

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

**WRIT PETITION NO.6253 OF 2017**

Devidas Pundlik Muneshwar .. Petitioner  
Versus  
The State of Maharashtra and Others .. Respondents

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Mr Y. P. Deshmukh, Advocate for the Petitioner  
Mrs M.A. Deshpande, Addl. G.P. for Respondent Nos.1, 3 and 4  
Mr S.S. Thombre, Advocate for Respondent No.2

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**CORAM : S. V. GANGAPURWALA  
AND  
R.N. LADDHA, JJ.**

**DATE : 01-09-2021**

**PER COURT : -**

1. The petitioner seeks directions against the respondent that the petitioner is entitled for exemption from passing NET / SET examination on the ground that his initial appointment is with effect from 02-09-1991. The petitioner seeks directions against the respondent to sanction pensionary benefits and also cash benefits.

2. Mr Deshmukh, learned Counsel for the petitioner, submits that the petitioner was appointed on 02-09-1991 on temporary basis. This Court in its Judgment and order dated 05-01-2017 delivered in Writ Petition No. 7361 of 2015, had directed the Director of Higher

Education to consider the proposal of the petitioner afresh considering the appointment of the petitioner on 03-09-1991 as temporary and not on contractual basis, however, the same is not considered. The learned Counsel submits that the University has condoned the break in service for the period of 14-04-1992 to 07-07-1992 and 16-04-1993 to 14-06-1993. The University is the competent authority. The learned Counsel further submits that as the appointment is prior to 01-10-1992, the petitioner is not required to obtain NET / SET qualification and is entitled for cash benefits.

3. According to the learned Counsel for the petitioner, the respondents have committed illegality in denying the benefits to the petitioner.

4. The learned AGP submits that the petitioner is not entitled for CAS benefits. Since the petitioner does not possess the required qualification, the petitioner is not entitled for pensionary benefits also. No illegality has been committed in negating the claim of the petitioner.

5. We have also heard Mr. Thombre, learned Advocate for the University.

6. It appears that the petitioner was initially appointed on 02-09-1991 on temporary basis. His services were discontinued and fresh appointment orders were issued.

7. There was a break in service for about 145 days prior to the regular appointment on 01-01-1994. The said break in service is condoned by the University for the pension purposes under order dated 26-08-2005. The petitioner did not acquire NET / SET qualification. The appointment of the petitioner would be considered as a regular appointment from 01-01-1994.

8. The break in service has not been condoned for regular purposes by the University as the petitioner does not possess NET / SET qualification. In view of the Judgment of the Division Bench of this Court at Principal Seat in **Writ Petition No.2082 of 2013 dated 23.12.2015**, it has been held that those appointed between 24-10-1992 to 03-04-2000 and not possessing NET / SET qualification are not entitled for CAS benefits. The petitioner's regular appointment is with effect from 01-01-1994. Earlier break in temporary service is condoned for the pension purpose by the University, but has not been condoned by the Director of Education.

In respect of the break in service of the temporary employee, only a Director of Higher Education has power to condone the break in service, but he has refused to condone the break in service.

9. Be that as it may, the appointment of the petitioner from 01-01-1994 is a regular appointment. The same is also not disputed by the University. The petitioner would be entitled to the benefits of the Government Resolution dated 27-06-2013. The said GR has given exemption for the employees, who have not passed NET / SET examination. It has been provided in the said GR that the Government hereby grants approval to hold the services of those non NET / SET teachers appointed during the period 23-10-1992 to 03-04-2000, who during the service period had not acquired the educational qualification (NET / SET / Ph.D./ M.Phil) prescribed for the post of lecturer by the UGC, valid for all the purposes from the date of issuance of the said Govt Resolution subject to the conditions laid down therein. It is not disputed that, the petitioner possesses the necessary qualification for the said post except NET / SET qualification. In view of the G.R. dated 27-06-2013 though the petitioner may not be entitled for the CAS benefits, but the petitioner would be entitled for the pensionary benefits considering his continuous service from 01-01-1994 till the date of his retirement.

10. Reliance can also be placed on the Judgment of the Division Bench of this Court at Principal Seat in **Writ Petition No.13166 of 2017 dated 03-10-2018.**

11. In light of the above, the impugned communication is quashed and set aside.

12. The respondents shall process the pension proposal of the petitioner considering that the petitioner is entitled for the pension being in regular services with effect from 01-01-1994 till the date of his retirement. The pension proposal shall not be rejected only on the ground that the petitioner did not possess NET / SET qualification. The pension proposal shall be processed expeditiously and preferably, within four months.

13. The arrears be paid deducting the amount of the provisional pension received by the petitioner.

14. Writ Petition is accordingly disposed of.

[ R.N. LADDHA ]  
JUDGE

[ S. V. GANGAPURWALA ]  
JUDGE

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