

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3884 OF 2024

Shrimati Dr. Gaikwad Rajashri Nitin

@ Rajashri Prataprao Mohite.

Age : 51 years, Occu: Service,

R/o. 4, Sahyadri Housing Society,

Ajinkya Colony, Powai Naka,

Satara -415 501.

... Petitioner.

Versus

1. The Deputy Secretary Affiliation
Department, T-1,
Shivaji University, Kolhapur.
 2. Shivaji University, Kolhapur
Through its Vice Chancellor,
 3. The Divisional Joint Director,
(Higher Education),
Kolhapur Region, Kolhapur.
 4. The State of Maharashtra
Through Ministry of Education and
Higher Education, Mantralaya,
Mumbai.
 5. Rayyat Sikshan Sanstha,
Satara, District Satara,
Through its Joint Secretary(Higher Edu.)
 6. Yashwantrao Chavan Vidyalaya,
Pachwadi, Satara,
Through its Principal.
- ... Respondents.

Mr. I.M. Khairdi, for the Petitioner.

Mr. Vikram N. Walawalkar a/w. Ms. Sayali Gangal & Ms. Madhura
Mulay, for Respondent Nos. 1 and 2-Shivaji University, Kolhapur.

Mr. Swapnil P. Kamble, AGP for Respondent Nos. 3 and 4/State.

Mr. Milind Deshmukh, for Respondent Nos. 5 & 6.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

DATE : 10th FEBRUARY, 2025

ORAL JUDGMENT(Per RAVINDRA V. GHUGE, J) :

1. Leave to add prayer clause. Addition be carried out forthwith.
2. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
3. The Petitioner has put forth prayer clauses (B), (B-1), (B-2) and (C), as under :

“(B) After perusing the legality, validity and propriety of the impugned order dated 08/11/2023 passed by the Respondent No.1 herein, this Hon'ble Court be pleased to quash and set aside the same and direct the Respondent No.1 to grant the approval to the appointment of the Petitioner in Clock Hour Basis (CHB) at Respondent No.6 College being run by the Respondent No.5 Educational Trust.

B-1) This Hon'ble Court be pleased to direct reinstatement in services of the Petitioner with R-6 College, run by R-5 since from February 2024 with a further direction to pay unpaid salaries for the period, worked by her institution.

B-2) This Hon'ble Court be further pleased to direct the R-Authorities to condone the break of period of the month, in each of the academic year & treat the Petitioner at continuous in services for all the service benefits & retrial benefits including updating the service Book & making payments

thereof.

(C) This Hon'ble Court be pleased to issue Writ of Mandamus and / or any other order, direction or writ in the nature of Mandamus directing the Respondent No.1 to forthwith release the salaries of the Petitioner since from 30/07/2023 along with interest at the rate of 6%."

4. The dates and sequences of events are as under :
 - (a) The Petitioner belongs to the open category and she was born on 29.7.1972.
 - (b) In 1992, the Petitioner passed her B.Com. Examination.
 - (c) In 1995, she passed her M.Com. Examination with 50% marks and did not score the B+ class.
 - (d) In 2005 she applied pursuant to an advertisement and was selected and appointed on Clock Hour Basis(CHB) as a lecturer in 100% grant-in-aid section with the L.B.S. College, Satara for a period of 11 months.
 - (e) Since the Petitioner's selection was only for 11 months, she again responded to a fresh advertisement in 2006 and was again appointed in the same manner.
 - (f) In 2007, she applied for the M.Com Improvement Examination with the Shivaji University, Kolhapur from where she had acquired her B.Com. and M. Com. Degrees.
 - (g) She scored 54.6% marks in the said Improvement Exam and

with grace marks, her percentage was 55.63.

