

PRONOUNCED ON : 22nd OCTOBER, 2021

JUDGMENT (Per R.D.Dhanuka, J.) :-

Rule. Learned counsel for the respondent no.1 waives service. Ms.Jyoti Chavan, learned Assistant Government Pleader waives service for the respondent nos. 2 and 3. By consent of parties, the petition is heard finally.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner is seeking an order and direction against the respondent no.1 to forward the pension papers of the petitioner to the respondent no.2 and seeks further direction against the respondent nos. 2 and 3 to pay the petitioner his retirement dues including pension and gratuity by treating qualifying service as continuous from his initial date of appointment i.e. from 1981 with interest at the rate of 9% per annum from the date of the pension and gratuity became due till payment or realization of the same. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. It is the case of the petitioner that the petitioner is qualified as M.Sc. (Organic Chemistry) (1981) and has completed his Ph.D (Organic Chemistry) (1988). The petitioner was initially appointed as junior Analyst, a non-teaching post, on permanent basis in the

Chemistry Department of the respondent no.1 University in the year 1981. He continued to be in service in the non-teaching post till 1993 without any break in services.

4. On or about 15th December, 1993, the petitioner was appointed as a lecturer after following the prescribed procedure in the respondent no.1 University pursuant to the advertisement dated 7th November, 1992 in the Chemistry Department of the respondent no.1 University. The said post was shown to be reserved for the DT/NT. No suitable candidate was available. No reserved category candidate was available for the said post. The petitioner was thus appointed on the said post on the temporary basis. The petitioner continued on the said post by the respondent no.1 without break in the service as a full time lecturer by issuing fresh appointment letter on yearly basis.

5. It is the case of the petitioner that on 3rd April, 1999, the respondent no.1 though issued an advertisement for other posts in the Chemistry Department, did not advertise for the said post occupied by the petitioner as a lecturer in the Organic Chemistry. On 6th and 7th September, 2002, the respondent no.1 issued an advertisement for the

post in the Chemistry Department of the respondent no.1. The posts in the Chemistry Department i.e. the Organic, Inorganic and Analytical Chemistry were clubbed together resulting into the ambiguity regarding the post occupied by the petitioner.

6. The petitioner filed a writ petition bearing lodging no. 2568 of 2002 in this Court. The respondent no.1 University made a statement before this Court in the said writ petition that the proposal of regularization of the petitioner on the said post was under consideration before a Special Committee along with other similar cases. The University will take appropriate decision after receiving the report from the Committee and till the decision would be taken by the University, the appointment of the petitioner as a lecturer in Organic Chemistry would continue. This Court accordingly made it clear that in case the decision of the University was adverse to the petitioner, the same shall not be implemented for the period of four weeks from the date of communication of such decision to the petitioner.

7. It is the case of the petitioner that the petitioner thereafter continued to work on his post. The said Special Committee did not

submit any report. The respondent no.1 however again advertised the said post on 6th December, 2007. The petitioner once again filed a writ petition bearing no. 1318 of 2008 in this Court. By an order dated 18th June, 2008, this Court recorded the statement made by the University that out of the three posts advertised for the post of lecturer in the Department of Chemistry in respect of one post, no further steps will be taken pursuant to the advertisement. In view of the said statement made by the University, the petitioner withdrew the said writ petition with liberty to approach this Court, if the occasion so arises.

8. The petitioner accordingly continued to work on the said post without any break in service and was paid salary all throughout by the respondent no.1 University from the grant received from the State Government as per the prescribed pay scale and also received all due increments. The petitioner also received vacation salary, leave etc. The provident fund was deducted from his salary. On 31st March, 2017, the petitioner retired by superannuation. It is the case of the petitioner that the petitioner had served from 1981 to 1993 for 11 years as Junior Analyst on permanent basis and from 1993 to 2017 for 24 years as full time lecturer with the respondent no.1.

9. It is the case of the petitioner that since the respondent no.1 University did not send the pension papers of the petitioner to the respondent no.1 State, though repeatedly called upon by the petitioner, the petitioner filed this writ petition *inter alia* praying for various reliefs. The matter appeared on board on 3rd August, 2021 when the learned A.G.P. tendered affidavit in reply of the Joint Director of the Higher Education and suggested that in view of the contentions raised by the State Government, the University be directed to file an affidavit and deal with the contentions raised by the petitioner as well as the State Government. This Court accordingly directed the University to file an affidavit.

10. On 14th September, 2021, after adverting to the affidavit filed by the State Government, this Court recorded the contentions raised by the State Government in the affidavit in reply dated 28th July, 2019 that till date, University had not informed the State Government regarding the decision of the Special Committee and thus the status of the appointment of the petitioner was still not decided by the University. It was the contention of the State Government that since there was no clarity regarding the appointment of the petitioner and in absence

thereof, the petitioner could not claim the pensionary benefit under Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982.

