Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5357 OF 2022

Dr Shrikant Sakharam Jadhav,
Age- 61 years
Residing at- 476/1, Samarth Wadi, Vitthal Park, Gangapur Road,
Nasik 422 002. **...Petitioner**

~ versus ~

1. **The State of Maharashtra,**
Through its Principal Secretary,
Higher & Technical Education Department, Mantralaya Annex,
Mumbai 400 032.

2. **The Director of Higher Education, Maharashtra State,**
Central Building, Pune,
District- Pune.

3. **The Joint Director of Higher Education,**
Department of Higher Education,
17, Dr Ambedkar Road, Pune,
District- Pune.

4. **The Savitribai Phule Pune University,**
Through its Registrar,
Ganesh Khind Road,
Pune 411 007.

5. **Maratha Vidya Prasarak Samaj, Nashik,** Through its Secretary Having office at- Central Office, Shivaji Nagar, Gangapur Road, Nashik 422 002, Maharashtra. 6. **MVP's KTHM College,** Through its Principal Having office at- Shivaji Nagar, Gangapur Road, Nashik 422 002.	**...Respondents**

Appearances

for the petitioner	**Mr Mihir Desai, Senior Advocate,** *i/b Devyani Kulkarni.*
for respondent – State	**Mrs PJ Gavhane, AGP.**

CORAM : G.S.Patel & Neela Gokhale, JJ.

DATED : 29th March 2023

ORAL JUDGMENT (*Per GS Patel J*):-

1. **Rule**. There is an Affidavit in Reply of an additional affidavit by the Petitioner and an additional Affidavit in Reply by the Joint Director, Higher Education, Pune Region. Rule is made returnable forthwith and the Petition is taken up for final hearing and disposal.

2. The Petitioner was employed at the 6th Respondent, MVP's KTHM College (**"the College"**) as an Assistant Professor in

Commerce. He was first appointed as a Lecturer on 16th September 1999. He retired on 30th June 2020. He has filed this Petition aggrieved by the denial by the 3rd Respondent, the Joint Director of Higher Education, Pune of the Petitioner's retiral benefits including pension and gratuity. That denial came by two letters dated 10th February 2020 and 8th February 2022.

3. The final prayers in the Petition at pages 43 to 44 read as follows:

> "a. That this Honourable Court be pleased to issue a writ of certiorari and /or any other order or direction in the nature of certiorari to quash and set aside the impugned orders dated 10.02.2021 and 08.02.2022 which have been marked and annexed hereto collectively as Exhibit H and release the retirement benefits including pension and gratuity to the Petitioner on the basis of his last drawn salary counting his service from 20.09.1999 to 30.06.2020 as per the provisions of the old pension scheme of 1983.
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> b. That this Honourable Court be pleased to issue a writ of mandamus and /or any other order or direction in the nature of mandamus to direct the Respondent No.1, 2 & 3 to grant and release the retirement benefits to the Petitioner including his pension and gratuity etc. on the basis of his last drawn salary considering his service period from 20.09.1999 to 30.06.2020 as per the provisions of the old pension scheme of 1983, with interest at the rate of 18% per annum from the date of superannuation till payment.
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> c. That this Honourable Court be pleased to issue a writ of mandamus and /or any other order or direction in the nature of mandamus to direct the concerned Respondents to grant the retirement benefits to the Petitioner including pension and gratuity as per the

provisions of the old pension scheme of 1983 which was brought into effect vide the GR dated 21.07.1983."

4. The 5th Respondent is the management of the College.

5. The Petitioner was appointed as a Lecturer on 30th November 1987 in the subject of commerce on a temporary basis. His services were continued on an annual basis until 1999. None of this is really contentious but we note it for completeness of record. There is no doubt that his appointment followed the usual procedure and was approved by the 4th Respondent University by various approval orders. The Petitioner's services were approved with effect from 20th September 1999. The approval order in question referenced the UGC Regulation of 2006 and the second amendment. This *inter alia* required that the candidate have an NET qualification. By that time the Petitioner had obtained an M.Phil degree and was teaching at the undergraduate level. He maintains that he was exempted from appearing for the NET examination. The Petitioner was initially appointed on a non grant-in-aid basis but that is inconsequential, the Petitioner says, because he was still appointed following a procedure approved by the University. Thus, the case of the Petitioner is that he had not only got an M.Phil degree but was exempted from meeting the NET/SET qualification and, in any case, there was a further exemption granted by the University Grants Commission (**"UGC"**) by its letter of March 2010. As a matter of routine course, the Petitioner was afforded Career Advancement Scheme benefits and annual grade pay as well. Pay fixation forms are annexed. By the year 2005, the Petitioner acquired a Ph.D. This, according to the

Petitioner, is all the more reason not to insist today on his having once met the NET/SET requirement.

6. The Petitioner had served for 29 years, 8 months and 2 days when he retired on 30th June 2020. His last pay certificate is annexed at Exhibit 'G' to the Petition. His pension proposal was sent on by the management of the College. But the 3rd Respondent by the first impugned order of 10th February 2021 rejected the proposal. The Petitioner took into account a Government Resolution of 29th October 2021 and sought once again from the 3rd Respondent the release of his pensionary benefits. The 3rd Respondent denied these again on 8th February 2022. The grounds for rejection now appeared to be these:

> "i. The Petitioner was appointed on a grant-in-aid basis from 2003 and therefore he should have cleared the NET/SET as prescribed by UGC.
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> ii. The Petitioner acquired the qualification of M.Com. in 1984 and M.Phil. in 2008 and therefore he should have acquired the requisite qualification as prescribed by the UGC in the period between 23.10.1992 to 03.04.2000.
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> iii. The impugned order further states that the Old Pension Scheme of 1983 will not be made applicable to the Petitioner.
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> iv. Since the Petitioner was appointed on an aided post on 17.01.2005, the benefits of the GR dated 29.10.2021 cannot be granted to him.
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> v. That there is no provision in the GR dated 29.10.2021 to grant pension to teachers appointed after 03.04.2000."

7. Mr Desai for the Petitioner states that having seen the reply, only two grounds now really survive. The first is about the shift from the unaided to the aided section and the second is whether the previous years of service from 1999 should or should not be counted for the purposes of computing the pension and retiral benefits.

8. Mr Desai points out that the Affidavit in Reply and the additional affidavit show that the pay scale amounts have in fact been periodically approved. Once this comes into play, there is no question of any period being excluded only because the Petitioner was at some point in the unaided section. That is of no consequence when computing pension. Pension must apply to the entire period in service. There can be no doubt that it is the Old Pension Scheme of 1983 that must apply to the Petitioner.

9. Mr Desai draws attention to an order of 3rd October 2018 by the Bench of BR Gavai J (as he then was) and MS Karnik J in *Shri Maruti Dattatray Patil v The State of Maharashtra & Ors* in Writ Petition No. 13166 of 2017. In paragraph 5 of that order, the Division Bench said:

> "5. The perusal of the impugned order would reveal that the claim of the Petitioner has been rejected on the ground that the appointment of the Petitioner from 1999 was ad-hoc since the Petitioner did not possess the requisite qualification. The other reason given is that the Government Resolution vide which the requirement of having passed net-set examination is exempted has been issued on 27/06/2013 and the Petitioner has retired on 30/09/2012 i.e. prior to the said G.R. coming into effect."

10. This decision was carried to the Supreme Court which, on 1st July 2019 dismissed the Special Leave Petition.

11. Then our attention is drawn to a second decision of a Division Bench of BR Gavai J (as he then was) and Dama Seshadri Naidu J in *Ranpise Vijaykumar Baburao v The State of Maharashtra & Ors* in Writ Petition No. 755 of 2019. Paragraphs 7 to 9 of that judgment are relevant to one of the issues before us today. We reproduce them:

> "7. In response to the notice issued by this Court, the respondent no.3 has stated that since the petitioner was not possessing net/set, he would not be entitled to the pensionery benefits. In the reply it is stated that as per the GR dated 27th June 2013, the petitioner would be governed by the Defined Contributory Pension Scheme.
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> 8. **The issue is no more res integra. The Division Bench of this Court of which one of us (Gavai, J) was a party, through judgment and order dated 3rd October 2018 in Writ Petition No.13166/2017 (*Maruti Dattatraya Patil Vs. The State of Maharashtra and ors*.), has observed thus**:
>
> "8. It can be thus seen that vide aforesaid G.R., the State Government has exempted the lecturers who are appointed between 23/10/1992 to 03/04/2000 and who were not possessing the net-set examination, M.Phil. and Ph.D. qualification. Only requirement is that the appointment of these lecturers is required to be made after following due selection process. The other requirement is that appointment of such lecturers ought to

> have been approved by the University and University should have submitted the proposal for grant of approval of such teachers to the University Grant Commission." "
>
> 9. Indisputably, the petitioner's appointment is during the period exempted by the said G.R. So not only the petitioner's appointment is approved by the University but he has also been granted exemption."

Once again this was carried to the Supreme Court, and once again, this time on 7th February 2020, the challenge failed.

12. Thus, the question of the NET/SET examination requirement being a prerequisite is answered in favour of the Petitioner. What remains is the question of the date from which the Petitioner's services must be computed for the period of reckoning the pension and this is covered, apart from the previous judgments by the decision of a Division Bench of the BR Gavai J (as he then was) and Dama Seshadri Naidu J of 16th April 2019 in Writ Petition (St) No. 9011 of 2017, *Sister Ansela D'mello & Anr v The State of Maharashtra & Ors*. The decision notes the judgment of another Division Bench of this Court in *Anuradha Jayant Gangakhedkar v Brihanmumbai Municipal Corporation & Ors*[1] and, also the judgment in *Homraj Hansaram Bisen & Ors v State of Maharashtra & Ors*.[2] Paragraphs 4 and 5 of the Division Bench order in the *Sister Ansela D'Mello* case read thus:

> "4. On perusal of records, it could be seen that the petitioner was in continued service from 13th June 1986 till 31st December 2014 i.e. almost 28 years and 6 months. Out

1 2012 SCC OnLine Bom 1056

2 2012 SCC OnLine Bom 1703

of this, almost entire period she has been working in aided School and only from period 5th July 1996 to 15th June 2008 i.e. for approximately for a period of 12 years she worked in unaided school. **The pensionary benefits were denied to petitioner no.1 on the ground that part of service the petitioner has rendered in unaided school, and therefore, she would not be entitled to pensionary benefits. Stand taken by the respondents is totally incorrect and ignorance of law laid down by the Division Bench of this Court in the case of *Anuradha Jayant Gangakhedkar Vs. Brihanmumbai Municipal Corporation & ors*.** It would be relevant to refer to the following observations made by the Division Bench in the said Judgment:

> "6. … … … The definition of the expression "qualifying service" in the Pension Rules refers to service rendered in a permanent post. In the present case, there is no dispute about the position that the Petitioner worked in a post which was sanctioned. Her services were duly approved by the Education Officer. **The test which must be applied is as to whether an employee was a full time confirmed and approved member of the teaching or non-teaching staff of a private primary aided school on the date of her retirement. If that test is satisfied, the Pension Scheme is made applicable by virtue of the provisions of clause 5(ii). There is no warrant in the Pension Scheme or the Pension Rules to exclude while computing qualifying service, the service which is rendered by an employee before a school came to be in receipt of grant-in-aid. So long as the school was in receipt of**

> **grant-in-aid on the date on which an employee retired from service upon attaining the age of superannuation, the application of the Pension Scheme would be attracted.** The Pensioner was an employee of a private primary aided school on the date of retirement and was hence eligible."

It could be thus seen that the ratio the Division Bench has applied is whether on the date on which the employee retires was working in a School which was receiving grant-in-aid. Even if a part of the period of service is rendered in a School which was not receiving grant-in-aid, it cannot be ground to deny the Petitioner's pensionary benefits.

