

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

WRIT PETITION NO. 646 OF 2015

Dr. Yuvraj s/o Nijam Meshram,
 Age 38 years, Occupation-Service,
 R/o. Dayashanti Nivas, Shrinagar,
 Dalenwadi, Brahmapuri,
 District-Chandrapur.

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Petitioner

.. Versus ..

1. The Secretary,
 University Grants Commission (UGC)
 Bahadurshah Zafar Marg,
 New Delhi-02.
2. ~~The Registrar,~~
~~Rashtrasant Tukdoji Maharaj,~~
~~Nagpur University, R.T. Marg, Nagpur~~
 (Deleted vide court's order dated 06.10.2015)
3. The Joint Director Higher Education,
 Nagpur Division, Nagpur.
4. Navjabhai Hitkarini College,
 Through its Principal,
 Bramhapuri, Chandrapur.
5. The Registrar,
 Gondwana University,
 Gadchiroli.

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Respondents

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Shri R.R. Dawda, Advocate for the petitioner,
 Shri A.S. Agarwal, Advocate for the respondent no.1,
 Mrs. N.P. Mehta, Assistant Government Pleader for the respondent no.3,
 Mrs. Anjali A. Joshi, Advocate for the respondent no.5.

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CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEAD ON : 19.01.2023.

JUDGMENT IS PRONOUNCED ON : 27.01.2023.

JUDGMENT (Per : Mrs. Vrushali V. Joshi, J.)

The petitioner seeks the direction against the respondent nos.2, 3 and 4 to consider petitioner's service period from his date of appointment i.e. from 06.02.2004 for fixation of revised pay-scale and other ancillary benefits and not from 21.08.2009 i.e. the date on which the exemption for qualifying NET/SET was relaxed for the petitioner.

2. By following the due procedure, the petitioner was appointed on 06.02.2004 as the Lecturer in English on contract basis on fixed consolidated payment of Rs.8,000/- per month. He belongs to scheduled caste category. The appointment was subjected to condition that the petitioner shall qualify the NET/SET examination within the period of two years from the date of joining and the same shall be terminated on expiry of the aforesaid period of two years, if the petitioner fails to qualify the examination within stipulated period. The appointment of the petitioner was duly approved by the Assistant Registrar, Nagpur University. Twice, the respondent no.2 extended the period of two years to enable the petitioner to qualify by passing

NET/SET examination. On 15.02.2008, after artificial break of five days, he was again taken in service. The petitioner was not able to qualify NET/SET examination within the aforesaid stipulated period which was granted. Further 11 months' period was granted for qualifying the NET/SET examination.

3. The petitioner was unable to qualify the NET/SET examination in the extended period. In year 2008, the petitioner has completed his M. Phil, when extended 11 months' period was about to expire. The petitioner has filed an appeal before the University and College Tribunal, Nagpur. The Tribunal has passed an order and granted exemption that is relaxation from NET examination to the petitioner for the post of full time Lecturer. After granting exemption, the respondent no.1 approved said exemption from 06.02.2004 i.e. from his date of appointment and the respondent no.1 directed for pay fixation from 06.02.2004 and also asked for opening a General Provident Fund account mentioning that the petitioner's pay-scale and revised pay-scale of the petitioner was computed respectively from 06.02.2004 i.e. from his date of appointment, as the exemption was granted by the respondent no.1 from his date of appointment. Thereafter, the respondent no.4 received a communication from the respondent no.3 mentioning that the fixation of pay from 06.02.2004 is incorrect and the same is quashed by

giving a reference of one Mr. B.S. Gedam and directed to fix the pay from 21.08.2009 that is from the date of exemption and not from the date of appointment and also directed for recovery of excess salary. Being aggrieved by said communication, the petitioner has filed this petition.

