

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

WRIT PETITION NO. 1763 OF 2019

Dr. Kiran Purshottam Adhi

... Petitioner

Versus

State of Maharashtra and Anr.

... Respondents

Ms. Chandana Salgaocar, for the Petitioner.

Mr. Yunus Vakaharia h/f Rajendra Anbhule, for the Respondent No.2.

Ms. Sushma Bhende, AGP for the State-Respondent No. 1.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

DATE : 25th NOVEMBER, 2021.

P.C. :-

Rule.

2. Ms.Bhende, learned AGP for the respondent nos.1, waives service. Mr. Yunus Vakaharia, learned counsel for the respondent no. 2 waives service. By consent of parties, petition is heard finally.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus against respondent no. 1 to forthwith issue letter of continuity in service from 5th August 1991, all service, retirement and similar other

benefits (Pension, Gratuity) with effect from 5th August 1991.

4. The petitioner had applied for the post of Lecturer in the department of Physics with respondent no. 2 on 29th June 1991 and was appointed as a Lecturer on temporary basis for a period of 6 months vide appointment letter dated 1st August 1991. On 3rd July 1991, Selection Committee, selected the petitioner after following interview process. The petitioner thereafter joined his duties as Lecturer on 5th August, 1991. On 9th July, 1991 petitioner had applied for the post of Lecturer in Physics with respondent no. 2. The Selection Committee after following the procedure and after interview of the petitioner and other candidates, appointed the petitioner on 4th December 1991. The petitioner was appointed as a Lecturer on temporary basis until further orders.

5. The petitioner was thereafter appointed on probation for two years for the post of Reader and his services were to be governed by the provisions of University Act, 1994. The petitioner was confirmed on 23rd March 2010. The petitioner was thereafter promoted to the post of Associate Professor vide letter dated 19th July and was promoted to the post of Professor under the Career Advancement Scheme on 9th June 2014 vide promotion letter dated 16th July 2018. The petitioner thereafter made correspondence with respondent Nos 1 and 2 for issuance of General Provident Fund account number till date.

6. The petitioner was in service right from the initial date of his appointment till the date. On 17th June, 2017 respondent no. 1 informed respondent no. 2 that the petitioner's service from 5th August 1991 to 23rd March 2008 was on temporary basis and that the petitioner was denied General Provident account number in view of clause 2(i) of the Government Resolution dated 12th January 2007. Respondent No. 2 addressed a letter to the petitioner reiterating the reasons set out by the Respondent No. 1 in letter dated 17th June 2017. The petitioner thus filed this petition.

6. Ms. Salgaocar, learned counsel for the petitioner invited our attention to various correspondence exchanged between the parties and also to the averments made by the State Government in its affidavit-in-reply. She submits that the only contention raised in the affidavit-in-reply by the State Government is that the petitioner was appointed on temporary basis for a period of 6 months from 29th June 1991 and thereafter was appointed as a Lecturer on temporary basis vide letter dated 24th August 1991. It is contended by respondent no. 1 in the affidavit-in-reply that the petitioner was not selected by duly Selection Committee. The petitioner was appointed through regular mode of selection on probation for two years for the post of Reader on 24th March 2008 and thus according to the State Government, the petitioner is eligible for getting service benefits with effect from 24th March

2008 and not for prior period.

8. Learned counsel for the petitioner strongly placed reliance on Rule 30 and Rule 33 of the Maharashtra Civil Services (Pension) Rules 1982 and also on the unreported Judgment delivered by this Court on 22nd October 2021 in Writ Petition No. 1812 of 2017 filed by Dr. Dinesh Pandurang Kudav Vs. University of Mumbai and the State of Maharashtra and would submit that this Court after construing Rule 30 of the Maharashtra Civil Services (Pension) Rules 1982, has granted reliefs in favour of the petitioner in that case who was initially appointed on temporary basis and was held entitled to full pension. She submits that the facts in this case, the petitioner stands on better footing.