- (h) In April 2009, the Petitioner secured M.Phil qualification.
- (i) In 2016, the Petitioner acquired her Ph.D.
- (j) For the academic year 2012-2013, the Petitioner was appointed for 11 months at Deor College, Satara.
- (k) On 13.7.2014, the Petitioner was appointed on CHB at the Respondent No. 6 College namely Yashwantrao Chavan Vidyalaya, Satara, for 11 months. The said appointment was approved every year and she continued for 11 months till 2022-2023.
- (l) On 3.7.2023, she was again appointed for 11 months on CHB with the same college. A proposal for seeking approval to her appointment was forwarded and the same was rejected on 8.11.2023 on the ground that the Petitioner did not have 55% marks/B+ class, with reference to the M. Com. Degree. It is, thus, obvious from the above that the whole issue turns upon whether the Petitioner had B+ Class for the M. Com. Degree.

5. The learned Advocate appearing on behalf of the Respondent No. 2 Shivaji University has vehemently opposed this Petition. His contentions can be summarized as under :

- (a) The Petitioner's M.Com. result would indicate that she had

scored 54.6% marks in her Improvement Exam.

(b) In order to enable her to have the B+ class, the University added grace marks to her total by virtue of Ordinance 91, which permitted grace marks for getting a higher class.

(c) The Petitioner's marks tally is 437 out of 800 for Part-I and Part-II i.e. 210 out of 400 for Part-I and 227 of out of 400 for Part-II. The percentage was 54.625%.

(d) 8 grace marks were added to the tally of the Petitioner's score in the Improvement Exam and her total became 445 out of 800 which is 55.63%.

(d) It is specifically mentioned in the mark list that Ordinance 91 was invoked to give the Petitioner the B+ class.

6. The learned Advocate for the University has strenuously relied upon Ordinance 91 and the two proviso there below. Ordinance 91 reads as under :

“0.91: (U.0.02): Grace Marks for getting higher class:

A candidate who passes in all subjects and heads of passing in the examination without the benefit of either gracing or condonation rules and whose total number of marks falls short for securing second class higher second class or first class by marks not more than 1% of the aggregate marks of that examination or up to 10 marks. Whichever is less shall be given the required marks to get the next higher class of grace as the case may be.

Provided that benefits of above mentioned grace marks shall not be given, if the candidate fails to secure necessary passing marks in the aggregate head of passing also if prescribed in the examination concerned.

Provided further that benefits of above mentioned grace marks shall be given to the candidate for such examination/s only for which provision of award of class has been prescribed.

Condonation deficiency of marks be shown in the statement of marks in the form of asterisk and Ordinance number, Provided that this condonation of marks is concurrent with the rules and guidelines of professional statutory bodies at the All India level such as AICTE, MCI, Bar Council, CCIM, CCIH, NCTE etc,”

7. The learned Advocate for the University, therefore, submits that when it came to a class to be awarded, it cannot be overlooked that the Petitioner had not scored 55% marks in the Improvement Exam so as to qualification for the B+ class. On instructions, reliance is placed on the second proviso below Ordinance 91 reproduced above, to contend that the grace marks would be given to a candidate for such examination only for which provision of award or class, has been prescribed and, therefore, it is the belief of the University that the addition of such grace marks is only to enable the Petitioner to appear for further examinations.

8. We are unable to accept the vehement submissions of the learned Counsel on behalf of the University, that the grace marks are given only for the purpose of letting a candidate appear for further examinations for which a class is necessary. We would revisit the second

proviso for this purpose and reproduce it once again herein below:

“Provided further that benefits of above mentioned grace marks shall be given to the candidate for such examination/s only for which provision of award of class has been prescribed.”

9. We do not find any ambiguity in the above reproduced proviso, in as much as, there is hardly any vagueness or confusion so as to require an interpretation. There is no dispute that Improvement Examination to which the Petitioner had applied for, is provided with grace marks since the award of class is prescribed for the M.Com. Examination. The proviso plainly indicates that the benefit of grace marks would be given to a candidate who has appeared for such examination to which the proviso of awarding a class is prescribed.

10. When awarding of a Class like B+, First Class and Distinction, is permissible for the M. Com. Examination, the Petitioner was given the said advantage by the University itself. This Petition is not filed for demanding grace marks. The said grace marks have already been granted to the Petitioner as long ago as in 2007 and the reason for which she is before this Court is for voicing a grievance, as to, how far can she be continued on 11 months CHB appointments, which commenced from 2005 onwards.

11. The grievance voiced by the Petitioner is out of her anxiety, which is not misplaced. The learned Counsel for the University has vehemently canvassed that the G.R. dated 8.3.2019, does not permit grace marks to be used for granting a CLASS to a candidate, in view of Clause 4.4 and 4.5, which read as under :

4.4. A minimum of 55% marks (or an equivalent grade in a point-scale, wherever the grading system is followed) at the Master's level shall be the essential qualification for direct recruitment of teachers and other equivalent cadres at any level.

I. A relaxation of 5% shall be allowed at the Bachelor's as well as at the Master's level for the candidates belonging to Scheduled Caste/Scheduled Tribe/ Other Backward Classes (OBC) (Non-creamy Layer)/Differently-abled ((a) Blindness and low vision; (b) Deaf and Hard of Hearing; (c) Locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid-attack victims and muscular dystrophy; (d) Autism, intellectual disability, specific learning disability and mental illness; (e) Multiple disabilities from amongst persons under (a) to (d) including deaf- blindness) for the purpose of eligibility and assessing good academic record for direct recruitment. The eligibility marks of 55% marks (or an equivalent grade in a point scale wherever the grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible, based only on the qualifying marks without including any grace mark procedure.

4.5. A relaxation of 5% shall be provided, (from 55% to 50% of the marks) to the Ph.D. Degree holders who have obtained their Master's Degree prior to 19 September, 1991.

12. It is, thus, apparent that a minimum of 55% marks or an equivalent grade in a point scale at the Masters level is declared to be an essential qualification for recruitment of teachers and other equivalent

cadres at any level. Sub-clause I below 4.4. pertains to relaxation of 5%.

13. The interpretation of University is that the last sentence below 4.4 (I), beginning with the words “*The eligibility marks..... without including any grace marks*”, have to be read with 4.4 which indicates a minimum of 55% marks as an essential qualification for direct recruitment of teachers and, therefore, a teacher who has outrightly scored 55% marks, alone will be considered for direct recruitment and not by including the grace marks.

14. The Petitioner is before us with a grievance that after she secured B+ in 2007, she was still continued on 11 months CHB. She tolerated such engagement pattern only because she was in dire need of employment and did not have a bargaining power. She had no option, but to keep silent and accept such appointment for the fear of losing employment and today at the age of 52 years, she is not engaged for the 11 months tenure for the academic year 2024-2025, only because the G.R. dated 8.3.2019 was retrospectively made applicable by the University, having been adopted vide Order Reference No. 402, dated 2.4.2019. The said G.R. dated 8.3.2019, is in relation to the notification dated 18.7.2018, issued by the University Grant Commission.

15. We find from the Ordinance 91 that the purpose for which it was introduced was only to grant such quantum of grace marks to a candidate, who was falling short of a particular class. The case before us is not in connection with a candidate who had failed and the grace marks were added only to ensure that he passed. Because the present case was within the ambit of Ordinance 91, that the grace marks were added up only to enable the Petitioner to obtain a particular class. Had the Petitioner been slightly short of 75%, the Ordinance 91.1 permitted addition of grace marks to give him the distinction class. The whole object of addition of such grace marks is to bring the candidate within a particular class on the basis of which he can obtain employment.

16. It is logical to interpret this Ordinance the way we have in the above paragraph, for the reasons that it would purposeless if the class is made available to a candidate by addition of grace marks, and such class is made useless when it came to seeking employment. A second class is an indication of a candidate having scored 55% marks. In order to avoid using the words like “Third Class”, “Second Class”, the word used is “B+” instead of Second class. This B+ qualification essentially indicates the score of 55% and, therefore, in some advertisement, some Institutions use the word “55%” and some use the word “B+”. Both

mean the same.