5. Similarly, is the ratio of *Homraj Hansaram Bisen and Ors v State of Maharashtra & Ors.* It would be relevant to refer to paragraph 16 of the said judgment:

> "16. We find that had the Government not prescribed such a cut-off date, it would have led to anomalous situation. **As already discussed hereinabove, the basic responsibility in an unaided recognized school to pay salary to its employees is on the management of the school. Taking the hypothetical situation as suggested by the counsel for petitioners, if an employee is appointed in 1998 and school comes to hundred percent grant in 2008 the question would be who would pay employer's contribution for a period of ten years. We, therefore, find that Scheme as formulated by the State Government is also totally workable inasmuch as employee who is receiving hundred percent salary from the public exchequer prior to 1st November**

> **2005 is being governed by old Scheme.** Had such a cut-off date not being provided for, there would have been discrimination between employees of the State Government who are appointed on or after 1st November 2005 and who are getting hundred percent salary from the State Government and the employees like the petitioner who are not getting full salary from the State Government. The Scheme has also taken care to see to it that a person who, though appointed in a school prior to 2005 and the school receives hundred percent grant-in-aid after 2005, would be entitled to enter into the new scheme as on the date on which the school comes to hundred percent grant-in-aid. In that view of the matter, we are unable to accept the contention of learned counsel for the petitioners that the Scheme is violative of Article 14 of the Constitution of India or unreasonable and arbitrary".

(*Emphasis added*)

13. The Division Bench actually allowed the Petition with costs. We do not think it is necessary to go quite that far but we do note that the default provision in that order was interest at 18% pa plus a potential charge of contempt.

14. The finding is clear that it is the Old Pension Scheme and the date of the Petitioner's initial employment in the unaided section which would have to be taken into account for computing the number of years of service for the purposes of pension.

15. Rule is made absolute in these terms, in terms of prayer clauses (a), (b) and (c) set out above. The amounts are to be paid to the Petitioner no later than by 21st April 2023.

16. We said earlier that we are not making the order that the Division Bench of this Court made in *Sister Ansela D'mello's* case. However, for the benefit of the State Authorities and so that there is no possibility of any miscommunication between Mrs Gavhane and the officers in question, we reproduce paragraph 6(i) and 6(ii) of the order in the *Sister Ansela D'mello* case (that is potentially contempt plus interest at 18% pa):

> "6(i) Writ Petition is allowed with costs. The amount of costs is quantified at Rs.1,00,000/-. The State to give donation of Rs.1,00,000/- within a period of 15 days from the date of uploading of this order to ***Bethany Hospital, Thane*** by demand draft and place the receipt thereof on the proceedings of the present matter. The hospital details are as under:
>
> **Bethany Hospital**
> Charitable Trust,
> Pokhran Road No.2
> Thane (West),
> Thane 400 610.
>
> It is made clear in the event the amount of costs is not deposited within the aforesaid period, the Chief Secretary of the State shall personally be held liable for committing contempt of this Court. It is further clarified that the State is at liberty to conduct inquiry as to who was the officer responsible for giving rise to such unnecessary litigation which deprived the petitioner of her legitimate pensionary benefits for a period of almost five years. The

> State would be at liberty to recover the amount of costs from the said officer.
>
> 6(ii) The respondents are directed to take into consideration the service rendered by the petitioner in aided School while considering the grant of pensionary benefits and work out pensionary benefits payable to the petitioner on the basis of her last drawn salary. The pensionary benefits would be paid on the basis of aforesaid order from the month of June 2019, and all arrears which the petitioner would be entitled from 1 January 2015 till 31 May 2019 shall be cleared within a period of three weeks from the date of uploading of this order, failing which, the respondents shall be held liable to pay interest @ 18 % p.a."

17. Finally, we are constrained to note our great dismay, even displeasure, at the manner in which the State Government persists in raking up the same defence again and again. We do not know how many times this Court has to pronounce the law. The aforesaid extracts show that this Court had laid down the law, and the pronouncement was not limited to the facts of any particular case. Yet, the government persists in the belief that the law declared by this court is somehow not binding on it, or that every judgment, no matter what the wording and even if it clearly lays down the law is confined to that particular petition. We are letting it pass this once, but if this is repeated we may well be moved to far sterner action.

18. The Writ Petition is disposed of in these terms. There will be no order as to costs.

(Neela Gokhale, J) **(G. S. Patel, J)**

RAJU DATTATRAYA GAIKWAD
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