper. His appointment was effective from 1st July, 1992. It was also noticed that the University whilst according approval had not mentioned that the appointment is either on ad hoc or on temporary basis because of the non-passing of the NET / SET examination. It was an open category advertisement and it was held that the word used 'temporary' or 'ad hoc' appeared to be a device to enable the management to throw out an employee as has been done in present case. It was thus held that, the justification given by management for terminating the services of the Petitioner was not sound and was accordingly set aside. This judgment of the University and College Tribunal and the findings on facts therein are binding upon the University of Mumbai and the management of the said College. It is also not open for the Respondent Nos.1 and 3 to depart from the findings on facts by the Tribunal. The Petitioner is thus entitled to be accorded regular approval with effect from 1st July, 1992, which would be the date of his appointment as full time lecturer in Marathi in the said college.

29. We would otherwise have not gone into other issues. However, since these issues have been raised by the parties, we are dealing with the same.

30. The Respondent No.2 granted approval to the Petitioner only after the completion of M.Phil degree by the Petitioner on 10th August, 1994. This by a letter dated 15th February, 2012 issued by the University of Mumbai granting probation approval to the Petitioner from 10th August, 1994.

31. There appears to be an inconsistency in stand of Respondent Nos. 1 and 3 from that of Respondent No.2 regarding the probation approval granted by Respondent No.2 to the Petitioner. In the Affidavit in Reply of Dr. Sanjay S. Jagtap, Joint Director Higher Education, Konkan Region, Panvel on behalf of Respondent Nos. 1 and 3, it is stated that the probation approval issued by the University in favour of the Petitioner dated 15th February, 2012 was contrary to the Notification dated 14th June, 2006 issued by UGC and therefore, invalid and bad in law. The probation approval had been granted by the Respondent No.2 on the Petitioner having obtained M.Phil degree. However, the UGC Notification dated 14th June, 2006 which had been relied upon by

the University in granting the approval had been clarified by the UGC vide its letter dated 24th February, 2009 that, it would be applicable only to those candidates who were recruited on or after 14th June, 2006 and did not have any retrospective effect. Thus, it is stated that the Petitioner could not have been granted the benefit of the UGC Notification dated 14th June, 2006, having been appointed / recruited prior to 14th June, 2006. The Respondent No.2 in its Affidavit in Reply has now gone on to state that the Petitioner could not have been granted exemption from NET / SET by the UGC as the Petitioner had obtained the M.Phil degree on 10th August, 1994 i.e. after 31st December, 1993. This by placing reliance upon the University Circular dated 19th November, 2014 which provides that approvals granted to those having passed M.Phil degrees after 31st December, 1993 are required to be revoked.

32. There may be some merit in the contentions of these Respondents that the probation approval could not be given by the University to the Petitioner on clearing the M.Phil degree. However, the Respondent No.2 as well as Respondent Nos.1 and 3 have lost sight of and / or failed to give effect to the GR dated 27th June, 2013 which clarified that the prior GR dated 19th

September, 1991 which had introduced the qualification of NET / SET shall not be made applicable to teachers who are appointed prior to 23rd October, 1992. The Petitioner having been appointed on 1st July, 1992 and having the requisit qualification of M.A.B+ would, therefore, not be required to satisfy the NET / SET requirement and hence the clearing of the M.Phil degree is immaterial. The only reason give by Respondent Nos.1 and 3 in their Affidavit in Reply for not given effect to the GR dated 27th June, 2013 is that the GR is challenged in the Supreme Court by filing of Special Leave Petition (C) No.4534 of 2016 from the impugned final judgment and order dated 23rd December, 2015 in W.P.No.2082 of 2013 passed by this Court in Asha Ramdas Bidkar & Anr V/s. State of Maharashtra. This cannot be considered to be a satisfactory reason for not giving effect to the said GR particularly when there is no mention of a stay being granted to the GR. We do not find any merit in the other contentions of these Respondents regarding the invalidity of the selection and / or continuance of the Petitioner in the post of lecturer in the Respondent No.4 college. These contentions are of no substance and are merely made by way of an after thought.

33. Consequently, the Petitioner would be entitled to the benefit of GR dated 27th June, 2013 and his appointment being prior to the 23rd October, 1992 would be accorded regular approval from his appointment date i.e. 1st July, 1992.

34. Accordingly, we pass the the following order:-

- (a) The Respondent No. 3 shall accord regular approval w.e.f. 1st July, 1992 for the appointment of the Petitioner as full time lecturer in Marathi in the said College.
- (b) The Respondent No.2 shall withdraw and / or cancel the approval letter dated 15th February, 2012 granting probation approval to the appointment of the Petitioner w.e.f. from the date the Petitioner cleared the M.Phil i.e. on 10th August, 1994;
- (c) The Respondent No.2 shall issue a fresh letter according regular approval to the appointment of the Petitioner w.e.f. 1st July, 1992;
- (d) The Writ Petition is made absolute in the above terms with no order as to costs.

(R. I. CHAGLA J.)

(S.C. DHARMADHIKARI, J.)