

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

WRIT PETITION NO. 7123 OF 2021

Sardar Juzarsingh S/o Nirmalsingh
Siledar,

Age : 60 Years, Occu. : Retired,

R/o Guru Nanak Apartment,

Flat No. 3, Nirmale Nagar,

Gurudwara Gate No. 3, Nanded.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Maharashtra State,
Mantralaya, Mumbai – 32.
2. Director of Higher Education,
Maharashtra State, Pune.
3. Joint Director of Higher Education,
Nanded Region, Nanded.
4. Swami Ramanand Teerth
Marathwada University,
Vishnupuri Nanded,
Through its Registrar.
5. Peoples College, Nanded,
Snehanagar, Nanded,
Through its Principal.

.. Respondents

Shri Nitin S. Kadam, Advocate for the Petitioner.

Mrs. M. A. Deshpande, Addl.G.P. for the Respondent Nos. 1 to 3.

Shri B. N. Gadegaonkar, Advocate for the Respondent No. 4.

Shri Manish P. Tripathi, Advocate for the Respondent No. 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

RESERVED FOR JUDGMENT ON : 11.07.2023
JUDGMENT PRONOUNCED ON : 26.07.2023

JUDGMENT (*Per Shailesh P. Brahme, J.*) :-

. Rule. Rule is made returnable forthwith. With the consent of parties taken up for final hearing at the admission stage.

2. The petitioner, a superannuated teacher has approached this Court challenging communications dated 08.03.2021 and 27.04.2021 refusing to process his proposal for retiral benefits. The respondent No. 3 has turned down the claim of the petitioner for the benefits of Old Pension Scheme in view of the Government Resolutions dated 23.10.1992, 23.11.1993, 12.08.1999 and 27.06.2013.

3. The relevant factual matrix is stated herein below :

The petitioner was holding qualification of B. A. B. Ed. M. P. Ed. when he was appointed as a lecturer in the College of Physical Education run by Saraswati Shikshan Prasarak Mandal, Nanded. The college was unaided at the relevant time. The petitioner was selected by the recommendation of the duly constituted selection committee of the university. By order dated 16.07.1986 he was appointed as a lecturer. His appointment was approved on 23.05.1986 by the then Marathwada University. By order dated 17.12.2004 the approval was given on a permanent

basis.

4. He secured M. Phil on 17.07.2000 and Ph. D. in the year 2012. He rendered continuous services till 12.09.2005 as a permanent teacher.

5. The respondent No. 5 college is aided college. It published an advertisement for the post of lecturer. The petitioner applied for it. Duly constituted selection committee of the university recommended his name for appointment. By order dated 12.09.2005 he came to be appointed as a lecturer. By order dated 28.10.2005 his services were approved for the period of probation. By further order dated 06.02.2013 the services of the petitioner were approved permanently by the university.

6. The petitioner attained age of superannuation on 30.04.2021. His services from 16.07.1986 to 12.09.2005 (19 years 01 month and 26 days) were in unaided college. His services from 13.09.2005 to 30.04.2021 (15 years 07 months 17 days) were in aided college, the respondent No. 5. In all he rendered services of about 34 years and 09 months. Before his retirement, the proposal was submitted by the respondent No. 5/ college to the Divisional Deputy Director of Education the respondent No. 3.

7. By letter dated 08.03.2021 the proposal of the petitioner for retiral benefits was turned down by the respondent No. 3 stating that it was for service rendered in aided college and he did not

qualify NET/SET and, therefore, he was an ad-hoc teacher. He was not eligible for exemption from NET/SET qualification as he acquired M.Phil on 17.07.2000. It was further held that he was not entitled to old pension scheme, but was covered by Defined Contributory Pension Scheme (for short “D.C.P. Scheme”).

8. In response to the letter dated 08.03.2021, on 18.03.2021 the petitioner as well as college submitted explanation to the respondent No. 3. Thereafter on 27.04.2021, the respondent No. 3 addressed a letter to the college stating that the petitioner was not entitled to old pension scheme and the proposal along with documents was returned.

