

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

**REVIEW APPLICATION NO.159 OF 2018
IN
WRIT PETITION NO.3763 OF 2016**

Dr. Janka d/o Sangram Pandurne
Age : 47 years, Occu : Service
R/o. Behind Renuka Collection,
Main Road, Taluka : Mukhed
District Nanded.

... **APPLICANT**

VERSUS

1. The State of Maharashtra
through the Secretary,
Department of Higher Education,
Mantralaya, Mumbai.
2. Swami Ramanand Tirtha
Marathwada University
through the Vice-Chancellor
District Nanded.
3. The Director,
Academic (Approval) Section,
Swami Ramanand Tirtha
Marathwada University,
District Nanded.
4. Virbhadra Education Society
through the Secretary,
Taluka Mukhed, District Nanded.
5. Virbhadra Education Society's
Mahatma Jyotiba Phule College,
through the Principal,
Taluka Mukhed, District Nanded.
6. The Joint Director,
High Education, Nanded Division
Nanded.
7. Gunwant Madhavrao Patil
Hangargekar, Age: 50 years,
Occu: Agriculture & Social Service
R/o. Borban Parisar,
Vajirabad, District Nanded
8. Shankar Madhavrao Basapure,
Age : 68 years, Occu: Pensioner
R/o. Shanti Nagar, Narsi Road,
Taluka Mukhed, District Nanded

... **RESPONDENTS**

...

Advocate for the applicant : Mr. Rajendra Deshmukh, Senior advocate a/w
Mr. Sanket A. Jadhav i/b. Mr. Amol R. Joshi

Advocate for Respondent No.1/State : Mr. S.B. Yawalkar

Advocate for Respondents Nos.2 and 3 : Mr. V.P. Latange

Advocate for Respondent Nos.4,5, 7 & 8 : Mr. V.J. Dhage and Mr. D.A. Karnik

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WITH

REVIEW APPLICATION (CIVIL) NO.176 OF 2019

IN

WRIT PETITION NO.3763 OF 2016

1. Virbhadra Education Society,
Mukhed, Taluka Mukhed,
District Nanded
through the Secretary,
Sanjay S/o. Venkatrao Gond,
Age : 50 years, Occu: Service
R/o. Mukhed Tq. Mukhed
District Nanded.
2. Mahatma Jyotiba Phule Mahavidyalaya
Mukhed, Taluka Mukhed,
District Nanded through its Principal

... **PETITIONERS**

VERSUS

1. Dr. Janka d/o Sangram Pandurne
Age : 47 years, Occu : Service
R/o. Behind Renuka Collection,
Main Road, Taluka : Mukhed
Dist. Nanded.
2. The State of Maharashtra
through the Secretary,
Department of Higher Education,
Mantralaya, Mumbai.
3. Swami Ramanand Tirtha
Marathwada University
through the Vice-Chancellor
District Nanded.
4. The Director,
Academic (Approval) Section,
Swami Ramanand Tirtha
Marathwada University,
District Nanded.

5. The Joint Director,
High Education, Nanded
Division Nanded.
6. Gunwant Madhavrao Patil
Hangargekar, Age: 50 years,
Occu: Agriculture & Social Service
R/o. Borban Parisar,
Vajirabad, Dist. Nanded
7. Shankar Madhavrao Basapure,
Age : 68 years, Occu: Pensioner
R/o. Shanti Nagar, Narsi Road,
Taluka Mukhed, District Nanded

... **RESPONDENTS**

...