4. The learned counsel for the petitioner has urged that an opportunity of being heard was not given by the respondent no.3 before issuing the communication dated 08.01.2015. The exemption was granted with retrospective effect is not considered by the respondent. As the exemption was having retrospective operation, the artificial break of four days in 2006 and five days in 2008 would not have any effect, as in view of exemption granted by the respondent no.1 from 06.02.2004. He has further stated that the petitioner was in continuous service since 2004 to the satisfaction of the respondent no.3. Due to this technicality, the petitioner will have to suffer huge loss. Technically there is no break in the service. The artificial break in contractual appointment could be condoned, hence prayed to allow the petition by fixing the salary and other benefits from his date of appointment i.e. from 06.02.2004 and also grant benefits under the old pension scheme.

5. The respondents appeared and filed their say and opposed the petition, stating therein that the services of the petitioner were on

temporary basis and, therefore, he is not entitled for any benefits of regularization. After the appointment on contractual basis, no claim could be made for permanent regularization of service in absence of an order of regular appointment. After submitting necessary bond, the petitioner is estopped from claiming permanency and regularization in service. The petitioner, on the date of appointment, was not eligible to be appointed as a Lecturer, as he was not possessing requisite qualification as per the norms of UGC Notification. The petitioner has acquired qualification of M.Phil in the year 2008. In pursuance to the letter dated 02.06.2009 issued by UGC, the petitioner was exempted from NET/SET. Initially, the respondents have made the pay fixation as per the UGC letter dated 02.06.2009 from the initial appointment that is 06.02.2004 when the petitioner was working on contract basis, but after perusal of the Government Resolution and Notification, the respondents came to know that the said fixation from 06.02.2004 was wrongly done and therefore the regularization done from 06.02.2004 was cancelled and it was confirmed from 21.08.2009. According to UGC norms, the pay fixation of the petitioner was done. Hence, the stand taken by the respondents is correct and the petitioner is not entitled for the pay fixation from his date of appointment.

According to the UGC, by the communication dated 16.08.2011, it was informed that benefit of exemption was only for

regular appointees. This was clarified by subsequent communication dated 05.09.2022. Thereafter, the Higher and Technical Education Department informed the Director, Higher Education of the same.

6. Heard the learned counsel. After going through the record, it is clear that initial appointment of the petitioner was on contractual basis. The condition was there to pass the NET/SET examination within two years. During that period, his appointment was contractual. On his request, his services were extended and time to pass the NET/SET examination was extended twice. He has applied before the University Tribunal for exemption, as he has completed his M.Phil. As he has acquired the M.Phil qualification, he was permanently exempted from qualifying NET/SET. Earlier, by the said order, the exemption was granted from the date of appointment, but the appointment was on the contractual basis and the condition was to pass the NET/SET examination.

7. It is seen that on 16.08.2011 itself, the UGC had informed the Higher and Technical Education Department that benefit of exemption from the requirement of NET to those appointed between 19.09.1991 to 03.04.2000 was only to appointments on regular basis. This has been reiterated by the UGC on 05.09.2022 that the effect of

grant of exemption would be available only on appointment on regular basis. The Higher and Technical Education Department has directed compliance with this decision by its communication dated 16.11.2022. Since the petitioner's initial appointment was on contractual basis on 06.02.2004 and the date of grant of exemption by the UGC is 02.06.2009, the benefits flowing from the grant of such exemption would be from 21.08.2009 when the petitioner's services were duly approved on account of grant of exemption. The petitioner placed reliance on judgment of the Apex Court in the case of **State of Punjab and others .vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334**, held as under :

“Orders passed by the State as employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover.”

The ratio of this decision would not be applicable. The petitioner continues in service and the excess amount paid on account of wrong fixation is being recovered. In the light of the clear stand of the UGC that benefit of regular pay-scale would be admissible only to regular appointees, grant of opportunity of hearing would have been an empty formality. In any event, reasons for such recovery are found to be legally sustainable.

8. For aforesaid reasons, we do not find any reason to hold that the impugned communication dated 08.01.2015 calls for any interference. The writ petition is dismissed with no order as to costs. In the circumstances of the case, the recovery to be made in view of the communication dated 08.01.2015 shall be made in twelve equal instalments, the first deduction commencing from March, 2023.

[MRS. VRUSHALI V. JOSHI, J.]

[A.S. CHANDURKAR, J.]

Gulande