17. The Petitioner has been working on CHB since 2007, after she received her marks list post the Improvement Examination. Her final marks list today indicates that she has scored 55.63% marks in the M.Com. course having taken her Improvement Examination and since grace marks were added to her tally. As per Ordinance 91, she was given 8 grace marks and her final score, in percentage, is 55.63 and going by the class, she had achieved the second class or the B+ class.

18. We have heard the learned Advocates on the Principle of '*Reading Down*'. The learned Advocate for the Petitioner submits that Ordinance 91 did permit candidates to use the particular percentage like 55% (B+ or Second Class) or 60% (First Class) for the purposes of seeking employment. However, by the G.R. dated 8.3.2019, which is on the basis of the UGC Recommendation in the light of the 7th Central Pay Commission and UGC Regulations on minimum qualifications for appointment of teachers and other academic staff, that clause 4.4 was introduced. According to him, the benefit that is extended by Ordinance 91, is sought to be taken away by Clause 4.4 of the G.R.

19. On the query of the Court as to whether we should invoke

the Principle of 'Reading down', the learned Advocate for the University submits that there are no such pleadings, there is no specific prayer with regard to the Clause 4.4 and that, the said principle may not be invoked at this stage. If any specific challenge to the sustainability of the clause 4.4 is brought before this Court in a substantive petition, the Court may consider the said issue.

20. The learned Advocate for the Petitioner submits that since she has been working on 11 months since the academic 2007-2008, she is seeking confirmation in employment and for the said purpose, she prays for reinstatement in the service. The Petitioner has been disengaged from the academic year 2024-2025 and it is only for this period of 11 months that she is not in employment. She is willing to waive the entire salary for this period of 11 months, though she prays for continuity of service from the academic year 2007-2008.

21. In the light of the above, we find that it has been unfair that the Petitioner has been kept on Clock Hour Basis(CHB) ever since the academic year 2007-2008. For the last 17 years, she was in employment on 11 months CHB. At the age of 52 years, she would not secure employment in any institution and she would suffer an irreparable harm, grave prejudice and manifest inconvenience. Her entire career would be

destroyed, despite she having acquired M. Phil. and Ph.D. She further instructs her learned Advocate (the Petitioner is present in the Court), that she would not seek salary benefits for the academic year 2024-2025. She may be granted reinstatement in service for the academic year June, 2025-2026 on wards. Continuity may be granted to her since she has joined in 2007, ignoring her first joining in 2005 since she did not have B+/55% marks as in 2007. The benefit available to her under Ordinance 91, cannot be taken away by the GR subsequently introduced by the State. The said GR will not be made applicable retrospectively.

22. In view of the above, **this Writ Petition is partly allowed.** The impugned order dated 08.01.2023, refusing approval to the appointment of the Petitioner, is quashed and set aside. The Petitioner shall be reinstated in service by Respondent Nos. 5 and 6, from the academic year June 2025 on wards. The competent authority shall grant her 'Approval' within 30 days. Continuity in service is granted to her and the artificial breaks of one month in each academic year, beginning from 2007 on wards, until her disengagement, stand condoned and bridged. Since the Petitioner has not worked for academic year 2023-2024 and since she has made a statement that salary would be not claimed, prayer clause C is not being considered.

23. On her superannuation at the age of 58 years or as the case may be, continuity of service from 2007 onwards till her superannuation, would be granted and the said period would be reckoned with for the purpose of calculating her retiral/service benefits. The unpaid salary of the Petitioner till date of her disengagement from February, 2024 would be paid by the Management.

24. Rule is made partly absolute in the above terms.

25. Needless to state, in the event of any specific challenge to the G.R. dated 8.3.2019 as being contrary to Ordinance 91, in a substantive petition, the said issue is left open to be considered on its own merits.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)