9. Mr Vakharia, learned counsel for respondent no.2-University, does not oppose the submissions made by the learned counsel for the petitioner. Ms. Bhende, learned AGP for the state place reliance on the stand taken by respondent no. 1 in the affidavit-in-reply filed before this Court.

10. With the assistance of the learned counsel for the petitioner and for the respondents, we have perused the report of Selection Committee dated 3rd July, 1991 constituted under section 58 of the Poona University Act, 1974. In the said meeting of the

Selection Committee, in addition to the members of the Selection Committee, various candidates including the petitioner were present. The minutes of the meetings of the Selection Committee, clearly indicates that name of the petitioner was selected in the said Committee meeting for appointment on temporary basis. Similarly, in the Selection Committee report dated 4th December 1991, annexed at page No. 72 of the affidavit in rejoinder also clearly indicates that several candidates including the petitioner were present in the said meeting. After following procedure and after taking interview of the candidates including the petitioner, the petitioner was appointed as a Reader in open category.

11. We are thus of the view that stand taken by respondent no. 1 in the affidavit-in-reply dated 24th June ,1991 that the petitioner was not selected through duly Selection Committee is factually incorrect. It is not disputed in the affidavit-in-reply that there was no break in service of the petitioner since his initial date of appointment in the year till the date.

12. We have also perused letter dated 2nd December 2016 from the respondent no. 2 addressed to Deputy Director of Education furnishing the details of appointment of the petitioner and recommending the appointment of the petitioner for pension.

13. Rule 30 of the the Maharashtra Civil Services (Pension)

Rules 1982 has been construed by this Court in the Judgment of Dr. Dinesh Kudav (supra). This Court has held that the petitioner who had completed more than ten years of service though appointed on temporary basis on the sanctioned post is eligible to get the pension. The University has not disputed that provision of the Maharashtra Civil Services (Pension) Rules 1982 would apply to the petitioner employed by respondent no. 2-University. This Court accordingly held that Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 would apply to the appointment of the petitioner for the purpose of payment of pension and other benefits permissible under the said rules.

14. This Court also considered that appointment of the petitioner initially made on the post of Lecturer was made on the recommendation of the Selection Committee consisting of various officers including the nominee of the state Government. This Court accordingly held that once it is established that the petitioner was appointed on the vacant post out of the posts sanctioned by the State Government and was paid salary and other benefits out of the salary grant paid by the State Government, the State Government cannot be now allowed to deny its obligation to pay the pension to the petitioner. The State Government was directed to release the retirement dues of the petitioner therein including the pension and gratuity by treating his continuous service from his initial date of appointment within the time prescribed in the said order and to continue to pay such

benefits as payable under the provisions of MCS (Pension) Rules, 2002 regularly.

15. In our view, said Judgment would squarely apply to the facts of this case. We do not propose to take a different view in this matter. Facts in this petition are better in this case.

16. Rule 33 of the MCS(Pension) Rules, 1982 provides that service rendered by a Government servant holding permanent post on the date of his retirement, the entire temporary or officiating service rendered under Goevrnement followed without interruption or confirmation in the same or another post, shall count in full service qualifying for pension except the services rendered against one of the post mentioned in Rule 57. In our view Rule 33 would apply to the case in hand and would entitle the petitioner for full pension under this Rule also.

17. In our view, the State Government thus cannot refuse to consider the period of appointment from initial date of appointment for the purpose of computation or qualifying service for the purpose of pension and other entitlements. In our view, stand taken by respondent no. 1 in the affidavit-in-reply that the petitioner would be eligible only with effect from 24th March 2006 is totally untenable and contrary to the law.

18. We accordingly, pass the following order.

- (i) Writ Petition is made absolute in terms of prayer clause (a).
- (ii) The letter of continuity of service shall be issued by respondent no. 1 within two weeks from today.
- (iii) Rule is made absolute accordingly. No order as to costs.
- (iv) The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D.DHANUKA, J.]