

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4730 OF 2021

Shri Dhansing Dalsing Rajput
Aged 60 Years, Occ. Service,
R/o. 6, Nikunj Apartment,
Patil Lane No.3, College Road,
Nashik

..... Petitioner

Vs.

1. The State of Maharashtra,
Through the Secretary,
Higher & Technical Education
Department, Mantralaya,
Mumbai-400 032.
2. Savitribai Phule Pune
University, Pune,
Through its Registrar,
Ganesh Khind, Pune – 411 007.
3. Krantiveer Vasantryao
Narayanrao Naik Shikshan
Prasarak Sanstha, Nashik,
At Canada Corner, Sharanpur,
Road, Nashik – 422 002,
4. K.V.N.Naik Shikshan
Prasarak Sanstha's
Arts, Commerce & Science
College, Canada Corner,
Sharanpur Road,
Nashik – 422 002,
Through its Principal
5. The Joint Director of
Education ([Higher Education],
M.S.Pune – 411 001.

..... Respondents

Mr.N.V.Bandiwadekar, Sr.Advocate a/w Mr.Vinayak Kumbhar i/b
Ms.A.N.Bandiwadekar for Petitioner.

Mr.S.B.Kalel, A.G.P. for the Respondent nos.1 and 5

Dr.Rajendra Anbhule for Respondent no.2

Mr.Sachin Gite for Respondent nos.3 and 4

**CORAM: SUNIL B. SHUKRE, J. &
FIRDOSH P. POONIWALLA, J.**
DATED : 4th SEPTEMBER 2023

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.) :

1. Rule. Rule made returnable forthwith. With the consent of the parties taken up for final disposal.

2. Leave is granted to amend prayer clauses (b) and (c) so as to change the date from '**23th June 2003**' to '**14th June 2003**'. Amendment be carried out forthwith.

3. The issue involved in this petition which arises from what is stated by the Petitioner to be an illegal order of approval passed by the University on 30th August 2018, has in fact been already settled and has attained finality in the earlier round of litigation which was in Writ Petition No.11066 of 2014 decided on 13th July 2018, wherein this Court had in no uncertain terms allowed the petition in terms of prayer clauses (b), (c) and (d) and also directed the University and the other Respondents to treat the Petitioner as a full time or permanent employee w.e.f. 14th June 2003.

This Court had also directed all the Respondents to make available all

consequential service benefits to the Petitioner including continuity in service, pension, seniority, etc. as shall be admissible to the Petitioner. The prayer clauses (b), (c) and (d) made in that petition are reproduced in the Memo of the petition and for the sake of convenience these prayer clauses are reproduced again as under:

“(b) By a suitable writ, order, direction, this Hon’ble High Court may be pleased to quash and set aside the impugned Resolution No.288/250814 dated 25.8.2014 passed by the Management Council of the Respondent No.2 University so far as the Petitioner herein is concerned, and accordingly it be held and declared that the Petitioner herein is concerned, and accordingly it be held and declared that the Petitioner was and is entitled to be granted approval to his appointment as Physical Education Director in Respondent No.4 College on full time basis with effect from 25.9.2001, and accordingly the Respondents No. 2 to 4 be directed to grant all consequential service benefits to Petitioner such as payment of salary and allowances in the appropriate pay scale applicable to the post together with arrears from the date of said appointment, continuity of service, seniority, promotion if any etc.

(c) By a suitable writ, order, direction, this Hon’ble court be pleased to quash and set aside the impugned Report [Exhibit -U] submitted by the Principal Nandkumar Nikam Committee so far as the case of the Petitioner herein is concerned, and on the basis of which the Management of the Respondent No.2 University has passed the Impugned Resolution No. 288/250814 dated 25.8.2014.

(d) By a suitable writ, order, direction, this Hon’ble Court be pleased to quash and set aside

the impugned order dated 10.10.2014 issued by the Respondent No.3 thereby terminating the services of the Petitioner in the post of Physical Education Director in Respondent No.4 College, on the basis of the impugned Resolution No.288/250814 dated 25.8.2014 passed by the Management Council of Respondent No.2 University and accordingly the Respondents No.3 and 4 may be directed to reinstate the Petitioner in the said post with all consequential benefits including payment of full back wages, continuity of service, seniority, promotion, if any etc.”

