

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

WRIT PETITION NO.1197 OF 2021

PETITIONER : Devanand Bajirao Sawarkar,
Age 48 yrs, Occ. Service, R/o.204,
Padam Apartment, Desai Layout,
Behind Ganesh Colony, Amravati,
Tq. and Dist. Amravati.

..VERSUS..

RESPONDENTS : **1.** Joint Director,
Higher and Technical Education,
Amravati Division Amravati, office
at V.M.V. Premises, Amravati, Tq.
and Dist. Amravati.

2. Shri. Hanuman Vyayam Prasarak
Mandal through its
President/Secretary Hanuman
Nagar, Amravati, Tq. and Dist.
Amravati.

3. Degree College of Physical
Education Amravati through its
Principal Hanuman Nagar,
Amravati, Tq. and Dist. Amravati.

Shri. P. S. Patil, Advocate for Petitioner.
Shri. N. S. Rao, AGP for Respondent No.1.
Shri. A. Sudame, Advocate for Respondent No.3.

CORAM : **SUNIL B. SHUKRE AND**
SMT. M. S. JAWALKAR, JJ.

DATE : **25th APRIL, 2022.**

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. The brief facts of the case are that the Petitioner was appointed as a Lecturer in the year 1999 by Respondent No.2 and he was posted to Respondent No.3-College. The Petitioner was made Assistant Professor in the year 2012 and his such appointment initially as Lecturer and later on as Assistant Professor, received approval from the Competent Authorities. When a proposal was sent by the Management i.e. Respondent No.2 for granting pay protection to the Petitioner from the year 1999, it was turned down by the Respondent No.1 vide his order dated 24.07.2020. The Respondent No.1 found that the Petitioner did not possess necessary qualification as prescribed under the Government Resolution dated 23.10.1992 and that there was no provision found anywhere regarding granting pay protection to the Petitioner from the date from which, it was sought under the proposal sent by the Management.

4. Shri. N. S. Rao, learned Assistant Government Pleader representing the Respondent No.1 contends that the Petitioner did not possess one of the essential qualifications of clearance of NET or SET, and therefore, the pay protection could not be granted to the Petitioner from the year 1999. He further submits that it was in the year 2008 that the Petitioner cleared the NET, and therefore, if at all the Petitioner is to be granted any pay protection, it would not be anytime before the year 2008.

5. The contention is fallacious as these are not the grounds taken in the impugned order dated 24.07.2020, for flatly refusing to grant pay protection to the Petitioner from the year 1999, when the Petitioner was initially appointed as a Lecturer. It is pertinent to mention here that what the Petitioner is seeking now is only his notional pay protection and he is not claiming any arrears of pay as a Lecturer. But, even these benefits have been denied to the Petitioner not on the ground that the Petitioner did not clear any NET or SET in 1999, but on two other grounds namely, the Petitioner did not possess the

educational qualifications as prescribed in the Government Resolution dated 23.10.1992 and that there is no provision made anywhere enabling the Respondent No.1 to grant pay protection to the Petitioner from the date of his initial appointment. Both these grounds, however, have been seen by us to be not tenable in law for the reasons given in the ensuing paragraphs.

6. The Government Resolution dated 23.10.1992 has been superseded by the Government Resolution dated 27.11.1992. In paragraph 2 of the GR dated 27.11.1992, it is clearly stated that the earlier orders contained in the GR dated 23.10.1992 are superseded and in their place, new orders have been issued. While rejecting the proposal of the Management, the Respondent No.1, however, took recourse to the provisions of a GR, which was already superseded, which was not permissible. The first ground taken by Respondent No.1 for rejecting the Management's proposal, therefore, is illegal.

7. About the second ground taken in the impugned order, we must say that specific provisions are already made for granting pay protection in the GR dated 11.02.1994. The paragraph 1 of this GR clearly reflects this position. For the sake of convenience, it is reproduced as below :

“1) Previous service without any break as a Lecturer or equivalent in a University, College, National Laboratory or other scientific organisations (CSIR, ICAR DRDO, UGC etc.) and as a UGC Research Scientist, should be counted for placement of Lecturers in Senior Scale/Selection Grade provided that :

- a) the post was in an equivalent grade/scale of pay as the post of a Lecturer;
- b) the qualifications for the post were not lower than the qualifications prescribed by the UGC for the post of Lecturer;
- c) the Lecturers concerned possessed the minimum qualification prescribed by the UGC for appointment as Lecturer;
- d) the post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government

e) the appointment was not ad-hoc or in leave vacancy of less than one year duration.

2) These services should be counted for the purposes of placement in Sr. Scale and Selection Grade only and not for any other purposes.

3) No distinction should be made with reference to the nature of management of the institution where previous service was rendered (Private / local body / Government) if the above criteria are satisfied.”

8. So, there already exist provisions on the basis of which pay protection could be granted to the Lecturers like the Petitioner, provided the conditions of the GR dated 11.02.1994 are satisfied. This would make the second ground mentioned in the impugned order as without substance.

9. In the result, we find that the impugned order is illegal and it deserves to be quashed and set aside.

10. Accordingly, the petition is **allowed**. The impugned order is hereby quashed and set aside.

Matter is remanded back to the Respondent No.1 to consider the issue of grant of pay protection to the Petitioner, in terms of the GR dated 11.02.1994. Decision in this regard shall be taken at the earliest and in any case within a period of eight weeks from the date of receipt of this order.

11. Rule is made absolute in the above terms.
No costs.

(JUDGE)

(JUDGE)

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