

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

WRIT PETITION NO.11746 OF 2018

Mohan Shamrao Shinde
Age 61 years, residing at
Anand Vidyanagar,
Near S.M.High School,
Kavathemahankal,
Taluka Kavathemahankal.
District Sangli

... Petitioner.

V/s.

1. The State of Maharashtra,
Through the Principal Secretary
to Government of Maharashtra,
Department of Higher & Technical
Education, Mantralaya, Annex,
Mumbai - 400 032. ...
2. Director of Higher Education,
Maharashtra State, Pune,
Central Building. ...
3. Divisional Joint Director,
Higher Education (Grants),
Kolhapur Division, Rajaram
College Campus, Kolhapur ...
4. The Senior Auditor,
Higher Education (Grants)
Kolhapur Region,
Kolhapur ...
5. The Accountant General (A & E)-1,
101, Maharashi Karve Road,
Mumbai - 400 020 ...

6. The Principal,
Padmabhushan Vasantdada Patil
Mahavidyalay, Kavathemahankal,
District Sangli 416 405
7. The Secretary,
Shikshan Prasarak Sanstha,
Kavathemahankal,
District Sangli 416 405 ...
8. The Registrar,
Shivaji University,
Vidyanagari, Kolhapur
District Kolhapur ... Respondents.

Mr.C.G.Gavnekar with Mr.G.S.Hiranandani for the Petitioner.

Mr.V.M.Mali AGP for the Respondent-State.

**CORAM : S.S. SHINDE &
V.G.BISHT, JJ.**

**RESERVED ON : 4TH MARCH, 2020
PRONOUNCED ON : 16TH JULY, 2020**

JUDGMENT (PER V.G. BISHT, J.)

1. Heard learned counsel for the parties.
2. Rule. Rule made returnable forthwith. Learned counsel waives service on behalf of the respondents. By consent of the parties heard finally at the stage of admission.

3. By this petition under Article 226 of the Constitution, the petitioner has approached this Court being aggrieved by the letter dated 5/06/2018 addressed by Respondent No.2 and impugned action of Respondent No.3, whereby it is held that the petitioner is not entitled for pensionary benefits.

4. The petitioner came to be appointed as Lecturer on Clock Hour Basis (CHB) on 20/06/1992 in Respondent No.6 College through University Selection Committee. The appointment of the petitioner subsequently came to be approved by University vide letter dated 8/08/1992 and the petitioner worked as CHB teacher upto 9/06/1995. He then came to be appointed as Full Time teacher by Local Selection Committee on 20/06/1995 and his appointment was duly approved by Respondent No.8 University by letter bearing No.85/3370 dated 6/07/1996. The petitioner since his appointment in Respondent No.6 College on 20/06/1992 as Lecturer worked continuously till his date of retirement on 31/05/2017. In all, the petitioner states that he worked as a Teacher in Senior College for 25 years.

5. According to the petitioner since he was appointed with approval of University on CHB basis and was duly qualified as per the norms existed for appointment of Lecturer, he was not required to acquire NET/SET qualification and was thus exempted from acquiring NET/SET qualification by resolution dated 27/01/2014 and 22/01/2015. Therefore, not having NET/SET qualification was not ground to disqualify him from getting pensionary benefits.

6. In view of his retirement on 31/05/2017, Respondent No.6 - College submitted pension proposal to Respondent No.3 Divisional Joint Director, who in turn sought clarification as to how the petitioner was exempted from NET/SET qualification. Respondent No.8, the Registrar, Shivaji University, Kolhapur, relied upon Government decision that since the petitioner was working in Respondent No.6 - College since 20/06/1992 on CHB basis and thereafter on 15/11/1995 as Full Time Lecturer, therefore, he was entitled to be exempted from NET/SET qualification.

7. Respondent No.3 further returned the pension proposal alongwith service book to Respondent No.6 College on the ground that clarification sought by him from Respondent Nos.1 and 2 was awaited. Lastly, Respondent No.2 by the impugned order informed that the petitioner was not entitled to pensionary benefits for want of acquiring NET/SET qualification and rejected proposal for pensionary benefits.

8. Perusal of the impugned order reveals that the claim of the petitioner has been rejected on the ground that the petitioner after his regular appointment did not acquire prescribed educational qualification i.e. NET/SET qualification and he came to be regularised on 27/06/2013. He would be governed by Defined Contribution Pension Scheme (New Pension scheme) (DCPS) and shall not be entitled to benefits of old pension scheme.

9. At the outset there is no challenge to the submissions of learned counsel for the petitioner that initial appointment of the petitioner on CHB basis was with the approval of University and even subsequent appointment

was duly approved by the University by the orders dated 08/08/1992 and 06/07/1996 (Exhibit "A" and Exhibit "B"). Not only that, the record reveals that the petitioner was granted increment as per procedure from time to time. Moreover, the petitioner had rendered continuous service of more than 20 years thereby entitling him to pensionary benefits as provided under pension rules.