4. It could be seen from these prayers that the Petitioner sought declaration that he was and is entitled to be granted approval to his appointment as Physical Education Director in Respondent No.4-College, (who was also Respondent no.4 in that Writ Petition) on full time basis w.e.f. 25th September 2001 and had also prayed for directing Respondents therein to grant all consequential service benefits to the Petitioner such as payment of salary and allowances in the appropriate pay scale applicable to the post to which the Petitioner was appointed together with arrears of salary. It can also be seen that the Petitioner had sought not only reinstatement to the said post but also all consequential benefits including payment of full back wages, continuity of service, seniority, promotion and so on.

5. All these prayers were granted by this Court and the only modification that was made by this Court was in respect of the date by

which the Petitioner was to be treated as full time or permanent employee. The Petitioner had sought a declaration that he is a full time or permanent employee holding post of Physical Education Director w.e.f. 25th September 2001 but this Court found that he was entitled for such a declaration w.e.f. 14th June 2003. So, the Respondent University and the State Government were required to treat the Petitioner as a full time and permanent employee w.e.f. 14th June 2003 and as a consequence thereof, are also required to make available all the service benefits in relation to the salary, allowances, arrears of salary, continuity of service, seniority and so on. But, as can be seen from the impugned communication, these benefits have been made available to the Petitioner w.e.f. 26th July 2008 from which date the Petitioner has been declared to be a permanent employee holding the post of Physical Education Director and before that date, the Petitioner has been granted approval on year to year basis treating the Petitioner as a temporary employee which is not permissible. At this stage, the learned counsel for the University submits that University did not treat the Petitioner as a temporary employee and treated him as a permanent employee, though approval was granted on year to year basis. If this is so, in our opinion, it would constitute another reason for us to say that the impugned approval granted by the University is illegal and deserves to be quashed and set aside with further necessary directions to be given to the University. Similarly, the other impugned communications

dated 30th June 2020 issued by the Joint Director of Education (Higher Education), Respondent no.5 would also have to be held as illegal for the reason that its basis has been declared by us to be illegal.

6. In the result, the Petition is allowed in terms of prayer clauses (b) and (c) which read as under:

“(b) By a suitable writ, order, direction, this Hon’ble Court may be pleased to quash and set aside the impugned order dated 30.8.2018 (EXHIBIT-L) issued by the Respondent No.2- University, and in that place the Respondent No.2 may be directed to issue an order of approval to the appointment of the Petitioner in the post of Physical Education Director in Respondent No.4 College w.e.f. 14.6.2003 on continuous and permanent basis, with all consequential benefits.

(c) By a suitable writ, order, direction, this Hon’ble Court may be pleased to quash and set aside the impugned order dated 30.6.2020 (EXHIBIT-Q) issued by the Respondent No.5, and accordingly the Respondent No.5 may be directed to consider the Petitioner to be in continuous service in the post of Physical Education Director in the Respondent No.4 College w.e.f. 14.6.2003 and accordingly to release the grant-in-aid for payment of salary and allowances to the Petitioner from the said date till the end of A.Y. 2007-2008, together with annual increments, and further to apply the provisions of the old pension scheme to the Petitioner under the provisions of Maharashtra Civil Services [Pension] Rules, 1982 and to enrol the Petitioner to the General Provident Fund Scheme by opening his Provident Fund Account and deducting the amount of contribution of the Provident Fund from the Petitioner’s salary w.e.f. 14.6.2003.”

7. The approval as directed hereinabove shall be issued by Respondent

no.2 within a period of four weeks from the date of the order. All the benefits as directed hereinabove shall be made available to the Petitioner and released to him within a period of four weeks from the grant of approval by Respondent no.2.

8. Rule is made absolute in above terms.

9. Writ Petition is disposed of accordingly.

(FIRDOSH P. POONIWALLA, J.)

(SUNIL B. SHUKRE, J.)