

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

MISC. CIVIL APPLICATION (REVIEW) NO. 1040 OF 2019
IN
WRIT PETITION NO. 4873 OF 2011 (D)

Kishor S/o Sitaram Borkar,
Aged about 46 years, Occ. - Nil,
R/o At Po. Girgaon,
Tah. Nagbhid, Dist. Chandrapur.

.... **APPLICANT**
(Original Petitioner)

// **VERSUS** //

- 1) University Grants Commission,
Through its Secretary,
having its office at Bahadur Shah
Jafar Marg, New Delhi.
- 2) Rashtrasant Tukdoji Maharaj
Nagpur University, through its
Registrar.
- 3) Govind Prabhu College of Arts and
Commerce, through its Principal,
Talodhi, Tah. Nagbhid, Balapur,
Dist. Chandrapur.
- 4) Kalyan Education Society,
through its Secretary,
C/o "Unmesh", 103, Tikekar Road,
Dhantoli, Nagpur.
- 5) Joint Director (Higher Education),
Nagpur Division, Nagpur.
- 6) Gondwana Vidyapith,
having its office at MIDC Road,
Gadchiroli.

- 7) Nitesh Ramchandra Ramteke,
Aged about 44 years, Occ. Service,
R/o C/o Govindprabhu College
of Arts and Commerce, through
its Principal, Talodhi, Balapur,
Tah. Nagbhid, Dist. Chandrapur.

.... **RESPONDENTS**
(Original Respondents)

Mr. P.D. Meghe, Advocate for Applicants/Petitioners.
Mr. Arun Agrawal, Advocate for Respondent No.1.
Mr. S.M. Puranik, Advocate for Respondent No.2.
Mr. B.G. Kulkarni, Advocate for Respondent Nos.3 and 4.
Mr. M.J. Khan, Assistant Government Pleader for Respondent No.5.
Mr. Sandeep Marathe, Advocate for Respondent No.6.

CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.

DATED : 07.07.2022

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

1. Heard Mr. P.D. Meghe, learned counsel for the review applicant/original petitioner, Mr. Arun Agarwal, learned counsel for Respondent No.1 – University Grant Commission, Mr. S.M. Puranik, learned counsel for Respondent No.2 – Nagpur University, Mr. B.G. Kulkarni, learned counsel for Respondent Nos.3 and 4 – Management of the colleges, Mr. M.J. Khan, learned Assistant Government Pleader for Respondent/State and Mr. Sandeep Marathe, learned counsel for Respondent No.6 – Gondwana University.

2. It is the contention of the learned counsel for the Petitioner that the Petitioner was appointed as a lecturer way back in the year 2004, for one academic session and therefore, such continuation, according to learned counsel, showed that the Petitioner was in service. It is submitted that the Petitioner who was in service at the time when the communication was issued by the University Grant Commission (UGC) granting exemption to the lecturers appointed before 11.07.2009 from the requirement of NET-SET qualification, if those lecturers had obtained M.Phil. or Ph.D. qualification before the cut-off date 11.07.2019 and therefore, the Petitioner was entitled to be continued as a lecturer. It is further submitted that this aspect of the matter has not been considered in any way by the Division Bench, whose judgment is now sought to be reviewed.

3. Mr. Meghe, learned counsel for the Petitioner further submits that the Division Bench even did not consider the cases of *Anil S/o Namdeorao Therkar Vs. Gonwana University and another*, Writ Petition No. 1524 of 2014 and *Vivek S/o Tulshiram Maske Vs. Gondwana University and another*, Writ Petition No. 1525 of 2014, decided on 13.06.2014, in which the Petitioners were similarly situated as the present Petitioner and those Petitioners were granted benefit of the communication of the UGC granting exemption to those Petitioners from the requirement of NET-SET qualification. He further submits that these judgments were cited before the Division Bench but were not

considered by the Division Bench. He also submits that the Division Bench has also not given any reasons as to why the Division Bench could not have considered those judgments.

