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

902 WRIT PETITION NO.11545 OF 2021

**SHRI. VISHWANATH EKNATH PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Ms. Priyanka R. Deshpande, Advocate for petitioner;
Mrs M. A. Deshpande, A.G.P. for respondent Nos.1 to 3

**CORAM : RAVINDRA V. GHUGE
AND
S. G. DIGE, JJ.**

DATE : 13th April, 2022

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (B), (C), (D), (E) and (F) as under :-

“B. By issuing the writ of certiorary or any other appropriate writ or order or direction in the like nature, the impugned communication dt.23-11-2020 issued by the respondent no.3 may kindly be quashed and set aside.

C. By issuing the writ of mandamus or any other appropriate writ or order or direction in the like nature, the respondents may kindly be directed to consider the services of the petitioner for the purpose of conferring the benefits of Career Advancement Scheme and Pension from the date of his joining i.e. 02-07-1991 in the respondent no.5 college and to confer these benefits accordingly on the part of the petitioner.

(2)

D. By issuing the writ of mandamus or any other appropriate writ or order or direction in the like nature, the respondents may kindly be directed to make the pay fixation of the petitioner in accordance with the CAS as per the Rules and Regulations by considering the services rendered by the petitioner during the period from 02-07-1992 to 31-05-2020 and to confer the benefits on the part of the petitioner.

E. By issuing the writ of mandamus or any other appropriate writ or order or direction in the like nature, the respondents may kindly be directed to pay all the retirements benefits as well as to sanction the pension for which the petitioner is entitled as per the Rules and Regulations by considering the services of the petitioner from 02-7-1992 to 31-05-2020 for the said purpose.

F. By issuing the writ of mandamus or any other appropriate writ or order or direction in the like nature, the respondents may kindly be directed to pay the amount which will arrive after the grant of all benefits, as referred above and to pay the same along with interest thereon at the rate of Rs.15% p.a.”

2. We have considered the strenuous submissions of the learned Advocate for the petitioner and the learned AGP on behalf of respondent Nos.1, 2 and 3.

3. Despite service of Court notice on respondent No.4 – North Maharashtra University, Jalgaon, through its Registrar, and

(3)

respondent No.5, which is the Institution, in which the petitioner was employed, no appearance has been caused in the matter and as such, both these parties have not assisted this Court in deciding this petition. We would deal with their conduct at the end of this order.

4. Having considered the submissions of the learned Advocate for the respective sides, it is undisputed that the petitioner was appointed on 29/06/1991 as a 'Teacher' in respondent No.5 – College. He had the qualification of M.A. (B+ = 55%) in Marathi. He was appointed as an 'Assistant Professor' on 02/07/1991. By an advertisement dated 20/06/1992, the petitioner was selected and appointed as an 'Assistant Professor' with respondent No.5 – College. In this backdrop, it would be necessary to record that the petitioner's employment is prior to 24/10/1992. Those appointees prior to 24/10/1992 have been exempted from having the NET-SET qualification.

5. In Writ Petition No.2082/2013, filed by the Maharashtra Federation of University and College Teachers Associations Vs. State of Maharashtra and others, the learned Division Bench at the Principal Seat has delivered a judgment. It is, therefore, settled

(4)

that those teachers, who have been appointed prior to 24/10/1992, would be exempted from the qualification of NET-SET. Consequentially, these teachers would be entitled for the Career Advancement Scheme (CAS) benefits as the requirement of NET-SET qualification is not applicable to them. It would be apposite to reproduce paragraphs 81 to 84 of the judgment in Maharashtra Federation of University and College Teachers Associations (supra) hereunder :-

“81 It is clear that CAS provides benefits for a teacher who has appointed on full time regular basis and renders continuous services will get time bound promotion, whereby he receives senior designation and increased pay scale. Therefore, a qualified person who is in continuous services is entitled for the CAS benefits as per the scheme. The requirement of NET/SET, therefore, cannot be overlooked and the appointments, therefore, even if made, who has not passed the NET/SET examination cannot be treated equally. However, the pay scale of such teacher (non-NET/SET teacher) is at par with that of NET/SET qualified teacher.

82 In view of above and in view of the judgment of Supreme Court in State of Orissa v. Mamata Mohanty, in para 70 which is reproduced hereinbelow, we are not accepting the case of rival Petitioners and we are accepting the stand and the submission so raised by the State and so also their Resolution, whereby the benefits such as CAS and other related benefits have been denied, but services have been protected.