9. The respondent Nos. 1 to 3 have filed affidavit in reply and contested the matter. According to them NET/SET was a mandatory qualification as per notification dated 19.09.1991 issued by the University Grants Commission (for short “U.G.C.”). In the order of approval dated 23.09.1986, there was condition to acquire M. Phil. The petitioner was not having NET qualification which was compulsory as per regulation dated 04.04.2000. The petitioner did not have M. Phil before 31.12.1993. While securing the services in the respondent No. 5, aided college there was a condition to have NET/SET qualification in the advertisement dated 03.04.2005. The pension proposal of the petitioner was for the period from 13.09.2005 to 30.04.2021 for service rendered in aided college. Therefore, he was not exempted from NET/SET qualification. A strong reliance was placed on the Government Resolution dated

22.11.1993 to disqualify the petitioner from the benefits of old pension scheme. As the former college remained to be unaided till the retirement of the petitioner, the petitioner is not governed by the old pension scheme.

10. The parties have placed on record the orders of appointments, approvals, communications, relevant notifications and Government Resolutions.

11. The learned counsel for the petitioner would submit that the petitioner was having requisite qualification when he was appointed for first time on 16.07.1986 in an unaided college. At the relevant time M. Phil. or Ph. D. or NET/SET was not requisite qualification. Thereafter petitioner secured services with the respondent No. 5 from 13.09.2005. He was not required to acquire NET/SET qualification. The learned counsel would further submit that to treat the petitioner as an adhoc teacher for want of NET/SET qualification is patent illegality and misconception. According to him NET/SET qualification became mandatory by notification of U. G. C. dated 19.09.1991. It became applicable in the State of Maharashtra from 23.10.1992. The petitioner was in service prior to 23.10.1992 and his services were approved by the competent authority. Therefore, there was no need for him to acquire NET/SET qualification.

12. The learned counsel for the petitioner submits that the petitioner was governed by the old pension scheme which was made applicable by the Government Resolution dated

21.07.1983. The D.C.P. Scheme was made applicable from 01.11.2005. Even his appointment with the respondent No. 5 was on 12.09.2005. Hence he was covered by the Old Pension Scheme. The respondent No. 3 erred in holding that as per G. R. dated 27.06.2013, the petitioner was governed by the D.C.P. Scheme According to him G. R. dated 27.06.2013 was applied for CAS benefits. It was applicable for the teachers who were appointed during 24.10.1992 to 03.04.2000.

13. The learned counsel invites our attention to the provisions of the G. R. dated 22.12.1995. By this government resolution even M. Phil qualification was not mandatory for the teachers who were appointed from 01.01.1986 to 27.02.1989. The G. R. exempts him from acquiring NET/SET qualification. He relied on circular dated 18.06.1994, which clarifies that the lecturers who were in service prior to revision of pay scales and fulfilling the requisite qualification will not be governed by the subsequent qualifications prescribed by the U.G.C.

14. The learned counsel further canvasses that the G. R. dated 22.11.1993 and 12.08.1999 are not attracted. The learned counsel places reliance on the reply cum explanation dated 18.03.2021 tendered by him to the respondent No. 3 which is at page No. 47. The learned counsel would rely upon the judgment and order dated 29.03.2023 passed by High Court in **Writ Petition No. 5357 of 2022 in the case of Dr. Shrikant Sakharam Jadhav Vs. The State of Maharashtra and others**. According to him the respondent authorities misconstrued various provisions

of the notifications and wrongly applied the policies prescribing the qualification of NET/SET to the case of the petitioner. The petitioner is illegally deprived of the benefits of the Old Pension Scheme.

15. The learned Additional Government Pleader would submit that the advertisement was published by the respondent No. 5 college for the recruitment of the petitioner, wherein the NET/SET was prescribed qualification. Reliance is placed on Government Resolutions dated 13.06.2000, 22.11.1993 and 12.08.1999. She would submit that certain conditions stipulated in the G. R. dated 22.11.1993 and 12.08.1999 were not fulfilled. The erstwhile college wherein petitioner was rendering services was permanently unaided college and it remained unaided when petitioner attained superannuation. It is further tried to be impressed upon the Court that the G. R. dated 13.06.2000 and Regulation dated 31.07.2002 required the petitioner to compulsorily acquire NET/SET qualification. The petitioner acquired M. Phil on 17.07.2000 which was beyond stipulated date and, therefore, not useful for seeking exemption from NET/SET.

16. Having considered the rival submissions we are called upon to determine (i) Whether the petitioner was having requisite qualification? (ii) Whether the petitioner is governed by the Old Pension Scheme or New Pension Scheme (DCP Scheme)? and (iii) Whether previous service rendered by the petitioner in an unaided college can be considered to determine pensionable service.

