

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**REVIEW APPLICATION (CIVIL) NO. 202 OF 2022**

**IN**

**WRIT PETITION NO. 416 OF 2021**

Surekha d/o Laxman Chavan,  
Age : 60 years, Occu.: Retired,  
R/o.: Pranjali Apartment, Wagh mala,  
Balikshram Road, Ahmednagar

Applicant

**VERSUS**

1. The State of Maharashtra,  
Through the Secretary of Higher  
Education Department, Mantralaya  
Mumbai-32
2. The Director Higher Education  
Maharashtra State Pune
3. The Joint Director (Higher Education)  
Pune Regional Office, Pune
4. The Accountant General (A & E)-1  
Office at 10, Maharshi Karve Road,  
Old CGO building, New Marine Lines,  
Mumbai-20
5. The University of Poona,  
Through its Registrar
6. Ahmednagar Jilha Maratha Vidya  
Prasarak Samaj's A charitable Trust,  
Through its Secretary,  
R/o. New Arts Commerce and Science College,  
Ahmednagar, Tq. & Dist. Ahmednagar
7. New Arts, Commerce & Science College,  
Through its Principal,  
Ahmednagar, Tq.Dist. Ahmednagar

Respondents

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Mr. R.R. Deshpande and Mr. Bhagwat Deshpande, Advocates holding for Ms. Priyanka Deshpande, Advocate for applicant. Mr. S.G. Karlekar, A.G.P. for respondent Nos.1 to 4.

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CORAM : RAVINDRA V. GHUGE AND  
SANDIPKUMAR C. MORE, JJ.

Order Reserved on : 23.02.2023

Order pronounced on : 16.03.2023

**Order (Per Sandipkumar C. More, J.) :**

1. By way of this Application, the applicant is seeking review of the judgment and order dated 21.06.2022, delivered by this Court in Writ Petition No. 416 of 2021. We would like to reproduce the prayers clauses “B”, “C”, “D” and “E” of Writ Petition No. 416 of 2021 herein-below, for the quick reference :

*“B] By issuing the writ of certiorari or any other appropriate writ or order or direction in the like nature, the communication dated 31/08/2020/ 07-09-2020 issued by the respondent No.3 to the respondent No.7 and to the petitioner 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 respondent Nos.1 to 4 may kindly be directed to sanction and disburse the pension and other retirement benefits to the petitioner within the stipulated period which this Hon’ble Court would deem fit and proper.*

*C] During the pendency of this writ petition the respondent Nos.1 to 4 may kindly be directed to sanction and disburse the provisional pension and other retirement*

*benefits to the petitioner within the stipulated period which this Hon'ble Court would deem fit and proper.*

*D/ By issuing the writ of mandamus or any other appropriate writ or order or direction in the like nature, the respondent Nos.1 to 4 may kindly be directed to pay all arrears of the pensionary benefits as well as the other retirement benefits in respect of the petitioner with 15% interest p.a. till its realization”.*

2. The applicant has sought review of the judgment, containing the following conclusions :-

- a. Not a single order is placed on record issued by the respondent No.3 vide which the services of the petitioner approved 1986 till 28-2-2013.
- b. The case of the petitioner is not covered in the GR dated 29-10-2021 issued by the respondent No.1 being said GR covers the cases of the lecturers who are appointed during the period from 23-1-93 to 03-04-2000.
- c. The applicant was serving in respondent no.7 college at the time of her retirement which was not 100% grant in aid.
- d. The applicant has not achieved the qualification of NET/SET in consonance with the GR DATED 29-10-2019.

3. The applicant has elaborately mentioned in the Review Application as to how the aforesaid conclusions are erroneously arrived at by us.

4. So far as ground 'a' is concerned, the applicant is saying that the documents at page Nos. 69 and 67 were not considered by us, whereby it has been transpired that the present respondent No.2, who is the higher authority of respondent No.3, had in fact inspected, verified and confirmed the services of the applicant from 01.08.1989.

