



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6269 OF 2022

Ku. Sandhya Shrawan Makarande
@ Mrs. Sandhya Uddhav Samudre,
Age about 58 years, Occ. – Service,
R/o 5, Laxmi Apartments, Damle
Layout, Ramdaspath, Akola.

.... PETITIONER

VERSUS

- 1) State of Maharashtra,
through its Secretary, Department
of Higher and Technical Education,
Mantralaya, Mumbai – 440 032.
- 2) Director of Higher Education,
Maharashtra State, Pune.
- 3) Government College of Education,
Akola, through its Principal.

.... RESPONDENTS

Mr. A.C. Dharmadhikari, Counsel for the petitioner,
Mr. J.Y. Ghurde, A.G.P. for respondent Nos.1 to 3.

CORAM : BHARATI DANGRE &
ABHAY J. MANTRI, JJ.

DATE : 10-10-2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Rule. Rule is made returnable forthwith and heard finally with
the consent of the learned Counsel for the parties.

2. The petitioner is aggrieved by the judgment and order dated 29-03-2022 passed by the Maharashtra Administrative Tribunal, Nagpur (for short, “*the Tribunal*”) in Original Application No.657/2015, thereby dismissing the original application filed by the petitioner, claiming to regularise her services on the post of ‘*Assistant Professor*’ in Mathematics in respondent No.3-College from the date of her initial appointment i.e. 23-09-2024 and with all consequential benefits.

3. In brief, the facts are as under :

The petitioner holds educational qualifications of B.Sc. (Maths), B.Ed., M.Ed., B.A. (Additional Sociology), B.A. (Additional English Literature), M.A. in Marathi Literature and Sociology, and M.Sc. in Subject Communication.

Based on her qualifications, she responded to the advertisement issued by respondent No.3-College for a temporary appointment as an ‘Assistant Professor’ in Mathematics and she was appointed on *ad hoc* basis in respondent No.3-College by order dated 23-09-1994. The said appointment on *ad hoc* basis, continued by various orders, till she applied for regularisation of her services.

In 2007, she also acquired a Ph.D. in Education while working as an Assistant Professor.

4. It is the contention of the petitioner that five candidates had acquired the qualifications while in service, and their services were regularised. However, her services were not regularised, and she continued as an *ad hoc* employee.

It is also the case of the petitioner, that as per the direction dated 06-07-2010 bearing No.47/2010 issued by the Sant Gadge Baba Amravati University, the Ph.D. holders of the University who have acquired the qualification on or before 11-07-2009 are entitled to exemption from passing NET/SET and other examinations and being acquired Ph.D. degree from Amravati University on 17-02-2007, she is entitled for the exemption. It is hence the case of the petitioner, based on the Government Resolution dated 23-03-2005, that she is entitled to have her service regularised.

5. In the wake of the above, on 17-08-2015, she made a representation to respondent No.3 for regularisation of her services, who forwarded the same with a recommendation dated 02-9-2015 to respondent No.2-Deputy Director of Education, Pune. Despite receipt of representation, neither her services were regularised nor said benefit has been extended to her. Hence, she was constrained to approach the Tribunal by filing the Original Application.

6. The Tribunal, after considering the material placed before it held that the petitioner had not acquired the requisite qualification, i.e. M.Sc. Mathematics at the time of her initial appointment as 'Assistant Professor' as prescribed by the University Grants Commission (for short, "*U.G.C.*"), hence it dismissed the Application.

7. Mr. A.C. Dharmadhikari, the learned Counsel for the petitioner, has vehemently contended that despite the petitioner acquiring the requisite qualification and being entitled to have regularisation of her services as per the Government Resolution dated 23-03-2005, the Tribunal has not considered the clauses in the Resolution and the direction issued by the Sant Gadge Baba Amravati University on 06-7-2010 thereby exempting the candidates from passing the NET/SET examination in its proper perspectives and erred in dismissing the application holding that the petitioner did not possess the requisite qualification.

In addition, the learned Counsel has argued that since appointment, the petitioner has been teaching Mathematics subject, and she passed her B.Ed. Examination and secured 66.85% in it. He further canvassed that in the Maths Teaching Method, she had secured 32 marks out of 50 marks and, in the practical examination has secured 60 marks out of 65 marks, which comes to 92 out of 115 marks, i.e.

80%. Similarly, she passed M.Ed. Examination, and had secured 57.8 marks in M.Ed. Part-I and 65% marks in M.Ed. Part-II and as such, she had fulfilled the condition of passing 55% marks in the concerned subject in B.Ed. However, the learned Tribunal has not considered the said fact and erroneously concluded that the petitioner did not acquire the requisite qualification.