Advocate for Applicants : Mr. V. D. Gunale

Advocate for Respondent No.1: Mr. Rajendra Deshmukh, Senior advocate
a/w Mr. Sanket A. Jadhav i/b. Mr. Amol R. Joshi

AGP for Respondent No.2/State : Mr. S.B. Yawalkar

Advocate for Respondent No.3 : Mr. V.P. Latange

Advocate for Respondent Nos.6 and 7 : Mr. V.J. Dhage

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CORAM : **MANGESH S. PATIL &
Y.G. KHOBRAGADE, JJ.**

DATE : **24.11.2022**

ORDER (MANGESH S. PATIL, J.) :

By these separate review applications, the original petitioner and the original respondent Nos.4 and 5 are seeking review of the judgment and order passed by this Court dismissing the Writ Petition wherein the petitioner had claimed following relief in prayer clause 'B':

“B) That this Hon’ble High Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction under Article 227 of the Constitution of India and the Impugned Letter/Order dated 29th February 2016 bearing reference number Acad / Approval/02/2015 - 2016/4489 addressed by Respondent No.3 to Respondent No.5, whereby Respondent No.3 communicated Respondent No.5 regarding withdrawal of its approval to appointment of the Petitioner with

Respondent No.5 as Assistant Professor on ad-hoc basis (Annexure "T"), be quashed and set aside."

2. For the sake of convenience the parties are hereinafter referred to by their status in the Writ Petition.

3. The petitioner claims to have been appointed as a lecturer by following the procedure in accordance with Section 169 of the Statute of the respondent No.2 - University by a duly constituted selection committee pursuant to an advertisement dated 16.10.2000, initially on a clock hour basis and subsequently by the order dated 01.11.2007 on a full time basis. She was possessing requisite educational qualification. Even the respondent No.3 - Director, Academic (Approval) Section of the respondent No.2 - University by his order dated 25.03.2009 approved appointment of the petitioner on ad-hoc basis. However, by the impugned letter/order dated 29.02.2016 respondent No.3 cancelled the approval *inter alia* holding that the approval granted to her appointment was illegal.

4. After hearing both the sides, by the order under review, this Court dismissed the writ petition with following reasons :

"13) It does appear that the petitioner did not fulfill the qualification requirement at the time of initial entry in service and even until issuance of letter of appointment in the year 2007. Admittedly, while issuing letter of appointment in the year 2007, the prescribed procedure for making appointment was not observed. The Selection Committee approved by the University consisting representative of the University has not conducted the selection process and the petitioner's name has not been recommended by the duly constituted Selection Committee.

14) The most surprising feature of the appointment of the petitioner in the year 2007 is that letter of appointment has been issued to her in furtherance of the advertisement issued on

16.10.2000. It is mindboggling as to how the management could appoint the petitioner as a Lecturer after lapse of seven years from the date of issuance of advertisement. The management flouted all the procedural norms mandated by the University for making appointment of Lecturer. The management has acted in the manner as if the educational Institution is their private property. Infact the Director, Board of College and University Development, ought not to have approved the appointment of petitioner at the initial stage. It has not been reported that either the State Government or the University has taken any action against the management of the College for continuing with all the illegalities during the prolonged period of more than 15 years.

15) The University Grants Commission has formulated regulations prescribing qualification, norms for making appointment of the Lecturers in the affiliated Colleges. The norms, prescribed by the University Grants Commission which is a creation of the Statute, are binding on all the affiliated Colleges and the Universities. The qualification required for making appointment to the post of Lecturer in affiliated Colleges has been prescribed as below:

“A candidate shall have a good academic record with atleast 55% of the marks or, an equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F at the Master's degree level, in the relevant subject from an Indian University, or an equivalent degree from a foreign University.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

Note: NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidate who have completed M.Phil. degree or have submitted Ph.D. thesis in the concerned subject up to 31st December, 1993, are exempted from appearing in the NET examination.”

16) In the instant matter, while making initial appointment of the petitioner in the year 2000 as a Lecturer on clock hour basis or in the year 2007 as a Lecturer on adhoc basis, the petitioner did not fulfill requisite qualification norms. The petitioner acquired M.Phil. degree in 2008 and was awarded Ph.D. in the year 2014. The appointment of the petitioner made in 2007 has been earlier

approved by the Director, Board of College and University Development, which has lateron been recalled. While making appointment of the petitioner in the year 2007, admittedly, she did not fulfill the requisite qualification norms.