17. Both the parties are *ad edem* on following relevant facts :

- a) The petitioner was appointed on 16.07.1986 in a college which was not receiving grant in aid. The appointment was duly approved. The permanent approval was also issued to the petitioner.
- b) The petitioner was appointed in the respondent No. 5 college by following due procedure of law on 13.09.2005. The appointment was also approved by the competent authority initially on probation and subsequently on a permanent basis.
- c) The old pension scheme was enforced by G. R. dated 21.07.1983. D.C.P. Scheme was made applicable by G. R. dated 31.10.2005 with effect from 01.11.2005.
- d) The proposal submitted by the management and the explanation/reply submitted by the petitioner on 18.03.2021 show that the proposal was for the pensionable service rendered in the respondent No. 5 from 13.09.2005 to 30.04.2021.
- e) The UGC issued notification dated 19.09.1991 and NET/SET was made mandatory. The G. R. dated 27.06.2013 was for the purpose of awarding C.A.S. benefits.

Question No. 1 :

18. The petitioner was appointed for the first time on 16.07.1986. At the relevant time he was having qualification of

B.A. B. P.Ed. and M.P.Ed. His appointment was made after following due procedure of law. There was recommendation of duly constituted selection committee. The appointment was approved on 23.09.1986 and thereafter on 17.02.2004 as a permanent teacher.

19. The qualifications were laid by the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a university or other institutions affiliated to it) Regulations, 1982. The relevant extract is as follows :

**The University Grants Commission (Qualifications
required of a person to be appointed to the teaching
staff of a university or other institutions affiliated to it)
Regulations, 1982.**

UNIVERSITY LECTURERS

.....

COLLEGE LECTURERS :

- (a) An M. Phil degree or a recognized degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work and
- (b) Good academic record with atleast second class (C in the seven point scale) Master's degree in Education and also Master's degree in a relevant subject (10+2 level) from an Indian University or equivalent degree from foreign university.

Provided that if the Selection Committee is of the view that the research work of a candidate as evident Either from his thesis or from his published work is of a very high standard, it may relax any of the prescribed qualifications prescribed in (b) above.

Provided further that if a candidate possessing the qualifications as at (a) above is not available or not

considered suitable the college on the recommendations of the Selection Committee may appoint a person possessing a good academic record on the condition that he will have to obtain an M. Phil degree or a recognised degree beyond the Master's level within eight years of his appointment, failing which he will not be able to earn future increments till he obtains that degree or gives evidence of equivalent published work of high standard."

20. The petitioner was holding requisite qualification because he was having post graduation. The approvals produced on record granted by the competent authority do not reflect that the petitioner was unqualified and he was an adhoc employee.

21. The qualification stipulated by the UGC by notification dated 19.09.1991 requiring a teacher to have NET/SET as a mandatory qualification is applicable prospectively. The said notification was accepted by the State Government by G. R. dated 27.11.1992. The teachers who were to be inducted after 27.11.1992 were required to have a mandatory qualification of NET/SET. Therefore, the contention that the petitioner was not having NET/SET and he was adhoc employee cannot be accepted.

22. It is stated in impugned letter that the petitioner was an adhoc teacher. The petitioner was not for the first time appointed on 13.09.2005. He was initially appointed on 16.07.1986 after following due procedure of law. His services were also approved. The services rendered from 16.07.1986 in unaided college cannot be taken into consideration for calculation of pensionable service. But for the purpose of deciding whether he was trained teacher or not relevant date has to be 16.07.1986,

the date of induction in service. We are of the considered view that the respondent No. 3/Joint Director of Higher Education failed to appreciate this aspect of the matter and committed perversity.

23. At the time of appointment of the petitioner for the second spell in the respondent No. 5 on 13.09.2005 he had M. Phil. and Ph. D. The petitioner acquired M. Phil. on 17.07.2000. As the petitioner was held to be qualified since his induction he was not required to undergo NET/SET qualification. The objection against the petitioner that M. Phil was acquired after 31.12.1993 is inconsequential. There was no need for the petitioner to claim exemption from acquiring NET/SET as he was having M. Phil. to his credit. Therefore, the reasons assigned by the respondent No. 3/Joint Director of Higher Education that the petitioner was adhoc because he was neither having M. Phil prior to 31.12.1993, nor NET/SET qualification is preposterous.

24. As we have already held that the petitioner was having requisite qualification on 16.07.1986, the further policies in the form of regulation dated 13.06.2006, G. R. dated 12.08.1999, G. R. dated 27.06.2013 are not helpful to determine the entitlement of the petitioner. The G. R. dated 27.06.2013 is for extending the service benefits to the teachers appointed during 23.10.1992 to 03.04.2000. The petitioner has not been appointed during the period contemplated by the government resolution. The said government resolution is not applicable to him. Therefore, the stipulation in clause 18 of that government resolution has no

application to the case in hand.

Question No. 2 :

25. The old pension scheme is enforced by the Government Resolution dated 21.07.1983. The petitioner was appointed on 16.07.1986 in an unaided college. The D.C.P. Scheme was introduced by Government Resolution dated 31.10.2005. The employees who are inducted in services of schools and colleges after 01.11.2005 are to be governed by the D. C. P. Scheme. The respondent No. 5 is an 100% grant-in-aid college. The petitioner was appointed in the respondent No. 5 on 13.09.2005 i. e. when the Old Pension Scheme was applicable. On 01.11.2005, the petitioner was rendering services with 100% grant in aid college, respondent No. 5. A useful reference can be sought to appreciate the legal position in this regard to the judgment delivered by the Full Bench in the matter of **Deshmukh Dilipkumar Bhagwan and others Vs. State of Maharashtra and others** reported in **2019(3) Mh. L. J. 903.**

26. In a reference following three questions were answered by the Full Bench :

37. Under these circumstances, we answer the Reference as under :-

Question No. 1 :

In the context of the right of an employee of private school or college of education to receive pensionary benefits and the corresponding liability of the Government to pay the same, only those schools and colleges of education which

are receiving 100% grant-in-aid can be termed as aided institutions.

Question No. 2 :

The employees who were appointed prior to 1-11-2005 in aided recognized primary, secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1-11-2005 would be governed by the DCP scheme.

Question No. 3 :

Similar will be the situation of the employees who were appointed prior to 1-11-2005 in aided primary, secondary and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 1-11-2005 but which became 100% aided before 29-11-2010 would also be governed by the DCP scheme.

27. In view of the answer to question Nos. 1 and 2, it is explicit that the petitioner was rendering the services in an aided institution on 01.11.2005. He would be covered by the Old Pension Scheme. Considering the legal position laid down by the above referred judgment, we are inclined to hold that the petitioner is entitled to the benefit of the old pension scheme.

Question No. 3 :

28. We have noticed from the memo of the petition as well as explanation dated 18.03.2021 tendered by the petitioner to the respondent No. 3 that the claim pertains to the pensionable service rendered in the respondent No.5 college from 13.09.2005 to 30.04.2021. It is not the claim of the petitioner that services rendered in unaided erstwhile college from 16.07.1986 to

12.09.2005 should be calculated as pensionable service. The petitioner had contributed to G.P.F. and P.F. account bearing No. 2282 was also opened. Therefore, the G. Rs. dated 22.11.1993 and 12.08.1999 are not attracted in the present matter. These Government Resolutions stipulate the conditions for calculating the services rendered by an incumbent in an unaided schools or the colleges.

29. The submissions of the learned Addl. G. P. that the services rendered by the petitioner in an unaided institution cannot be considered to comprehend the pensionable service in view of G. R. dated 22.11.1993 and 12.08.1999, is of no consequence. As recorded earlier that was not the claim of the petitioner. Hence we have to restrict our reasoning and discussion to see whether the petitioner has pensionable service as a qualified, confirmed and approved teacher.

30. The learned counsel for the petitioner relied upon judgment and order dated 29.03.2023 passed by this Court at the Principal Seat at Bombay in Writ Petition No. 5357 of 2022 in the case of **Dr. Shrikant Sakharam Jadhav Vs. The State of Maharashtra and others**. We are of the view that the facts and the ratio laid down in that judgment is not applicable to present case.

31. The impugned letters dated 08.03.2021 and 27.04.2021 denying retiral benefits to the petitioner as per the old pension scheme are issued on the ground that he was not qualified. We,

find that reasoning so stated in the impugned letters are unsustainable. We, therefore allow the writ petition as follows.

i) The letters dated 08.03.2021 and 27.04.2021 issued by the Respondent No. 3/Joint Director of Higher Education, Nanded Region, Nanded are quashed and set aside.

ii) The respondent Nos. 3 to 5 shall forward the pension proposal of the petitioner dated 31.12.2020 and 18.03.2021 with necessary modifications, to the Accountant General, Nagpur within a period of four (04) weeks from today.

iii) Rule is made absolute in above terms. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/July 23