

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1725 OF 2020

Dr. Shobha w/o Suraj Paliwal
Aged about 63 years, Occ.: Service,
R/o. Qtr. No. VA-3, Professor Residence
Adhneya Sankul, Mahatma Gandhi
Antarrashtriya Hindi Vishwavidyalaya
Compound, Gandhi Hills,
Wardha – 442201 (Maharashtra)
E-mail: shobhapaliwal95@gmail.com **PETITIONER**

// **VERSUS** //

The Mahatma Gandhi Antarrashtriya
Hindi Vishwavidyalaya, Gandhi Hills,
Wardha – 442001, Through its Registrar,
E-mail: registrar.mgahv@gmail.com **RESPONDENT**

Mr. Firdos T. Mirza, Advocate for Petitioner.
Mr. A.C. Dharmadhikari, Advocate for Respondent.

CORAM : **SUNIL B. SHUKRE, AND**
ANIL L. PANSARE, JJ.

Date of reserved: 06.01.2022.

Date of Pronouncement: 20.01.2022

ORAL JUDGMENT: [PER: Anil L. Pansare, J.]

Heard Shri F. T. Mirza, learned counsel for the
Petitioner and Shri A. C. Dharmadhikari, learned counsel for the
Respondent.

2. **Rule.** Rule made returnable forthwith. The matter is heard finally by the consent of the learned counsel for the parties.

3. Fate of this petition rests upon the answer to the question, **“Whether the Petitioner was appointed by the Respondent, in the cadre of teaching post or non-teaching post?”**.

4. It is the case of the Petitioner that since she was appointed in the cadre of teaching post, her age of retirement would be 65 years and not 62 years, as against which the Respondent contends that the appointment of Petitioner was in the cadre of non-teaching post and therefore, her age of retirement would be 62 years.

5. Petitioner further contends that; the University Grants Commission has approved creation of various teaching and non-teaching posts with the Respondent-University including the post of Academic Co-Ordinator in the cadre of Reader. The said post according to the Petitioner, is a teaching post.

6. The trigger point herein is the appointment order dated 27.05.2013. It would show that the Petitioner was offered the post

of Academic Co-Ordinator/Associate Professor in the school of literature at Mahama Gandhi Antarrashtriya Vishwavidyalaya, Wardha, subject to certain terms and conditions. One of the important conditions was Condition No.5 which reads as under:

“She will be governed by the rules and regulations applicable to the Academic Staff (non-vacational) of Mahatma Gandhi Antarrashtriya Vishwavidyalaya, Wardha”.

7. The appointment order was in the form of offer, as it concludes with the condition that if the offer is acceptable to the Petitioner on the terms and conditions mentioned in the order, she should report herself on duty to the Deputy Registrar. Admittedly, she has reported to the duty, meaning thereby that she has accepted the offer which includes the offer with the terms and conditions, one of which is Condition No.5 mentioned above.

8. It is an admitted position that the Petitioner was appointed as Academic Co-Ordinator/ Associate Professor and that the said post was non-vacational. Thus, according to the Respondent, the Petitioner was well aware that her appointment is made in the category of non-teaching post being a non-vacational post, as against post of teachers being a vocational post.

9. Thus, the basic document i.e., appointment order dated 27.05.2013 indicates that the Petitioner was appointed in the category of non-teaching post. Learned counsel for the Petitioner could not satisfactorily counter the aforesaid inductive inference on the basis of the said condition that Petitioner was appointed in non-teaching post.

10. Another reason why Petitioner's claim of being appointed at the teaching post could not be accepted is because the Petitioner has not averred anywhere in the petition that she was discharging duty assigned to teaching post. There is nothing on record to show that she has taught any subject in her tenure. She has not annexed any document in support of her claim that she was appointed to the teaching post. However, the Respondent has filed purshis along with two documents. The first document is order dated 21.06.2013 informing Petitioner of her nature of duties. The duties so assigned do not include any duty of teaching post but are the duties of non-teaching post. The second document is extract of the meeting of Executive Council held on 31.07.2013, which indicates approval of nature of duties of the Petitioner. The said

duties, as said earlier belongs to non-teaching post. The Petitioner has not filed any affidavit denying aforesaid documents.

11. Further, the Petitioner has not filed any affidavit/rejoinder to the reply filed by the Respondent. In the affidavit/rejoinder, Respondent has asserted that the Petitioner has neither pleaded anywhere about her nature of job nor has annexed any list of duties assigned to the petitioner to show that she was appointed to the teaching post. Respondent further asserted that petitioner's appointment was governed by the rules and regulations applicable to Academic Staff (non-vacational) and that the use of word 'non-vacational' in the appointment order of Petitioner is applicable only to non-teaching post, as the teaching post is always entitled to vacations. The Petitioner further also failed to counter the assertion of Respondent that the Petitioner has never been appointed at any job which pertains to teaching.

12. The above status would clearly show that Petitioner was appointed on the non-teaching post and hence her age of retirement would be 62 years. As such, the issue would not have cropped up if the Respondent had been diligent in taking timely action. The

Petitioner was due to retire on 31.07.2018, on superannuation. However, neither Petitioner nor Respondent took any action to process her file for retirement on or prior to 31.07.2018. Usually, the process of documentation commences six months prior to retirement. Resultantly, the Petitioner continued her services beyond the period of 31.10.2018.

13. It is only on 05.03.2020, the Respondent realized that it has committed a mistake and therefore, issued a letter bearing No. 006/ACD/103/11-Vol.II/248 of the even date i.e., 05.03.2020 mentioning therein that the Petitioner stood retired on 31.10.2018 at the age of 62 years on superannuation. Yet another letter bearing No. 006/ACD/103/11-Vol.II/249 was issued on the same date i.e., 05.03.2020 by the Respondent, calling upon the Petitioner to deposit the amount received by her after 01.11.2018. The Petitioner has challenged these two communications so also the communication of even date i.e., 05.03.2020 bearing No. 006/ACD/103/11-Vol.II/251 wherein the Respondent has informed Petitioner that her seniority cannot be included in the list of teachers as her appointment was on the post of academic post (non-vacational). The said challenge has been made by the petitioner presuming that

the Petitioner was appointed on the teaching post. In our view such presumption in the facts and circumstances of the case, was not available to the Petitioner particularly when the appointment order dated 27.05.2013 was with a specific condition that her services will be governed by rules and regulations applicable to Academic staff (non-vacational). The Petitioner ought to have sought declaration of her appointment on the teaching post.

14. The Petitioner, it seems, is seeking continuation of the said mistake by contending that her service was continued beyond the period of 31.08.2018 because she was appointed on teaching post and therefore her retirement age was 65 years. We are not able to accept such plea. Mistakes cannot be directed to be continued. If it is the case of the petitioner that it was not a mistake, the petitioner must build her case on her own footing, which she has not. So, what remains is a mistake committed by Respondent, for which the Petitioner can also be blamed for not seeking clarification at appropriate time.

15. Mr. Mirza, learned counsel for the Petitioner has relied upon certain documents to argue that the Petitioner was appointed

on the teaching post. It includes the old notice calling upon candidate to fill-up teaching and non-teaching post. The post of Academic Co-Ordinator/Reader was advertised under the head of teaching post. However, this advertisement was published in the year 2010. The Petitioner has not been appointed pursuant to this advertisement. The Petitioner has been appointed in the year 2013 as Academic Co-Ordinator/Associate Professor with a categorical condition that her services will be governed by the rules and regulations applicable to Academic Staff (non-vacational). Therefore, the previous advertisement in which the post of Academic Co-Ordinator/Reader had been shown under the head of teaching post will not be of any help to the Petitioner. Similarly, the name of Petitioner having been shown in the combined provisional seniority list of Associate Professors/Regional Director/Academic Co-Ordinator cannot be said to be a document describing the post of the Petitioner in the cadre of teaching post. Mr. Mirza, learned counsel further contends that the Petitioner was nominated as member of Vidya Parishad for two years. In our view, such nomination is not conclusive evidence of the status of Petitioner on the teaching post.

16. Thus, what emerges is that the Petitioner was appointed as Academic Co-Ordinator/Associate Professor on the condition that her service will be governed by the rules and regulations applicable to Academic Staff (non-vacational). The fundamental document, therefore, is against the Petitioner. Further, the failure of Petitioner to plead or file any document showing that she has discharged her duty as teacher or such other duties that are performed by being at the teaching post would show that the Petitioner was aware that she was appointed on non-teaching post. Such status is further substantiated by the fact that the duty list for the post of Academic Co-Ordinator/Associate Professor filed by Respondent along with purshis would show that none of the duties assigned to Petitioner was belonging to teaching post. In such circumstances, merely because her service was continued after the age of superannuation would not convert her appointment from non-teaching post to teaching post. The mistake committed by the Respondent cannot be taken advantage of to make out a case which otherwise is known to the Petitioner to be flawed.

17. What best could be done in the circumstances is that the payment made to the Petitioner after the age of superannuation,

which the Respondent has directed her to deposit with the respondent, can be protected by setting aside the communication dated 05.03.2020 bearing No.006/ACD/103/11-Vol.II/249 (Annexure K). However, the impugned order dated 05.03.2020 bearing No.006/ACD/103/11-Vol.II/248 (Annexure J) and the communication dated 05.03.2020 bearing No.006/ACD/103/11-Vol.II/251 (Annexure N) cannot be set aside.

In view of the above, Rule is made absolute in the following terms.

- (i) The petition is partly allowed. The communication of the respondent dated 05.03.2020 bearing No. 006/ACD/103/11-Vol.II/249 (Annexure K) seeking from the petitioner to deposit payment received after superannuation, is set aside.
- (ii) Pending civil applications, if any, stand disposed of, as do not survive
- (iii) Parties to bear their own costs.

(ANIL L. PANSARE, J)

(SUNIL B. SHUKRE, J)