17) In view of the facts disclosed as above, the decision taken by the Director, Board of College and University Development of withdrawing the approval to the appointment of the petitioner cannot be said to be erroneous or illegal. Infact, the Director ought not to have initially approved the appointment of the petitioner. Atleast at a belated stage, he has corrected the mistake.

18) In view of above, no interference is called for. The petition is devoid of merits, hence stands rejected summarily.

19) It would be open for the University and State Government to take appropriate penal action against the affiliated College for the lapse committed by the College.”

5. Learned senior advocate Mr. Deshmukh for the petitioner would submit that there are errors in law as well as on facts which are apparent on the face of the record which are sufficient to undertake a review. He would submit that the observation of the Court holding that the petitioner did not possess requisite education qualification is incorrect. Attention of the Court was not adverted to and the Court had not referred to the UGC (Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to It) (2nd Amendment) Regulation 2006 by virtue of which she was exempted from qualifying NET. The petitioner was having M.Phil. degree in the concerned subject and was duly governed by this regulations but the fact was overlooked by this Court. Mr. Deshmukh would further submit that even the Court overlooked the fact that on the date of passing of the impugned order recalling the approval she was having requisite educational qualification. The report that was being

relied upon while passing the impugned order styled as 'Barik Committee Report' was not sustainable.

6. Mr. Deshmukh would further submit that even this Court had erred in noticing the facts that there were reports of the selection committee available on the record to demonstrate that the selection of the petitioner was made by a duly constituted selection committee which comprised of a representative of the Vice Chancellor and was strictly in accordance with statute S-166 applicable to the respondent No.2 - University.

7. On emotional front Mr. Deshmukh would strenuously submit that the petitioner is facing the burnt because of a dispute in the Management. The respondent No.8 was himself was a party to the resolution whereby the petitioner was appointed who subsequently started to questioning legality of her appointment. The petitioner is a duly qualified senior lecturer who has put in more than 20 years in the service. She has subsequently acquired doctorate as well and therefore her claim deserved to be considered.

8. Learned advocate Mr. Gunale for the respondent No.4- Management and the respondent No.5 - Principal of the College would subscribe to the submission of learned senior advocate Mr. Deshmukh and strenuously point out as to how the petitioner was appointed by following due process as per the regulations in the statute. He would submit that the petitioner has worked for years together. By the appointment order dated 01.11.2007 she was appointed on full time basis. She was appointed as per

the Government Resolution dated 08.08.1996 and 17.03.1998 but this Court had not taken into consideration those two Government Resolutions while deciding the petition by the order under review.

9. Learned advocate Mr. Latange for the respondent No.2 University and respondent No.3 - Director would support the order impugned in the writ petition and also submit that the initial approval granted was turned out to be incorrect. The decision to revoke the approval was taken objectively by referring to the reports of the committees. The appointment of the petitioner was never made in the year 2007 by following necessary rules and regulations and the fact of earlier approval would not come in the way of respondent No.3 to reconsidering it on its own merits.

10. Learned advocate Mr. Dhage who appears for the respondent Nos.7 and 8 from the review applications and also claims to be representing the respondent No.4 - Management and the respondent No.5 - Principal opposes the review applications. He points out that the petitioner was initially appointed as a lecturer on clock hour basis for a specific academic year and her appointment was from year to year basis prior to 2007. No fresh recruitment process was undertaken when she was appointed on full time basis for the first time in the year 2007. The petitioner had failed to demonstrate that any process of publishing advertisement, constitution of a selection committee and holding of interview was ever undertaken before she was given an appointment with effect from 01.11.2007. He would submit that the observations and conclusions of this Court in the order

under review are clearly justified. There is no error apparent on the face of the record. There cannot be an appeal under the guise of review. Unless the petitioner demonstrates that she was appointed by following the regulation and statute and by following due process, she cannot succeed.

