



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9071 OF 2021

Dr. Umakant Shesherao Maknikar,
Age : 46 Years, Occu. : Assistant Professor
R/o Makni, Tq. Ahmedpur,
Dist. Latur. .. Petitioner

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 of Higher
Education, Nanded Region,
Nanded, Dist. Nanded.
- 4] Swami Ramanand Teerth Marathwada
University, through its
Registrar, Dnyanteerth Campus,
Vishnupuri, Nanded,
Dist. Nanded.
- 5] The Principal,
Karmyogi Tulshiram Pawar College,
Hadolti, Tq. Ahmedpur,
Dist. Latur. .. Respondents

Shri R. R. Deshpande, Advocate i/by Ms. Priyanka R. Deshpande,
Advocate for the Petitioner.

Shri N. D. Batule, A.G.P. for the Respondent Nos. 1 to 3.

Shri V. P. Latange, Advocate for the Respondent No. 4.

Shri M. P. Tripathi, Advocate h/f Shri K. J. Ghute Patil, Advocate
for the Respondent No. 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT ON : 07.08.2024
JUDGMENT PRONOUNCED ON : 20.09.2024

JUDGMENT (*Per Shailesh P. Brahme, J.*) :-

. Rule. Rule is made returnable forthwith. With the consent of the parties heard both sides finally at the admission stage.

2. The petitioner is an Assistant Professor working in respondent No. 5/college. He is challenging order dated 21.06.2021 of the respondent No. 4/university granting approval to his appointment with effect from 27.05.2019, from the date of acquisition of Ph. D. He is seeking mandamus for granting him approval from the date of joining i. e. 01.02.2002 and/or alternatively, with effect from 18.08.2009, from acquisition of M. Phil.

3. The respondent No. 5/college is affiliated to the respondent No. 4/university. The services of the petitioner were approved by the university vide order dated 26.07.2006 on a temporary basis from 01.02.2002. He acquired M. Phil qualification on 18.08.2009. His services were approved as Assistant Professor with effect from 19.08.2009 vide order dated 02.03.2012. He was continued in the service by the management. It was approved by the respondent No. 4/university vide letter dated 17.09.2012. In the meantime, he acquired Ph. D. degree on 27.05.2019.

4. The petitioner was awarded Additional Grade Pay (A.G.P.) vide letter dated 19.08.2009. Thereafter, he was awarded further A.G.P. from 19.08.2014. The respondent No. 4/university issued a notice to the respondent No. 5/college on 16.10.2019 calling upon it to show cause why the approval given to his appointment should not be cancelled. The reply was given by the college on 04.11.2019. The respondent No. 4/university granted approval to the petitioner from 27.05.2019 by cancelling earlier approval dated 02.03.2012, which is the subject matter of present petition.

5. The learned counsel for the petitioner Mr. Deshpande submits that the petitioner was appointed after following due procedure of law and his appointment was prior to 11.07.2009. Therefore, he was entitled to receive approval with effect from 01.02.2002. He would submit that he was rightly awarded benefits of Career Advancement Scheme (CAS), which are sought to be withdrawn by the impugned order of approval arbitrarily. It is further contended that the Regulations of 2009 of the University notified on 11.07.2009 cannot be made applicable retrospectively. It is further submitted that the Regulation of 2009 was accepted vide G. R. dated 12.11.2009 and by that time the petitioner had acquired M. Phil.

6. He would further submit that earlier approval was cancelled without extending any opportunity of hearing to the petitioner and that too after lapse of nine years. The action is wholly unjust and high handed. It is further submitted that the petitioner is rendering service from 01.02.2002 continuously and

his performance is excellent and there is no reason to deprive him the benefits for the period prior to 27.05.2019.

7. The learned counsel for the petitioner seeks to rely on the following judgments of the High Court of Himachal Pradesh and this Court :

- i. Judgment dated 24.02.2027 in Writ Petition No. 1213 of 2009 in the matter of Madhuri Madhukar Deshmukh Vs. State of Maharashtra and others.
- ii. Judgment dated 20.10.2010 in Writ Petition No. 357 of 2010 in the matter of Atul Suresh Patil Vs. The State of Maharashtra and others.
- iii. Judgment dated 18.11.2009 in Writ Petition No. 9629 of 2009 in the matter of Maharashtra Rajya M. Phil Kruti Samiti Vs. The Chairman, University Grants Commission and others..
- iv. Judgment dated 04.04.2012 in Writ Petition No. 10023 of 2010 in the matter of Manik Ananda Choughule Vs. Barrister Balasaheb Khardekar College and others with other connected writ petitions.
- v. Judgment dated 02.05.2022 in Civil Writ Petition No. 365 of 2016 in the matter of Smt. Surekha Sharma Vs. The State of Himachal Pradesh and others.
- vi. Suman Shriram Kakad Vs. State of Maharashtra and another reported in 2011(1) Mh.L.J. 766.
- vii. Judgment dated 19.01.2021 in Writ Petition No. 3525 of 2019 in the matter of Shrikrishna Bhikaji Bondge Vs. The

State of Maharashtra and others.

