

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 814 OF 2023

(VANMALA WD/O GAUTAM SHAMBHARKAR AND OTHERS VS. THE STATE OF MAHARASHTRA,
 THROUGH, SECRETARY, HIGHER AND TECHNICAL EDUCATION DEPARTMENT,
 MANTRALAYA, MUMBAI AND OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri Naquid Z. Mirza, Advocate for Petitioners.
 Shri A.M. Ghogre, A.G.P. for Respondent Nos. 1 & 2/State.

CORAM : ANIL S. KILOR, AND
SMT.M.S.JAWALKAR JJ.

DATED : 14/03/2024.

1. This writ petition takes exception to the denial of family pension in favour of the petitioners in view of the Government Resolution dated 29/10/2021.

2. It is the case of the petitioners that the husband of the petitioner No. 1 and father of the petitioner Nos. 2 and 3 was a full time approved Lecturer appointed by following due selection process at respondent No.3 and he died on 30/05/2021.

3. Thereupon, the petitioners claimed family pension which came to be denied on the ground that firstly, he was not possessing the required education qualification and the another ground that the appointment was made on 02/08/2000 and not between 23/10/1992 to 03/04/2000, as stipulated in Clause 16 of the Government Resolution dated 27/06/2013.

4. The learned Counsel for the petitioners has pointed out that the present case is covered by the judgment dated 05/02/2024, passed in Writ Petition No. 10170/2021 of the Co-ordinate Bench of this Court in similar matter, whereby it is directed to the Authorities to sanction the family pension and other retirement benefits.

5. In the said matter before the Co-ordinate Bench, the deceased was appointed on 09/03/2002 i.e. beyond the cut-off date i.e. 03/04/2000 and in that matter also the objection was raised to the initial appointment of the deceased. This Court while dealing with the said submissions has observed thus :

“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.

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 allowed the petition, Accordingly, the Writ Petition is allowed.”

6. Since we are agreeable with the view taken by the Co-ordinate Bench in the above referred matter, we pass the following order :

The writ petition is disposed of and it is held 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 09/06/2022 issued by respondent No.2. Respondent Nos.

1 to 3 to process and sanction the family pension and other retirement benefits to petitioners in consonance with the rules regulations, expeditiously and preferably within a period of FOUR MONTHS from the date of this order. It should also include the arrears, if any.

JUDGE

JUDGE

Jayashree..