11. We have carefully considered the rival submissions and perused the papers of the writ petition including the order under review. It is a settled principle of law that the powers of review are limited and can be invoked in exceptional circumstances where the circumstance indicate that there is some formal defect or an error apparent on the face of the record. It is equally trite that a review cannot be entertained as an appeal in disguise.

12. As can be seen from the order under review this Court had dismissed the petition by specifically observing that the petitioner did not possess requisite educational qualification as on the date on which she was given the permanent appointment in the year 2007. It was also observed that the petitioner was given appointment in the year 2007 by referring to the advertisement that was published in the year 2000. It was also noticed that the procedure that was to be followed while giving appointment was not followed and also recorded the observation that in fact the respondent No.3 ought not to have granted approval at the first instance.

13. In view of such conclusions it was imperative for the petitioner to demonstrate that her appointment was strictly in accordance with Section 169 of the Statute. The learned senior advocate Mr. Deshmukh points out to us from the record of the writ petition that the petitioner who was selected

by a selection committee which was comprising of the nominee of the Vice Chancellor, however, all such earlier appointments which were on clock hour basis were purely for the relevant academic year. Except the initial advertisement of the year 2000, there was no subsequent advertisement and the petitioner was merely appointed on clock hour basis for subsequent academic years by separate orders. Pertinently, Mr. Deshmukh could not point out to us any document showing that while giving appointment on a permanent basis with effect from 01.11.2007 a similar selection committee was constituted which selected her as was the case in respect of the earlier academic years.

14. For that matter, even admittedly, the appointment was given on permanent basis by the appointment order dated 01.11.2007 by referring to the advertisement of the year 2000. Meaning thereby that there was absolutely no record to demonstrate that any fresh advertisement was given or that any selection committee was constituted which selected the petitioner before giving her appointment with effect from 01.11.2007 on permanent basis. If this is the state of affairs, irrespective of any other ground for undertaking a review, the observation and conclusion of this Court in the order under challenge to the effect that the appointment of the petitioner in the year 2007 was not preceded by any procedure as is required by the Rules and Regulations is certainly unassailable and in itself was sufficient to dismiss the petition. It cannot be said that this conclusion was an error apparent on the face of the record.

15. The observations of this Court in the order under review that the petitioner was not possessing requisite qualification is equally unassailable. It was clearly pointed out that the UGC regulations required a candidate to possess M.Phil. degree for the post of lecturer for under graduate courses. Admittedly, the petitioner acquired such qualification in the year 2008, after she was given the appointment on permanent/full time basis.

16. It is to be borne in mind that the petitioner is trying to demonstrate that her appointment was made strictly by following the requisite procedure. True it is that the petitioner and Mr. Gunale's clients relied upon the Government Resolution dated 08.08.1996 and 17.03.1998 to justify petitioner's appointment on permanent basis but there is no reference in the order under review to these two notifications.

17. But then, we have carefully gone through both these Government Resolutions. We notice that the Government Resolution dated 08.08.1996 permitted part time lecturers to be appointed on full time basis if a post was available without undertaking the requisite selection process. However, we notice that it is only if the initial appointment on a part time basis was made pursuant to a due selection process and that the candidate was possessing the requisite qualification when he/she was appointed on a temporary basis then only this government resolution permitted the individual to be appointed on full time basis. As is indicated herein above the petitioner was not possessing M.Phil. qualification which was requisite

for appointment of a lecturer when she was given appointment in the year 2007 and she acquired it in the year 2008. Consequently, she was not entitled to derive any benefit from this Government Resolution.

18. As far as Government Resolution dated 17.03.1998 is concerned Government permitted regularization of part time lecturers as full time lecturers depending upon the workload. However, when the petitioner was not possessing requisite educational qualification on the date on which she was given appointment on full time basis in the year 2007, she was not entitled to derive any benefit even from this government resolution.

19. In the result, we do not find that the order under review suffers from any formal defect or error apparent on the face of the record. No grounds are made out which would enable us to undertake a review.

20. The review applications are dismissed.

(Y.G. KHOBRAGADE, J.)

(MANGESH S. PATIL, J.)