8. Per contra, learned Assistant Government Pleader appearing for respondent Nos. 1 to 3 would oppose the submissions by relying on the affidavit in reply. He would submit that Regulation of 2009 of the University Grants Commission (U.G.C.) was brought into effect from 11.07.2009. The petitioner was not having M. Phil qualification at that time. It was acquired on 18.08.2009. Therefore, he was not qualified. It is further contended that the petitioner acquired Ph. D. degree on 27.05.2019 and the impugned approval was granted with effect from 27.05.2019. He would submit that National Eligibility Test (NET)/State Eligibility Test (SET) was the requisite qualification when the petitioner was appointed and, therefore, he was granted temporary approval on 06.07.2006. It is further submitted that M. Phil ceased to be the alternate qualification from 11.07.2009 and the petitioner acquired the same on 18.08.2009 and was not eligible for permanent approval.

9. The learned counsel for the respondent No. 4/university Mr. V. P. Latange opposes the claim of the petitioner by filing affidavit in reply. He would adopt the submissions of the learned A. G. P. and reiterated that the petitioner acquired M. Phil qualification after coming into force of Regulation of 2009 and that is why benefit of exemption is not available to him. The university is justified in cancelling the earlier approval and granting him approval from the date of acquisition of Ph. D. qualification.

10. We have considered rival submissions. The petitioner was appointed in the respondent No. 5/college on 01.02.2002, when he was having qualification of M. A. He acquired M. Phil on 18.08.2009. He was awarded benefit of CAS. Initially his services were approved with effect from 18.08.2009 vide letter dated 02.03.2012 issued by the university. He acquired Ph. D. degree on 27.05.2019. By the impugned order earlier approval was revoked and fresh approval was granted from 27.05.2019.

11. The Regulation of 2002 (First amendment) issued by the U.G.C. prescribed NET as compulsory qualification and exemption was provided for the lecturers having M. Phil degree acquired by 31.12.1993. It came into effect on 31.07.2002. Thereafter, Regulation of 2006 (Second amendment) of UGC was brought into force on 14.06.2006. The Regulation of 2009 (Third amendment) was brought into force from 11.07.2009.

12. The modifications in the qualification prescribed by the UGC from time to time are clear from the Regulation of 2009, by which the third amendment was brought into force from 11.07.2009. The following is the relevant extract :

4. In the ANNEXURE to the University Grants Commission (Minimum Qualifications required for the appointment of Career Advancement of teachers in Universities and Institutions affiliated to it) Regulation, 2000, the following was provided in the Note to Regulation 1.3.3, 1.4.3, 1.5.3 and 1.6.1 :

“NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D degree. However, the candidates who have completed M.Phil degree or have submitted

Ph.D. thesis in the concerned subject upto 31st December, 1993 are exempted from appearing in the NET examination.”

The said Note to Regulation 1.3.3, 1.4.3, 1.5.3 and 1.6.1 was substituted by the following para, vide University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (1st Amendment), Regulation 2002 :

“NET shall remain compulsory requirement for appointment as Lecturer even for candidates having Ph.D. Degree. However, the candidates who have completed M.Phil, Degree by 31st December, 1993 or have submitted Ph.D. thesis to the University in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. Degree, they shall have to pass the NET examination.”

Further, the above provision brought into effect by the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (1st Amendment), Regulation 2002, was further substituted by the following provisions of the University Grants Commission (Minimum Qualification required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (2nd Amendment), Regulation 2006 :

“NET shall remain compulsory requirement for appointment as Lecturer even for those with Post Graduate Degree. However, the candidates having Ph. D. Degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M. Phil. Degree in the concerned subject are exempted from NET for UG level teaching only.

Now, the above provision shall be substituted by the following paragraph :

“NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/College/Institutions.

Provided, however, that candidates, who are or have been awarded Ph. D. Degree in compliance of the “University Grants Commission (minimum

standards and procedure for award of Ph. D. Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.”

13. When the petitioner was appointed on 01.02.2002, he was not having NET/SLET qualification, which was compulsory. His appointment was regulated by Regulations of 2000, wherein NET was the compulsory qualification for appointment as a lecturer and the candidates who had completed M. Phil upto 31st December, 1993 were exempted from NET. Thus, the petitioner was neither having NET, nor M. Phil qualification on the date of advertisement and obviously on the date of appointment on 01.02.2002.