However, the aforesaid documents appear to be of 2007 and in respect of grant of Selection Grade to the applicant. Though the representative of respondent No.2 appears to have signed those documents, but the same cannot be interpreted as an 'approval' to the services of the applicant from 01.08.1989. Those documents are only in respect of placing the applicant in Selection Grade. It is extremely important to note that prior to these documents, respondent No.3, who is the authority for grant of approval to the appointment of the applicant, vide letter dated 17.03.2004, had given assent for the appointment of applicant on grant-in-aid post from non grant post. Further, there appears so many overwritings in the document at page No.69, and therefore, it's authenticity is also in question. Even otherwise also, we have already discussed as to how the earlier services of the applicant for the period from 1986 till 28.02.2003, could not be considered since there were breaks in her services and the same were

purely on temporary basis. It is evident that those services were either on leave vacancy basis or full time or part-time basis. Therefore, this ground cannot be revisited, since the approval for the appointment of the applicant was given only from 28.02.2003 at the hands of respondent No.2, who was the proper authority.

5. So far as the case of the applicant being not covered under Government Resolution dated 29.10.2021 is concerned, it is clearly evident from the said GR that only the lecturers who were appointed during the period from 23.10.1992 to 03.04.2000, are covered in the said GR. That means, those lecturers despite being failed to achieve the required qualification, were made entitled for getting pension from the date of their original appointment. Thus, the applicant cannot draw any benefit from the said GR since her appointment on grant-in-aid post existed for the first time on 28.02.2003.

6. In respect of ground 'c', it has already been recorded by us that the earlier services of the applicant were purely on temporary basis and also in non grant unit, and therefore, the eligibility of the applicant for getting pension needs to be considered only from 28.02.2003.

7. So far as ground 'd', which relates to non achievement of qualification of NET/SET in consonance with the GR dated 29.10.2019 (it should have been 29.10.2021), is concerned, the learned Counsel for the applicant vehemently argued that the State of Maharashtra, vide GR dated 23.10.1992 made it compulsory to have clearance of NET/SET examination for appointment on the post of Lecturer. Though it is claimed that the applicant was exempted from such clearance since she had been appointed on 01.08.1989, but we have already discarded such submission of the learned Counsel for the applicant in respect of date of appointment being 01.08.1989 and in clear terms, held that the applicant got appointed on grant-in-aid post from 28.02.2003. The learned Counsel for the applicant thereafter pointed out that the applicant has achieved qualification of Ph.D. in concerned subject from respondent No.5 vide Notification dated 07.01.2020 and she retired thereafter on 31.01.2020. Thus, it appears that the applicant had achieved qualification of Ph.D. in the last month of her service. This aspect of acquiring Ph.D. was never brought on record by the applicant at the time of hearing of Writ Petition No. 416 of 2021. The impugned order in the said Writ Petition passed by present respondent No.3 clearly indicates that for being eligible for pension from

28.02.2003, the applicant was supposed to hold necessary qualification for the post of Lecturer / Assistant Professor i.e. either clearance of NET/SET or achievement of Ph.D. The Government Resolution dated 27<sup>th</sup> June 2013 at Clause-5 clearly indicates that UGC had included the qualification of achievement of Ph.D. for being appointed as an Assistant Professor and it was also reiterated by the discussion made on 1<sup>st</sup> June 2009. It appears that respondent No.3 refused the proposal of the applicant under the impugned order in the aforesaid Writ Petition only because she did not have the said necessary qualification of NET/SET / Ph.D. as per the Notification of UGC dated 04.04.2000.

8. However, it is extremely important to note that the fact of having achieved the qualification of Ph.D. by the applicant was neither canvassed before respondent No.3 at the time of passing the impugned order in Writ Petition No. 416 of 2021, nor it was brought to the notice of this Court during the arguments in the said Writ Petition. Therefore, it has to be decided by respondent No.3, which is the proper authority, as to what would be the effect of achieving the qualification of Ph.D. by the applicant, that too in the last month of her service i.e. on 07.01.2020.

9. Therefore, we find substance in the submission of the learned Counsel for the applicant only to that extent. It is necessary for respondent No.3 to reconsider the proposal of the applicant in respect of getting pension on the basis of acquiring the qualification of Ph.D. and whether this qualification would condone the deficiency of not having the requisite qualification, with retrospective effect from 28.02.2003.

10. We, therefore, pass the following order :-

**ORDER**

- (i) The Review Application is partly allowed.
- (ii) The impugned order dated 21.06.2022 passed in Writ Petition No. 416 of 2021 is hereby recalled.
- (iii) The Writ Petition is disposed off with a direction to Respondent No.3 to reconsider the proposal of the applicant/original Petitioner for getting pension, afresh, and on it's own merits in the light of her Ph.D. acquired on 07.01.2020, within three months from the date of this order.

(SANDIPKUMAR C. MORE, J.)      (RAVINDRA V. GHUGE, J.)