(5)

“70 In the facts and circumstances of the case, we feel that terminating the services of those who had been appointed illegally and/or withdrawing the benefits of grant-in-aid scheme of those who had not completed the deficiency in eligibility/educational qualification or withdrawing the benefit thereof from those who had been granted from the date prior to completing the deficiency, may not be desirable as a long period has elapsed. So far as the grant of UGC pay scale is concerned, it cannot be granted prior to the date of acquisition of higher qualification. In view of the above, the impugned judgment/order cannot be sustained in the eyes of law.”

State granting continuity of service to Non-NET/SET candidates/lecturers/professors

83 The grant of continuity of service and regularisation by the State though they have not acquired requisite qualification of NET/SET which is the recent development after the judgment so referred above and as the State has taken that decision and as it is in the interest of protecting the services of all concerned and as they have been in service for so many years, therefore, also we are not inclined to disturb the policy decision so taken by the State, with concurrence of the State General Administration and Law and Judiciary Departments. However, the regularisation of non-NET/SET teachers, ad-hoc teachers preferences from the date of Government Resolution, and other benefits so announced, within the frame work of law is just, proper and keeping in mind the mandate of Supreme Court Judgments and the provisions about basic qualification of NET/SET.

84 *The Government (State Policy) (translation portion) (State affidavit) decision is as under :*

“14 Taking into account the scenario set out in the Introduction, the Notification of the University Grants Commission dated 19.9.1991 was implemented in the State from 23.10.1992; hence provisions of the said G.R cannot be made applicable with retrospective effect from 19.9.1991. Ergo, the qualification contained in University Grants Commission Notification dated 19.9.1991 cannot be made applicable to teachers appointed prior to 23.10.1992.

15 For such among the non-NET/SET teachers appointed during the period 23.10.1992 to 3.4.2000 who have not acquired the educational qualification prescribed by the University Grants Commission (NET/SET, Ph. D., M. Phil), the Government is sanctioning regularization of their services for all purposes from the date of issuance of this Government Resolution, subject to the following conditions:

a) Concerned teacher ought to have been appointed on Regular Basis.

b) Appointment of concerned teachers was made in the teaching post in accordance with the prescribed procedure

c) Appointment of concerned teacher fulfilling all other prescribed qualifications and conditions except NET/SET was approved by the University.

d) The concerned teacher's proposal for approval from the University Grants Commission has been forwarded through the University.

16 The Joint Director of the concerned Region shall constitute a committee under their Chairmanship to examine on merits the cases under their jurisdiction for the period 23.10.1992 to 3.4.2000. This screening committee will submit a self-explanatory proposal to the Director of Education, Higher Education, Maharashtra State, Pune for approval at the level of the Directorate after examining whether or not the entire procedure between the advertisement for the post of the concerned teacher up to the issuance of appointment order, has been in accordance with rules, and close scrutiny of all matters such as the post being a vacant one, social reservation being followed; thereafter approval be given at Director's level.

17 Similarly such of the affected non-NET/SET teachers who have been appointed as Principal or equivalent post, by holding admissible past service rendered by them, will not be disturbed and also the increments and pay drawn as per existing provisions will not be disturbed. Separate government resolutions will be issued on both these subjects.

18 Since the services of these teachers are being regularized for all purposes from the date of issuance of this Government Resolution, the defined contribution pension scheme will be applicable to them.”

6. In view of the above, this petition is allowed in terms of prayer clauses (B), (C), (D) and (E), reproduced above.

(8)

Consequently, the impugned communication dated 23/11/2020, stands quashed and set aside.

7. Insofar as the claim of the petitioner for 15% interest p.a. on the unpaid dues are concerned, we deem it appropriate to grant interest at the prevailing Bank rates, which is 6% p.a. from the date the amounts became due and payable, till the said amounts are actually paid to the petitioner. We expect the authorities to make such payment, on or before 15/06/2022.

8. We have frequently noticed in several matters that, certain authorities, who are necessary respondents, despite service of Court notice, do not remain present before the Court. In the present case, respondent No.4 is a formal party. However, it needs to issue an order granting permanent approval to the service of the petitioner from the date of his selection and appointment as an 'Assistant Professor'. Such order shall be passed by respondent No.4, as expeditiously as possible and in any case, on or before 30/04/2022. Failure to do so, would invite further orders from this Court.

9. Insofar as the conduct of respondent No.5 is concerned, it's failure to appear in this matter and render assistance cannot be

(9)

countenanced. We are, therefore, imposing costs of Rs.10,000/- (Rs. Ten Thousand) on respondent No.5 – Management, which shall be deposited in this Court, on or before 31/05/2022.

(S. G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)

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