10. Apart from above, learned counsel for the petitioner has tendered on record the Government Resolution dated 27/06/2013 (Exhibit "F") and translation (Exhibit F-1"). It will be relevant to refer to translated part of Government Resolution which reads as under :

"GOVERNMENT DECISION :-

14. Considering the circumstances mentioned in the introduction the notification of the UGC dated 19/09/1991 has been brought into effect vide Govt. Decision dated 23/10/1992. Therefore the provisions in the said government decision could not be brought into effect by retrospective effect. Hence the qualification in the notification dated 19/09/1991 of

the UGC would not remain applicable to the teachers appointed prior to dated 23/10/1992.

15. The government is hereby granting approval for holding as granted the service of the non NET/SET teachers who have not acquired in their service duration the educational qualification/eligibility (NET/SET, PHD/M PHIL) prescribed by the UGC for the post of lecturer from time to time for all purposes from the date of issuance of the government decision subject to the fulfillment of the following conditions :

(A) The concerned teachers should have been appointed on regular basis.

(B) The concerned teachers should have been appointed having complied with all the procedures prescribed for the post of teacher.

(C) The appointment of the concerned teacher should have received University approval having fulfilled all the prescribed qualifications and conditions other than the NET/SET educational qualification.

(D) The proposal of the concerned teacher should

have been submitted by the university to the UGC for its approval.

16. Committee should be constituted by the concerned Divisional Director, Higher Education under his own Chairmanship for examining the cases of the teachers from dated 2/10/1992 up till dated 03/04/2000 on merit. The said scrutiny committee having strictly examined whether the entire procedure of appointment of the concerned teacher from the stage of advertisement till the issuance of appointment order, the vacancy of post, complying with the social reservation obligations and other similar matter is implemented in a regular manner or not. And submit his self explanatory report to the Director, Higher Education, Maharashtra State, Pune and thereafter final approval should be given at the Director level.

17. Separate orders would be issued in connection with the two points :- if earlier appointment has been given to the teachers from the above mentioned period on the post of principal or equivalent post taking for granted their earlier service then accordingly their

increment in pay entitled to them as per the prevailing rules and the salary paid to them accordingly would remain unaffected.

18. The said teachers would be entitled to the newly defined contributory pension scheme from the date of issuance of the government decision as decision has been taken to hold their service as granted from the date of issuance of the government decision.

19. This government decision is being issued vide Finance Department Informal Reference No.IFR-85/13/service-4 dated 17 June, 2013, A.D.IFR No.873/2012/Twelve dated 22/05/2012 and IFR No.399-2012-E dated 22 May 2012 of the Law and Justice Department in concurrence with these department.”

11. Clause 14 of the said Government Resolution dated 27/06/2013 lays down that the Assistant Professors who were appointed prior to 23/10/1992 are not required to fulfill prescribed qualification by the said notification dated 19/09/1991. Therefore, the petitioner, who was appointed on

20/06/1992 will not be governed by notification dated 21/06/1991 issued by University Grants Commission. Therefore, the pension proposal of the petitioner will have to be considered in the light of Government Resolution dated 21/06/2013.

12. In **Anil Krishnarao Phadnis vs. Matoshree Bayabai Shripatrao Kadam Kanya Mahavidyalay & Ors.** decided on 25th October, 2013 by this Court (A.S.Oka and Revati Mohite Dere, JJ.) lays down similar proposition. In the said case the petitioner was appointed as Associate Professor in Hindi on 25th August, 1992 and got superannuated on 30th June, 2012. His pension proposal was returned by Respondent No.5 on the ground that there was no exemption granted to the petitioner from passing NET/SET examination and therefore, pensionary benefits cannot be granted to him. In the said case, learned counsel for the petitioner placed on record Government Resolution dated 27th June, 2013 which is also subject matter of the case on hand. This Court after referring to clause 14 of the Government Resolution came to the conclusion that since the petitioner was appointed on 25th August, 1992, he will

not be governed by the notification dated 19th September, 1991 issued by the University Grants Commission and, therefore, pension proposal of the petitioner was required to be considered in the light of Government Resolution dated 27th June, 2013.

13. Similarly, in **Maharashtra Federation of University and College Teachers Organisation vs. State of Maharashtra and Others** in Writ Petition No.2082 of 2013 decided by this Court (Anoop V. Mohta and A.A.Sayed, JJ) on 23rd December, 2015 considered the validity of Government Resolution dated 27th June, 2013 and upheld the same.

14. We are, therefore, of the considered view that the impugned letter dated 5th June, 2013 is not sustainable. Hence the following order :

ORDER

(i) We direct Respondent No.6 to resubmit the pension proposal of Petitioner to Respondent Nos.1 to 5 alongwith copy of the Government Resolution dated 27th June, 2013 as well as authenticated copy of this order.

- (ii) Respondent Nos.1 to 5 shall process the proposal and appropriate decision shall be taken on the pension proposal within a period of four weeks from the date of receipt of such proposal.
- (iii) Rule is made absolute in the aforesaid terms. No costs.

(V.G. BISHT, J.)

(S.S.SHINDE, J.)