14. By the Government Resolution dated 12.11.2009, the Regulation of 2009 was made applicable by the State Government with effect from 11.07.2009 and not from the date of resolution i. e. 12.11.2009. The petitioner was appointed on 01.02.2002 and he was not having M. Phil or Ph. D. degree. As per Regulation of 2009 which was in force from 11.07.2009, M. Phil was omitted as an alternate qualification, to exempt from passing of NET examination. The petitioner acquired M. Phil on 18.08.2009, which was post Regulation of 2009. Therefore, the petitioner cannot claim that he acquired M. Phil before the cut off date.

15. The petitioner has specifically stated in the memo of petition that he acquired M. Phil degree on 18.08.2009. The correspondence of the college with the university also shows that

on or about 18.08.2009 M. Phil degree was acquired by the petitioner. He was not having requisite qualification as contemplated by Regulation of 2000 when he was appointed on 01.02.2002. The UGC had prescribed requisite qualification of lecturer vide Regulation of 2000 which was as follows :

1.3.3 Lecturer

Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E and F at the Master's degree level, in the relevant subjects from an Indian University, or, an equivalent degree from a foreign university.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

Note : NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidate who have completed M. Phil. Degree or have submitted Ph. D. thesis in the concerned subject up to 31st December, 1993, are exempted from appearing in the NET examination.

16. Regulation 2000 granted exemption from passing NET examination for the candidates having acquired M. Phil. degree prior to 31.12.1993. Thereafter Regulation of 2002 granted such exemption to all candidates having M. Phil. degree prior to 31.12.1993 at the time of appointments. Petitioner was appointed on 01.02.2002 when he was not having M. Phil. Regulation of 2006 also granted exemption from NET for U.G. level to the candidates having M. Phil. degree. By last Regulation of 2009, M. Phil degree ceased to be qualification to seek exemption from NET. It was enforced from 11.07.2009.

The acquiring of M. Phil by the petitioner on 18.08.2009 is inconsequential. After 11.07.2009 only in respect of the new appointees NET/SLET is the mandatory qualification and those holding Ph. D. degree alone are exempted from passing of NET/SLET. Regulation of 2009 is not applicable in the present matter and the petitioner cannot take its benefit.

17. The purport of all the Regulations of UGC is that the candidate must possess NET or alternatively M. Phil./ Ph. D. at the time of appointment. No concession is provided for them to acquire M. Phil./Ph. D. on any future date. M. Phil. acquired prior to appointment could only be treated as alternate qualification to dispense with NET qualification. Any theory of incumbent that he acquired qualification before 11.07.2009 runs counter to true spirit to introduce the qualification and therefore it is unacceptable.

18. In this regard it is useful to refer to the judgment rendered in the matter of Ram and others Vs. State of Maharashtra and others reported in *2016 (1) All M.R. 214*. The coordinate bench has considered the judgment of Sudhir Sharadrao Hunge Vs. The State of Maharashtra and another reported in *2010(4) Mh. L. J. 572* and laid down that the qualification which is possessed at the time of appointment only is relevant. The subsequent acquisition of qualification is inconsequential. In the present matter submissions of the petitioner that Regulation of 2009 is prospective in nature is inconsequential. The petitioner acquired

M. Phil. Degree on 18.08.2009. At the time of his initial appointment he was not having requisite qualification. We therefore find no merit in the submissions of the learned counsel for the petitioner.

19. The petitioner seeks to rely on the judgment in the matter of Madhuri Madhukar Deshmukh Vs. State of Maharashtra and others (supra). In that matter the petitioner had acquired qualification in March 2009 i. e. prior to 11.07.2009 and, therefore, he was held to be exempt from NET qualification. In the matter in hand the petitioner was not having required qualification when he was appointed. He acquired M. Phil. Degree on 18.08.2009. On facts the case is distinguishable and the ratio cannot be made applicable to the present case.

20. He further relies on the judgment in the case of Atul Suresh Patil Vs. The State of Maharashtra and others (supra), which in turn relied on the Division Bench judgment in Writ Petition No. 1489 of 2010 in the matter of **Sudhir Sharadrao Hunge Vs. The State of Maharashtra and another** and the judgment of the Apex Court in the matter of Madan Mohan Sharma Vs. The State of Rajasthan reported in (2008) 3 SCC 724. Following observations are relevant :