11. This Court recorded that there was no dispute that the services of the petitioner had been adjusted by the Mumbai University against some post in view of the candidate from the reserved category being available for the post occupied by the petitioner. Learned counsel for the University stated before this Court that letter dated 3rd February, 2021 issued by the Mumbai University to the Deputy Director of Education would clearly indicate that there were seven sanctioned posts out of which only four posts were filled up and three were vacant. By the said order, this Court directed the respondent no.1 University to make a statement before this Court (i) as to whether the petitioner was appointed on any sanctioned post or the petitioner was adjusted for any sanctioned post in view of the reserved category candidate for the post when occupied by the petitioner was available ? and (ii) whether there was any vacant post available as indicated in the chart reflected at page 103, on which the petitioner was adjusted ? Pursuant to the said order passed by this Court, the respondent no.1 University filed an affidavit on 30th September, 2021.

12. Mr.Desai, learned senior counsel for the petitioner invited our attention to the various documents annexed to the writ petition and the affidavit filed by the respondents. He submits that the petitioner continued to be in service till the date of his superannuation and worked for about 36 years with the respondent no.1 University including for a period of 24 years as a full time lecturer. He submits that all throughout the State of Maharashtra had paid a grant in respect of various sanctioned posts to enable the respondent no.1 University to pay the salary and other expenses to the staff members including the lecturer appointed on the sanctioned post out of the said amount. The petitioner was thus all throughout paid the salary under this arrangement between the respondent no.1 and the State of Maharashtra.

13. It is submitted that though the petitioner was appointed on the temporary post without any break in service, the respondent no.1 University did not send the pension papers of the petitioner to the State of Maharashtra for payment. He relied upon section 76 of the Maharashtra Universities Act, 1994 and would submit that the appointment of the petitioner to the post of lecturer was made by the respondent no.1 after following requisite procedure under section 76 of

the said Act after recommendation of the Selection Committee which consist of various representatives of the University as well as the State Government. The State Government was fully aware of the appointment of the petitioner to the said post of the lecturer for more than two decades.

14. Learned senior counsel invited our attention to Rule 30 of the said Maharashtra Civil Services (Pension) Rules, 1982 and would submit that the petitioner having rendered temporary service of the more than ten years was entitled to the retirement pension, retirement gratuity etc. He submits that the entitlement of the petitioner for payment of the pension and other benefits has not been disputed either by the respondent no.1 or by the State Government. A dispute between the respondent no.1 on one hand and the State Government on the other hand is as to who is liable to pay the said pension amount and other benefits to the petitioner.

15. Learned senior counsel invited our attention to the stand taken by the respondent no.1 University and would submit that it is the case of the respondent no.1 University that the petitioner was appointed on the

sanctioned post though on temporary basis but without any break in service and was paid the salary from time to time out of the grant received from the State Government. He also invited our attention to the various paragraphs from the affidavit in reply filed by the respondent no.1 and would submit that when the petitioner was appointed to the said post of lecturer in Chemistry, there was several posts vacant on the date of such appointment and even thereafter.

16. Mr.Rodrigues, learned counsel for the respondent no.1 University invited our attention to various averments made by the respondent no.1 University in the affidavit in reply filed by the respondent no.1 on 24th April, 2019 and also from the affidavit in reply dated 30th September, 2021. He submits that the petitioner was paid salary all throughout from the grant received from the State Government. The petitioner was appointed on the sanctioned post and continued on the said post without any break in service. It is submitted that in the year 2008, there were three posts including one post of open category out of the said ten sanctioned posts were vacant. In the year 2016, there were two vacant posts out of the 14 sanctioned posts for the posts for Assistant Professor in (Chemistry) as on 30th November, 2016.

The number of sanctioned posts of Assistant Professor (Chemistry) was increased from 10 to 14 vide GR dated 5th March, 2011. Even today, there are four vacancies out of the 14 sanctioned posts of lecturer (Chemistry) which was communicated to the respondent no.2 vide a letter dated 3rd February, 2021.

17. It is submitted that the petitioner was accommodated and continued on one of the said vacant posts by the University and was continued to be paid as before from the salary grants received from the respondent nos. 2 and 3. He submits that the petitioner is entitled to the pension under the applicable MCS Rules. Since the petitioner had been all along paid from the grants received from the respondent nos. 2 and 3 vis-a-vis the sanctioned posts and his initial appointment had been made by following the statutory procedure through a statutorily constituted selection committee which comprised experts, it is the liability of the State Government to pay the pension and other retirement benefits to the petitioner.

18. Learned senior counsel placed reliance on section 76(g) of the Maharashtra Universities Act, 1994 and would submit that the said

provision applies to the facts of this case. The Director of the Higher Education appointed by the State Government is part of the Selection Committee. Learned counsel for the University invited our attention to some of the paragraphs from the affidavit in reply filed by the State Government on 28th July, 2021 and would submit that even according to the State Government, the appointment of the petitioner initially was made by the Selection Committee for the academic year 1993-94 on the post reserved for NT/DT as the candidate for the said category was unavailable. The said appointment continued till 1998-99.

19. Ms.Chavan, Assistant Government Pleader for the State Government submits that the University alone was the appointing authority and not the State Government. She submits that the petitioner was never confirmed on the permanent post. The respondent no.1 University never informed about the eligibility and the qualification of the petitioner at the time of his appointment or thereafter. The appointment of the petitioner was not a valid appointment. She submits that the services of the petitioner merely continued till the decision of the Special Committee. The respondent no.1 University had availed the services of the petitioner without

following due procedure of the recruitment and without knowledge of the respondent no.2 from 1999.

20. It is submitted by the learned A.G.P. that though the State Government called upon the respondent no.1 University to submit various details about the appointment of the petitioner since 2018, no details have been furnished by the respondent no.1. It is submitted that the liability of the payment of pension and gratuity, if any, would be of that of respondent no.1 University and not of the State Government.

21. Mr.Desai, learned senior counsel for the petitioner in rejoinder would submit that the University has already made it clear in the affidavit in reply that several posts of open category out of the 10 sanctioned posts were vacant in the year 2008 as well as subsequently. It is thus clear beyond reasonable doubt that the appointment of the petitioner was made on the sanctioned post all throughout. The record produced by the University along with the affidavit would clearly indicate that in the year 2008, three posts including of the open category out of the ten sanctioned posts were vacant.

22. Learned A.G.P. for the State could not dispute the position that

when the petitioner who belongs to the open category was appointed, there were few posts vacant in that category out of the said ten sanctioned posts in respect of which the respondent no.1 University was being paid salary grants by the respondent nos.2 and 3.

23. A perusal of the Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 clearly indicates 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. There is no dispute that the Maharashtra Civil Services (Pension) Rules, 1982 applied to the petitioner employed with the respondent no.1 University. Learned A.G.P. could not dispute that the State Government had paid salary grant to the respondent no.1 University for various sanctioned posts from time to time including the post on which the petitioner was appointed on temporary basis. The query raised by the State Government in their affidavit in reply and across the bar were responded by the respondent no.1 University and placed on record that the posts on which the petitioner was appointed as a lecturer was a vacant posts out of the ten posts duly sanctioned by the State Government. In our view, the said Rule (30) of the Maharashtra Civil

Services (Pension) Rules, 1982 would apply to the appointment of the petitioner for the purposes of payment of pension and other benefits permissible under the said rules.

24. Learned A.G.P. for the State Government also could not dispute that the services of the petitioner continued all throughout till his superannuation on 31st March, 2017.

25. We shall now decide the issue whether the respondent no.1 University is liable to pay the pension and other benefits permissible under the provisions of MCS (Pension) Rules or it would be the liability of the State Government.

26. It is not in dispute that the various posts were sanctioned from time to time by the State Government. It is also not in dispute that under section 76 of the Maharashtra Universities Act, 1994, the appointment of the petitioner initially on the post of the lecturer was made on the recommendations of the Selection Committee consisting of various officers including the nominee of the State Government such as Director, Higher Education or his nominee not below the rank of Joint Director. The respondent State did not place any document on

record making any enquiry since the date of the appointment of the petitioner on the said post of lecturer in Chemistry whether the petitioner was appointed on the sanctioned post or not and whether the petitioner was paid the salary and other allowances out of the salary grant paid by the State Government to the University. We are not inclined to accept the submission of the learned A.G.P. of the State that the State Government was neither aware of the appointment of the petitioner all these years nor was informed by the respondent no.1 University to the State Government.

27. Be that as it may, 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 respondent State to the respondent no.1 University, the respondent nos. 2 and 3 cannot be now allowed to raise any dispute its liability to pay the pension to the petitioner. The petitioner has clearly established that the petitioner had been paid the salaries and other benefits out of the salary grant received by the University from the State Government for one of the vacant post occupied by the petitioner out of the ten posts sanctioned by the State Government.

28. In our view the liability to pay the pension and other benefits payable under the provisions of the said Maharashtra Civil Services (Pension) Rules, thus would be that of the State Government and not the University of Mumbai. The respondent no.1 University has already stated in its affidavit filed before this Court that the petitioner was initially appointed/adjusted on the post of lecturer on the sanctioned post for NT and DT till the candidates from such reserved category was appointed. It is also admitted by the respondent no.1 University that the petitioner was thereafter adjusted/appointed without break in services on one of the vacant posts out of the posts sanctioned by the State of Maharashtra. These facts brought on record by the respondent no.1 University are not controverted by the State of Maharashtra.

29. We, accordingly pass the following order :-

(a) The respondent no.1 is directed to forward the papers for payment of terminal dues and the pension of the petitioner to the respondent no.2 within two weeks from today without fail with a copy thereof to be furnished to the petitioner.

(b) The respondent nos. 2 and 3 are directed to

release the retirement dues of the petitioner including pension and gratuity by treating his qualifying service as continuous from his initial date of appointment i.e. from 1981 within four weeks from the date of receipt of the pension papers from the respondent no.1 and shall continue to pay such benefits as payable under the provisions of MCS (Pension) Rules, 2002 regularly.

(c) Writ petition is made absolute in the aforesaid terms.

(d) Rule is made absolute accordingly. No order as to costs.

(e) The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R.D.DHANUKA, J.]