



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.10170 OF 2021

- 1) Gangasagar W/o Umrao Kawale,
Age-40 years, Occu:Household,
R/o-Patil Nagar, Vasmat,
District-Hingoli,
- 2) Vikas S/o Umrao Kawale,
Age-16 years, Occu:Education,
R/o-Patil Nagar, Vasmat,
District-Hingoli,
- 3) Janhavi D/o Umrao Kawale,
Age-18 years, Occu:Education,
R/o-Patil Nagar, Vasmat,
District-Hingoli,

...PETITIONERS

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, Higher Education,
Nanded Regional Office, Nanded,
- 4) Accounts Officer (Grants),
Office of the Joint Director, Higher
Education, Nanded Region, Nanded,
District-Nanded,

- 5) Swami Ramanand Tirth Marathwada
University, Through its Registrar,
Dnyantirth, Vishnupuri,
Nanded, District-Nanded,
- 6) Shri. Yoganand Swami College,
Through its Principal,
Vasmat Nagar, District-Hingoli.

...RESPONDENTS

...

Mr. R.R. Deshpande Advocate h/f. Ms. P.R. Deshpande
Advocate for Petitioner.

Mr. S.K. Shirse, A.G.P. for Respondent Nos. 1 to 3.

Mr. U.S. Malte Advocate for Respondent No.5 present
through Video Conferencing.

None present for Respondent No.6.

...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE OF RESERVING JUDGMENT : 11th JANUARY 2024

DATE OF PRONOUNCING JUDGMENT : 5th FEBRUARY 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed by the legal representatives of deceased Umrao Vitthalrao Kawale, who died on 26th May 2021 at Secunderabad due to Covid-19, for following reliefs:-

"B] By issuing the writ of certiorari or any other appropriate writ or order or direction in the like nature, the communication dated 23-07-2021 issued by the respondent No.4 namely Accounts Officer (Grants), Office of the Joint Director Higher

Education, Nanded Region, Nanded, may kindly be quashed and set aside.

C] By issuing the writ of certiorari or any other appropriate writ or order or direction in the like nature, the respondent Nos. 1 to 6 may kindly be directed to process, sanction and disburse the family pension and other retirement benefits to the petitioners in consonance with the Rules and Regulations, within the stipulated period which this Hon'ble High Court would deem fit and proper.

E] By issuing the writ of certiorari or any other appropriate writ or order or direction in the like nature, the respondent Nos.1 to 6 may kindly be directed to pay all the arrears of the pensionary benefits as well as the other retirement benefits in respect of the deceased to the petitioners with 15% interest p.a. till its realization."

2. It is the case of the petitioners that deceased Umrao was serving as assistant professor in respondent No.6 college. He came to be appointed in pursuant to the advertisement published by respondent No.5 on 5th June 2001. He came to be selected by the selection committee duly constituted for the purpose of making appointment in furtherance of the advertisement. Pursuant to order dated 9th March 2002, deceased Umrao was appointed as full time assistant lecturer. He had successfully completed his probation of two years after the appointment. Respondent No.5 had accorded approval to the services of deceased Umrao by letter dated 24th August 2006

from the date of joining i.e. 11th March 2002, subject to passing of NET / SET Examination. While in service the deceased has successfully completed his M.Phil degree in Sociology as on 3rd August 2009. The respondent authorities even granted additional increment on account of his said achievement in getting M.Phil. Degree from 3rd August 2009. The deceased acquired the additional higher qualification of Ph.D. in Sociology on 14th October 2017 from respondent No.5 University. Even additional three increments on account of the same came to be granted from 14th October 2017. Permanent appointment order came to be issued by respondent No.6 college on 6th November 2017, which again confirmed that the services rendered by the deceased from 11th March 2002 have been regularized. Deceased expired at the age of 44 years. Respondent No.6 was requested to forward proposal for the family pension. Accordingly, the proposal was forwarded in consonance with the provisions of the Maharashtra Civil Services (Pension) Rules to respondent Nos.3 and 4. However respondent No.4 declined to sanction the family pension on the ground that deceased had not acquired the requisite qualification within the prescribed period. It was stated that the deceased was not holding the requisite qualification of NET / SET Examination and had also not obtained

the same within the prescribed period nor the higher qualification as an exemption for the condition of passing the NET / SET Examination. In fact the deceased has rendered pensionable service. His services have been approved. Similarly situated lecturer, namely, Vijaykumar Baburao Ranpise, who came to be appointed on 14th August 1995 for the subject history, who had retired on 30th February 2018, when refused to give pension, had approached this Court by filing Writ Petition No.755 of 2019 and his Petition came to be allowed on 9th April 2019. Further, similarly situated other lecturers have also been granted pension, of whom names have been given with other details, in the Petition and therefore, the petitioners prayed that similar treatment be given to them.

3. Dr. Vitthal Ramrao More, Joint Director Higher Education, Nanded Region, Nanded has filed affidavit-in-reply on behalf of respondent Nos.1 to 3. The other facts are admitted but it is said that on the date of appointment the deceased was holding educational qualification of M.A. only. Deceased completed M.Phil. on 3rd August 2009 and Ph.D. on 14th October 2017. As per the notification of the University Grands Commission dated 19th September 1991 it was mandatory to possess the NET / SET

qualification for getting an appointment as lecturer in non-agricultural Universities and affiliated colleges. Appointment of the deceased in respondent No.6 college is not as per the said qualification. Government Resolution dated 27th June 2013 prescribes that the approval would be granted to the services of those non-NET/SET teachers appointed during the period from 23rd October 1992 to 3rd April 2000. Taking into consideration the date of appointment of the deceased, the said Resolution dated 27th June 2013 is not applicable to him. The cases in respect of allegedly similarly situated lecturers are concerned, this Court had come to the conclusion that they were fulfilling the criteria of Government Resolution dated 27th June 2013. Rule 31 of the Maharashtra Civil Services Rules 1982 mentions that if the duties and salary of the employee is not being regulated by the Government or the conditions prescribed by the Government, then the service will not qualify for pension. The acquisition of the higher qualification by the deceased is after the cut-off dates and therefore, the family pension cannot be granted.

4. Heard learned Advocate Mr. R.R. Deshpande holding for learned Advocate Ms. P.R. Deshpande for the petitioner, learned

AGP Mr. Shirse for respondent Nos.1 to 3 and learned Advocate Mr. Malte for respondent No.5, through Video Conferencing.

5. In order to cut short, it can be said that all the learned Advocates have argued in support of their respective contentions.

6. At the outset we would like to say that the decisions which have been relied on by the learned Advocate for the petitioner contended different set of facts. In those petitions the appointment of the petitioners therein was prior to 23rd October 1992 and therefore, it was held that they were covered by University Grants Commission Resolution dated 19th September 1991 which came to be implemented in the State on 30th October 1992. Here the facts are already stated, however to recapture, it can be said that the appointment of the deceased was on 9th March 2002. The approval was granted by the University on 24th August 2006 which was subject to passing of NET / SET Examination and it was temporary approval. The deceased completed his M.Phil on 3rd August 2009 and he was awarded Ph.D. on 14th October 2017. Thereafter the institute wherein the deceased was serving i.e. respondent No.6 had

forwarded proposal to grant permanency to the deceased, which came to be approved by the University on 13th December 2017. Entry was taken in his service book to that effect. Now, it is to be noted that there is a presumption that when University grants approval to the permanency then it has considered all the requirements / rules / regulations. The said approval granted by the University was never challenged by anybody. Unfortunately, the deceased expired on 26th May 2021. Now the petitioners cannot be asked to answer the deficiencies.

7. Since the University has granted approval on 13th December 2017 and the fact that the deceased had put in pensionable service, definitely the Petition deserves to be allowed.

8. At the cost of repetition, we are saying that it is since the University has granted approval, who was required to consider whether the appointment was proper or not and the Government cannot raise objection to that effect at a later stage; we are constrained allow the Petition. Accordingly, the Writ Petition is allowed.

9. We direct that petitioner No.1 would be entitled for pension and pensionary benefits. The respondents shall consider the case of the petitioners for pensionary benefits and shall not refuse to grant pensionary benefits to them on the ground that the deceased had not possessed the necessary qualification. Therefore, we set aside the order dated 23rd July 2021 issued by respondent No.4. Respondent Nos. 1 to 6 to process and sanction the family pension and other retirement benefits to petitioner No.1 in consonance with the rules and regulations, expeditiously and preferably within a period of SIX MONTHS from the date of this order. It should also include the arrears, if any.

9. Rule is made absolute in the above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JAN24