7] It can thus clearly be seen that the Division Bench in unequivocal terms has held that the necessity to have NET/SET qualification will have to be construed as prospective in nature and only effective from July 2009. The Court has held that what is crucial is the date of advertisement. In the present case also undisputedly, on the date of advertisement, NET/SET was not the compulsory qualification. Not only this but perusal of the Minutes of the 471st meeting of the UGC held on 12/8/2010 would also fortify the case of

the petitioners. The copy of the said Minutes are produced by the petitioners. The same are taken on record and marked "X" for identification. It would be relevant to refer to relevant part of Resolution No.3 of the said meeting which reads thus:

[iii] The Commission further resolved that since both the above mentioned Regulations are prospective and not retrospective in nature, therefore, all candidates having M.Phil degree on or before 10th July 2009 shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor. Further, all candidates who have either obtained Ph.D degree on or before 31st December, 2009 and such candidates who had registered themselves for Ph.D degree on or before 31st December 2009 and are subsequently awarded Ph.D degree shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor."

8] It can thus be seen that UGC itself has resolved that all the candidates who are possessing M.Phil on or before 1/7/2009 shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor. It is not in dispute that all the petitioners are having a degree of M.Phil before 10/7/2009. The said resolution further exempts the candidates who are having Ph.D degree on or before 31/12/2009 or who have registered themselves for Ph.D degree before 31/12/2009, from the requirement of NET examination. However, that may not be relevant for the purpose of this matter. Suffice it to say that all such candidates who have acquired M.Phil qualification on or before July 2009, shall be exempted from having the requirement of NET qualification.

In the present case the petitioner acquired M. Phil qualification on 18.08.2009, after the cut off date and hence the principle laid down would rather operate against him.

21. Further reliance is placed by the petitioner on the judgment of this Court in the matter of Sudhir Sharadrao Hunge and another Vs. State of Maharashtra and others reported in *2010(4) Mh. L. J. 572*. The

coordinate bench considered the issue as to whether qualification prescribed by the UGC notification dated 11.07.2019 would be eligibility condition for those who were appointed before 11.07.2009. It was recorded that petitioners in that case were appointed on various dates of 2009. M. Phil was treated to be eligibility qualification at the time of their appointments. The Division Bench relied on the judgment of the Supreme Court in the matter of Ashok Kumar Sharma Vs. Chander Shekhar and another reported in (1997) 4 SCC 18, for determining eligibility of the candidate with reference to the date of advertisement and calling for the applications. In that context it is observed as follows :

“10. From the above, it is clear that the subsequent insertion of compulsory NET/SET qualification by gazette notification dated 11.7.2009 made by University Grants Commission will have to be held to be prospective in its operation since in all these cases the advertisements as per earlier eligibility qualifications were duly approved and sanctioned by the University and were also published well before the cut-off date, namely, 11.7.2009 and at any rate before the last date of application that was to be made pursuant to these advertisements. Last date of application as per advertisements is a crucial date in accordance with the law laid down by the Hon'ble Supreme Court.”

22. The facts of the case in hand are distinguishable. The petitioner was not for the first time appointed in 2009. When he was appointed on 01.02.2002, the eligibility qualification was NET/SET or in the alternative M. Phil acquired before 31.12.1993 which was admittedly not possessed by him.

23. The petitioner further relies on the judgment in the matter of Manik Ananda Choughule Vs. Barrister Balasaheb Khardekar College and

others (supra). In that matter also the petitioners were having M. Phil and, therefore, they were held to be governed by the law laid down in the matter of Sudhir Sharadrao Hunge and another Vs. State of Maharashtra and others (supra), which is not the factual position in the case in hand.

24. The petitioner further relies on the judgment of the learned Single Judge of the Himachal Pradesh High Court in the matter of Smt. Surekha Sharma Vs. The State of Himachal Pradesh and others (supra). The petitioner was appointed in the year 1990. She had acquired M. Phil qualification in 1994. Second amendment to Regulation 2006 which was effected from 14.06.2006 by the UGC was the relevant provision prescribing qualification. The relevant prescribed qualification was passing of NET or the candidate having Ph. D. were exempted from NET for UG level only. In that context the petitioner was held to be qualified having acquired M. Phil in 1994. The case in hand shows altogether different facts and, therefore, this judgment is not helpful to the petitioner.

25. Reliance is also placed on the judgment in the matter of Suman Shriram Kakad Vs. State of Maharashtra and another and Shrikrishna Bhikaji Bondge Vs. The State of Maharashtra and others (supra) as both the matters are not concerning with qualification prescribed by UGC for appointment of teachers in senior colleges, they are not related to third amendment of Regulation of 2009. We are of the considered view that, those are not applicable to the present case.

26. The petitioner has failed to make out a case. The university is justified in granting approval from the date of acquisition of Ph.

D. i. e. 27.05.2019 by revoking earlier approval dated 02.03.2012.
There is no merit in the petition.

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

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb / Sept. 24