4. Mr. Meghe, learned counsel for the Petitioner further submits that in the Petitions, the Management of the Respondent college was served, but did not appear and therefore, there was no reason for the Division Bench to have concluded that the Petitioner did not fulfill the criteria of UGC communication in question. He also submits that reliance placed by the Division Bench on the judgment of *P. Sushila and others Vs. University Grants Commission and others, (2015) 8 SCC 129* was misconceived as the observations of the Apex Court made therein being relating to absence of right of the Petitioners to seek exemption being in the context of different facts, was not applicable to the facts of the present case.

5. Mr. Arun Agarwal and Mr. B.G. Kulkarni, learned counsel for Respondent Nos.1, 3 and 4 respectively submit that its a fact established on record that the Petitioners were appointed only as contributory lecturers and they were continued as contributory lecturers on academic session-to-academic session basis and that they were never appointed as regular lecturers and, therefore, they did not have any vested right to seek exemption from the criteria of NET-SET qualification. They also submit that in the case of *P Sushila and others*

(supra), the Petitioners were similarly situated as the Petitioners here in the sense that they were not in regular service and therefore, it was held by the Apex Court that the Petitioners did not have any vested right to seek exemption from the requisite qualification. Therefore, according to them, there is no reason to review the judgment in question.

6. The arguments so advanced on behalf of UGC and college Management have been adopted by learned counsel for the Nagpur University and Gondwana University.

7. On going through the documents placed on record and also considering the averments made by the Petitioner, we find ourselves in agreement with the arguments of learned counsel for the Respondents. The Petitioner himself has submitted that he was appointed as a contributory lecturer and was continued to be so on session-to-session basis. Once it is found that the Petitioner was not a regular lecturer, it cannot be said that the Petitioner would also have a right to seek exemption from the NET-SET qualification on the ground that the Petitioner fulfills the criteria of the UGC communication wherein the cut-off date for grant of such exemption has been fixed to be 11.07.2009.

8. In the judgment in question, the argument of the learned counsel for the Petitioner regarding his placing reliance upon the cases

of *Anil S/o Namdeorao Therkar* (supra) and *Vivek S/o Tulshiram Maske* (supra) has not been reproduced, nor these judgments have been considered by the Division Bench. Therefore, now, it cannot be ascertained as to whether or not these judgments were really cited before the then Division Bench by the learned Counsel for the Petitioner. If the learned counsel for the Petitioner had indeed cited those judgments and they were not considered by the then Division Bench, it was a case for seeking immediate review of the judgment in question. But, the Petitioner chose to remain silent in the matter and filed this review application in the year 2019 along with delay condonation application. By that time, one of the judges, who was a party to the judgment in question had retired in October 2018. Therefore, now, this submission made on behalf of the Petitioner by his learned counsel cannot be considered and cannot be made ground to review the judgment in question. We also find that the Petitioner has not made any prayer seeking regularization of his appointment as a contributory lecturer with effect from the date on which he was first appointed as a contributory lecturer. If the Petitioner had made such a prayer, perhaps another perspective could have been added to the whole matter and it may have led to some different result. But, that is not the case here.

9. For these reasons, we do not find that there is any case made out for reviewing the judgment in question, and that there is no error apparent on the face of the record.

10 In spite of what we have observed above, we have tried to take a sympathetic view in the matter considering the fact that the Petitioner after having rendered service as a contributory lecturer for a considerable period of time is without any service today. But, on being asked by us, Mr. B.G. Kulkarni, learned counsel for the Respondent Management submits that at present there is no vacancy available in the college so as to accommodate the Petitioner. We would only request the Management to consider the appointment of the Petitioner as and when the vacancy arises, of course, as per the rules.

11. We, thus, find no merit in the review application. The application is dismissed.

12. In view of disposal of the Civil Application, pending application(s), if any, is/are disposed off.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)