



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5883 OF 2024

Dr. Sunita Uttamrao Pawar

... PETITIONER

VERSUS

Vasantrao Naik Marathwada Krushi
Vidyapeeth Parbhani, through its Registrar,
Administrative Building, Krushi Nagar,
Vasmat Road, Parbhani, Dist. Parbhani

... RESPONDENT

...

Advocate for Petitioner : Mr. Sachin S. Deshmukh

Advocate for respondent : Mr. V.D. Patnurkar

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

Reserved On : 07.10.2024

Pronounced On : 18.10.2024

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned advocate Mr. Patnurkar waives service for the respondent. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The only issue that arises in this petition is as to if the petitioner who was appointed as a Senior Research Assistant in the year 2007 and was temporarily promoted to the post of Assistant Professor (Agronomy) can be considered eligible to the post of Associate Professor with the respondent – University, the eligibility criteria for which is *inter alia* of having eight years experience as Assistant Professor, by counting

the period she had worked temporarily in the spells as Assistant Professor.

3. There is factually no dispute. The petitioner was appointed as a Senior Research Assistant on 16.11.2007. She was temporarily promoted to the post of Assistant Professor (Agronomy) on 21.10.2014 with a break of around three months where after she was again appointed temporarily as an Assistant Professor. There is no dispute that eventually she was promoted on regular basis to the post of Assistant Professor (Agronomy) on 23.06.2015. She was issued with an experience certificate by the respondent on 15.09.2023 which reads as under :

“EXPERIENCE CERTIFICATE

This is to certify that, Dr. Sunita Uttamrao Pawar is presently working as Assistant Professor Agronomy under the control of the Associate Dean & Principal, College of Agriculture Parbhani. His service particulars are as under :

Sr. No.	Post held	Pay-scale (Rs.)	Period
1	Senior Research Assistant	9300-34800 GP 4400/-	16.11.2007 to 03.08.2011
2	Assistant Professor Agronomy (Temporary Promotion)	15600-39100 Grade pay 6000/- (01.01.2006 Onwards)	04.08.2011 to 10.07.2014
3	Senior Research Assistant	9300-34800 GP 4400/-	11.07.2014 to 20.10.2014
4	Assistant Professor Agronomy (Temporary appointment)	15600-39100 Grade pay 6000/- (01.01.2006 Onwards)	21.10.2014 to 22.06.2015
5	Assistant Professor Agronomy	15600-39100 Grade pay 6000/- (01.01.2006 Onwards) Pay Level AL-10 Rs.57,700-1,82,400 (01.01.2016 Onwards)	23.06.2015 to till Date

The requisite qualification for the post of Associate Professor contained in Appendix III of Statute 73 of the respondent University, is as under :

“(2) A minimum eight years of experience in teaching or research or extension education in the position of Assistant Professor or its equivalent; in a University or Accredited grant-in-aid College, Recognized Research Institution Excluding the period of Ph.D.;”

4. In the backdrop of such state of affairs, the learned advocate Mr. Deshmukh would vehemently submit that when the statute does not require that the minimum eight years of experience in the position of Assistant Professor by providing any qualification/rider, it is legally not sustainable to read that such experience should be in the regular cadre or should be a continues spell of eight years. When the statute is not eloquent enough, the respondent cannot be allowed to interpret according to its whims and fancies. He would submits that when the whole emphasis is on the fact of having an experience in teaching or research, it should not matter as to how such experience was gained. Having been promoted temporarily the petitioner could gain the experience as an Assistant Professor and there is neither the law nor is there any logic in ignoring it while counting the period of experience, when admittedly, she was brought in the regular cadre by giving her a regular promotion to the post of Assistant Professor with effect from 23.06.2015.

5. Mr. Deshmukh would cite the decision in the matter of **Raghunath Rai Bareja and Anr. Vs. Punjab National Bank and Ors.;** (2007) 2 Supreme Court Cases 230, to buttress his submission that the question of interpretation would come into play only if a plain reading of

a statutory provision gives rise to some doubt. If the language is plain as is that of Clause (2) above, there is no scope for any interpretation and the literal rule will prevail. He would also rely upon **Central Bureau of Investigation and Ors. Vs. Keshub Mahindra and Ors.; (2011) 6 Supreme Court Cases 216**, and submit that even the judgments of the Supreme Court cannot be read in a manner so as to nullify the express provision of an Act.

6. Per contra, the learned advocate Mr. Patnurkar would submit that when the statute requires eight years of experience as an Assistant Professor as an eligibility criteria for being promoted to the post of Associate Professor, it is not a question of taking into consideration the experience which the petitioner had purely by virtue of having rendered some spells of temporary appointments as an Assistant Professor. The legislature in its wisdom has not qualified the eligibility criteria with any exception in respect of the services rendered as Assistant Professor, on temporary or ad hoc basis or as a stopgap arrangement. He would buttress his submission by citing the decision of a co-ordinate division bench in a similar matter in case of **Dr. Mirza Intekhab Akbar Baig Vs. The State of Maharashtra and Ors.**; (WP No.8352/2020) decided on 30.04.2021.

7. We have considered the rival submissions and perused the papers.

8. At the outset, it is necessary to note that if we have to follow

the judicial discipline as indeed we are bound to, in the light of the decision of a coordinate division bench in the matter of **Dr. Mirza Intekhab Akbar Baig** (supra), wherein, in respect of exactly the same issue, for the elaborate reasons assigned by the brother judges, a similar argument of counting of experience gained on the temporary or ad-hoc appointments as Assistant Professors under Statute 73, Appendix III, has been expressly turned down, holding that such temporary spells of service rendered on ad hoc and temporary basis as Assistant Professor cannot be counted while counting the eight years of experience as Assistant Professor, we are bound to follow it unless ofcourse we are able to take exception on the basis of some reasoning, in which case it would be imperative for us to make a reference to the larger bench.

9. We are in respectful agreement with the reasons assigned by the division bench and the petition is liable to be dismissed as the issue is no longer *res integra*.

10. Indeed, there cannot be a deviation in the light of the law settled in the matter of **Raghunath Rai Bareja** (supra) and **Central Bureau of Investigation** (supra), as far as interpretation of statutes are concerned. Even the Courts cannot add or subtract or legislate, if the plain reading of a statutory provision leaves no room for entertaining any doubt or gives rise to any confusion. When the Statute 73 Appendix III is clear and expressly provides for a minimum of eight years experience in the position of Assistant Professor as a requisite qualification for being

eligible to be promoted to the post of Associate Professor, allowing the temporary spells of service rendered to meet exigencies and as a stopgap arrangement, cannot be considered for counting the experience. It would be like reading down the provision without any reason, rather it would be a case of judicial overreach in resorting to such interpretation, if the submissions of Mr. Deshmukh for the petitioner are to be accepted.

11. It appears that unfortunately for the petitioner she could avail a study leave for a period of 2 years after she was appointed in the regular cadre as an Assistant Professor between December 2017 and December 2019. Which seems to have landed her in trouble because for that period of two years for completing her Ph.D she was deprived of having the experience of two years.

12. Be that as it may, we cannot read down Statute 73 Appendix III as is being submitted on behalf of the petitioner so as to include even the experience gained by the petitioner in the spells on being appointed temporarily as Assistant Professor.

13. The writ petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE