



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

WRIT PETITION NO. 1223 OF 2021

Kirankumar Miraji Salve,
Age : 38 Years, Occu. : Service,
R/o Plot No. A/2, Dr. Babasaheb
Ambedkar Chowk, Nirmal Nagar
Savedi, Ahmednagar,
Tq. and Dist. Ahmednagar.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.
 2. The Joint Director,
(Higher Education),
Pune Division, Pune.
 3. Savitribai Fule Pune University
Through its Registrar, Pune.
 4. Premraj Sarda College, Ahmednagar
Through its Principal,
Tq. Dist. Ahmednagar.
- .. Respondents

Shri Anand V. Indrale Patil, Advocate for the Petitioner.
Shri A. R. Kale, Addl.G.P. for the Respondent Nos. 1 and 2.
The Respondent No. 3 is served.
Shri M. D. Deshpande, Advocate h/f Shri Sushant V. Dixit,
Advocate for the Respondent No. 4.

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

**CLOSED FOR JUDGMENT ON : 02.09.2024
JUDGMENT PRONOUNCED ON : 24.09.2024**

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

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

2. The petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India for challenging communications dated 30.07.2019 and 20.01.2020 issued by respondent No. 2/Joint Director of Education, Pune rejecting his claim for old pension scheme instead of Defined Contributory Pension Scheme (for short “D.C.P.S. scheme”). He is also seeking mandamus to hold him entitled to old pension scheme as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 as well as Government Provident Fund (for short ‘G.P.F.’) and to award him consequential benefits.

3. The petitioner is employee of respondent No. 4/college, which is affiliated to respondent No. 3/university. He belongs to the Scheduled Caste category. An advertisement was published by respondent No. 4 for the post of lecturer in Botany along with other posts. He was recommended by the duly constituted selection committee and was appointed on 17.08.2005 as a Lecturer in Botany with effect from 18.08.2005 on contract and purely temporary basis from 18.08.2005 to 17.08.2007. His service was approved by respondent No. 3/university vide order dated 29.10.2005 for two years on condition of passing National Eligibility Test (NET)/State Eligibility Test (SET). He was continued in service by further orders of continuation. Further

spells of appointments were also approved by the university for two years and lastly for 11 months.

4. Respondent No. 4/management discontinued the services of the petitioner, which was a cause of action for him to approach the High Court vide Writ Petition No. 8564 of 2010. Interim order was passed on 21.09.2010 restraining the management from filling in the post. By final order passed on 17 July 2014, he was directed to be continued in service subject to acquiring Ph. D. degree and the university was directed to consider the proposal seeking approval. He was not held entitled to the back wages, but the continuity of services was directed to be considered. As there was non compliance of the orders, Contempt Petition No. 479 of 2014 was filed by the petitioner. In compliance with the earlier orders, he was issued with appointment order on 14.02.2015 as a full time lecturer in Botany on contract basis from 17.07.2014 with stipulation of continuity of services.

5. The petitioner made representation to the respondent No. 2/Joint Director of Education, Pune seeking GPF number and for applying old pension scheme. By the impugned communications, respondent No. 2 rejected the claim and it was reiterated that D.C.P.S. scheme was applicable to him.

6. The petitioner was not having NET/SET or Ph. D. or M. Phil, when he was appointed on 18.08.2005. He registered himself for Ph. D. on 26.03.2007 and it was acquired on

16.03.2015. His initial appointment was subject to passing of NET/SET. Initial approval was also granted to him subject to passing of NET/SET examination within two years.

7. The learned counsel Mr. Anand V. Indrale Patil appearing for the petitioner submits that by the impugned communications the claim of the petitioner for getting GPF number and applying old pension scheme has been turned down arbitrarily and highhandedly. He would submit that the petitioner was appointed after following due procedure of law from 18.08.2005 and was given approved vide order dated 29.10.2005. He was continuously rendering services with the approvals which shows that it was a regular appointment. He would further submit that by the intervention of the High Court in Writ Petition No. 8564 of 2010, he was directed to be continued in service and his proposal for approval was to be considered by the university. He was reinstated and granted continuity from 17.07.2014. Consequently, the university approved him vide letter dated 19.11.2015, which amounts to regularization of services since inception. He would submit that the approval order issued on 19.11.2015 would relate back to the initial date of appointment i. e. 18.08.2005.

8. The learned counsel further submits that he acquired Ph. D. degree on 16.03.2015 and, therefore, holds necessary qualification. The learned counsel tenders on record written notes of arguments, couple of Government Resolutions and following judgments of this Court to support his claim :

- I. Judgment dated 03.10.2018 in Writ Petition No. 13166 of 2017 in the matter of Maroti Dattatraya Patil Vs. The State of Maharashtra and others.
- II. Judgment dated 05.02.2024 in Writ Petition No. 10170 of 2021 in the matter of Gangasagar Umrao Kawale and others Vs. The State of Maharashtra and others.
- III. Order dated 14.03.2024 in Writ Petition No. 814 of 2023 in the matter of Vanmala Wd/o Gautam Shambharkar and others Vs. The State of Maharashtra and others.
- IV. Shrikant Sakham Jadhav (Dr.) Vs. The State of Maharashtra and others ; 2023 DGLS (Bom.) 2368.

9. The respondent Nos. 3 and 4 have not filed any reply. The respondent No. 4 supports the petitioner.

10. The respondent Nos. 1 and 2 filed affidavit in reply. It is contended that service of the petitioner was approved with effect from 09.03.2015 by respondent No. 3/university and not from the initial date of appointment i. e. 18.08.2005. There was no regularization of service from initial date of appointment. The break in service was never condoned. The petitioner was not having requisite qualification when he was appointed on 18.08.2005 and subsequent acquisition of Ph. D. would not confer any benefit retrospectively. It is further submitted that the Government Resolutions dated 27.06.2013 and 29.10.2021, which are pressed into service by the petitioner, are not applicable his appointment was not during 23.10.1992 to 03.04.2000. It is

vehemently submitted that he is governed by the Government Resolution dated 25.03.2011 read with Government Resolution dated 22.08.2014. His claim is rightly rejected by the impugned communications.

11. We have considered rival submissions. We have also gone through the notes of arguments, government policies and the judgments cited by the petitioner.

12. The D.C.P.S. scheme is made applicable vide Government Resolution dated 25.03.2011 read with Government Resolution dated 21.08.2014 from 01.11.2005. The petitioner placed reliance on the G. R. dated 27.06.2013 and 29.10.2021. A careful perusal of both the Government Resolutions shows that those lecturers who were appointed from 23.10.1992 to 03.04.2000 without passing NET/SET examination were granted regularization on certain conditions. One of the conditions was of making the D.C.P.S. scheme applicable to them. It was deleted by subsequent Government Resolution dated 29.10.2021.

13. The petitioner for the first time was appointed on 18.08.2005. He did not enter the service during the period between 23.10.1992 and 03.04.2000. Therefore, Government Resolutions dated 27.06.2013 and 29.10.2021 are not applicable. Similarly, Government Resolution dated 02.02.2014 and circular of the university, No. 46/2024 are also not applicable, as advertisement was issued prior to 01.11.2005.

14. It reveals from record that the petitioner was not having qualification of NET/SET or Ph. D. or M. Phil when he was appointed on 18.08.2005. His appointment was conditional and following conditions were incorporated :

2. Your appointment is on Contract basis And on purely Temporary basis for the period from 18-8-2005 to 17-8-2007.

3. You will be paid Rs. 8,000-00 (Rs. Eight thousand only) per month as per mentioned in the letter No. संस-मागासवर्गीय अजुशेष-शेपा-पीआर-३०७ दि. ११.२.०४ Received form the Joint Director, Higher Education, Pune Region, Pune.

4.

5. As per above mentioned G. R. and Letters from Government, You shall have to qualify the NET or the SET or similar test (As the case may be) laid down by the University, State of Maharashtra/UGC Or the Central Council pertaining to your faculty within two years from the date of appointment, otherwise your service will be automatically terminated.

6. You shall have to acquire qualifications (M. Phil./Ph.D., etc) as prescribed by the University/State Government or Central Council.

15. The services were for the first time approved by the respondent/university on 29.10.2005 for two years subject to passing of NET/SET examination. Though the continuation orders are not placed on record, there is reason to believe that he was continued in service. The respondent/university approved services vide order dated 10.03.2008 for a period of two years. By further order dated 22.10.2009, the services were approved for eleven months. From the orders of appointment and the approval, it cannot be inferred that the petitioner was regularly

appointed and there was permanent approval. He was not having requisite qualification at the time of his initial appointment. He did not pass NET/SET within two years as was stipulated in the orders of approval.

16. The petitioner was terminated on 31.07.2010 and he was required to file Writ Petition No. 8564 of 2010. Final order passed by the coordinate bench on 17th July 2014 shows that he had registered for Ph. D. on 26.03.2007, which was an alternate qualification to dispense with NET/SET examination. He was directed to be continued in the services subject to acquiring of Ph. D. degree. In pursuance of the orders of the High Court the proposal was forwarded by the respondent/college to the university. Respondent No. 3/university granted approval vide order dated 19.11.2015 specifically with effect from 09.03.2015 as a full timer. The order of approval was neither challenged by the petitioner nor by the management. It was not an approval from initial date of appointment i. e. 18.08.2005.

17. The petitioner was granted continuity of the service by the High Court in Writ Petition No. 8564 of 2010 vide order dated 17.07.2014, but that is not reflected in the subsequent order of approval. Rather order of approval dated 19.11.2015 specifically mentions that the approval was from 09.03.2015. Management issued appointment order dated 14.02.2015 stipulating continuity of service from 01.09.2005 to 14.02.2015, but that is not sufficient to draw an inference that the services of the petitioner were regularized from 18.08.2005. It is not clear as to whether the

continuity granted to the petitioner is also for conferment of retiral benefits as per old pension scheme or not.

18. Mere continuity of services would not make the petitioner eligible for benefits of old pension scheme. Rather the last order of approval dated 19.11.2015 is an impediment in recognizing the petitioner being regularly appointed from 18.08.2005. At the most it can be inferred that the service of the petitioner has been regularized from 09.03.2015. We are not inclined to accept the submission of the petitioner that the petitioner was regularized from initial date of appointment.

19. At the cost of repetition, we record that there is no order regularizing the petitioner from initial date of appointment. Respondent Nos. 1 and 2 have rightly contended that the appointment of the petitioner was not made during the period from 23.10.1992 to 03.04.2000, and, therefore, he was not entitled for regularization on the conditions stipulated in the Government Resolution dated 27.06.2013 and 29.10.2021. Respondent No. 2/Joint Director of Higher Education, Pune is justified in rejecting the claim of the petitioner and holding him eligible for the benefits of D.C.P.S. scheme.

20. As the appointment of the petitioner was not during the period from 23.10.1992 to 03.04.2000, no benefit of the judgments and the law laid down therein by the coordinate benches in the matters of Maroti Dattatraya Patil Vs. The State of Maharashtra and others (supra) and Gangasagar Umrao Kawale and others Vs. The State of

Maharashtra and others (supra) can be given to the petitioner. In the matter of Gangasagar Umrao Kawale and others Vs. The State of Maharashtra and others, the university had given permanent approval on 13 December 2017 and, therefore, the petitioner therein was held to be entitled to all service benefits of permanency. In the case in hand the approval is from 09.03.2015 and there is no regularization from initial date of appointment.

21. In the case of Vanmala Wd/o Gautam Shambharkar and others Vs. The State of Maharashtra and others (supra) reliance was placed on the judgment of Gangasagar Umarao Kawale Vs. The State of Maharashtra and others. In that matter the deceased employee was full time lecturer appointed after following due procedure of law. Since there was permanent approval, it was held that the petitioner was entitled to pensionary benefits and his proposal should not have been refused for not possessing necessary qualification. The case in hand shows that the approval of the respondent/university is very specific i. e. with effect from 09.03.2015 and it is not a permanent approval since inception.

22. The judgment relied by the petitioner in the matter of Shrikant Sakharam Jadhav (Dr.) Vs. The State of Maharashtra and others (supra) shows that retiral benefits were denied to the petitioner therein as his earlier service on non grant basis was not taken into account for calculating the total qualifying service and at the time of his appointment in the year 2003, he was not having NET/SET. The petitioner was held to be entitled to the retiral benefits as the date on which he attained superannuation the

school was receiving grants. Considering the previous service rendered in unaided school, he was held to be complying the qualifying service. Such is not the situation in the present matter. The petitioner has not been denied the retiral benefits. The issue involved in the present matter is as to the applicability of old pension scheme or the new D.C.P.S. scheme. Therefore, the ratio laid down by the coordinate bench is not helpful to the petitioner.

23. The regularization does not in all cases relates back to the initial date of appointment. If it relates back to the first date of appointment, then it has to be so mentioned expressly. In the present matter there is no express order of regularizing the services from 18.08.2005. The petitioner's services have been regularized from 09.03.2015, which is after the cut off date provided by the Government Resolution dated 25.03.2011. The petitioner is governed by D.C.P.S. scheme. We find no illegality or arbitrariness in the impugned communications. We are unable to grant any relief to the petitioner.

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

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

bsb/Sept. 24