To buttress his submissions, he has relied on the decision of the Division Bench of this Court in the matter of *Writ Petition No.6594/2018 (Mohd. Ilyas Ahmed s/o Abdul Kabeer Vs. State of Maharashtra and others)* along with other connected matter decided on 06-03-2024 and the decision of the Hon'ble Apex Court in the matter of *Vinod Kumar & Ors. ETC. V Union of India & Ors., 2024 LiveLaw (SC) 330*, and submitted that the facts in the case at hand and the said cases are identical; hence, the petitioner is entitled to regularise her services. Therefore, he urged for allowing the petition.

8. Mr. J.Y. Ghurde, learned Assistant Government Pleader for respondent Nos.1 to 3, has strenuously argued that the petitioner was not holding the requisite qualification to claim regularisation of her services and considering the same, the Tribunal has rightly dismissed the application. He has drawn our attention to the Gazette published by the U.G.C., more particularly Clauses No.3.3.0 and 4.3.0 (ii) and the

qualification prescribed in the advertisement dated 04-07-1994 by which the petitioner was appointed on an *ad-hoc* basis, and argued that the respondent No.3 categorically mentioned the requisite qualification for appointing the Associate Professor on an *ad-hoc* basis. However, the petitioner did not possess the requisite qualifications for her initial *ad-hoc* appointment, therefore, she is not entitled to claim regularisation in the service. Hence, he urged for the dismissal of the petition.

9. Having considered the rival submissions and the record, the short question that arises for consideration is:

‘Whether the petitioner had acquired the requisite qualification at the time of her initial appointment, as per the U.G.C. Guidelines?’

To ascertain the fact, it would be proper to reproduce Clauses 3.3.0 and 4.3.0 of the Notification of U.G.C. dated 30-06-2010.

“3.3.0 The minimum requirements of a good academic record, 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the master’s level and qualifying in the National Eligibility Test (NET), or an accredited test (State Level Eligibility Test - SELT/SET), shall remain for the appointment of Assistant Professors.

4.3.0 ASSOCIATE PROFESSOR

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ii. A Master’s Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is

followed).

iii.

iv.

v.”

A careful reading of these clauses reveals that the requisite qualification for the appointment of Assistant/Associate Professor is that a candidate should secure 55% marks in the requisite subject, i.e., Mathematics, in the Master's Degree, on which she was appointed on an *ad-hoc* basis.

10. We would like to reproduce the qualification prescribed in the advertisement dated 04-07-1994 issued by respondent No.3-College as under :

“अर्हता : यु.जी.सी व शासनाने निर्धारित केल्याप्रमाणे वरिष्ठ अधिव्याख्याताकरिता मास्तरची पदवी 55 टक्के गुणासह आणि कनिष्ठ अधिव्याख्याताकरिता द्वितीय श्रेणी मास्तरची पदवी आणि बी.एड., एम.फिल., पी.एच.डी. धारण करणा-या आणि एन.ई.टी./सी.एस.आय.आर सर्वसमावेशक चाचणी उत्तीर्ण झालेल्या अमेदवारांना प्राधान्य देण्यात येईल,”

The above reveals that the qualification prescribed in the advertisement is that the candidate shall secure 55% in the concerned subject in the master's Degree as per the U.G.C. norms, i.e., 55% in mathematics.

Secondly, it seems that the said advertisement was issued for the Assistant Professor, to be appointed on *ad-hoc* basis only.

11. The combined reading of the advertisement and U.G.C. norms denote that for appointment of the Assistant Professor, the requisite qualification was prescribed, and **the candidates should have secured 55% marks in the concerned subject in master's Degree.** In the case at hand, undisputedly, the petitioner did not secure 55% marks in Mathematics subject, in the master's degree and, therefore, as per the U.G.C. norms, she was not qualified for appointment as an Assistant Professor and the learned Tribunal has considered the aforesaid U.G.C. norms, advertisement and clauses in the Government Resolution dated 18-10-2001 and rightly concluded that the petitioner did not possess the requisite qualification in Mathematics subject.

12. In the case of *Mohd. Ilyas Ahmad s/o Abdul Kabeer*, the petitioner therein, had acquired the requisite qualification at the time of his appointment, and, therefore, his services were regularised. However, in the case at hand, the petitioner did not possess the requisite qualification, thus, the observations made in the above-cited decision are not helpful to the petitioner to substantiate her claim.

In the case of *Vinod Kumar and others*, the petitioners possessed the requisite qualifications, and therefore, the Hon'ble Apex Court has held that they are entitled to regularise their services in their respective posts.

13. In the wake of the above, since the petitioner failed to show that at the time of the initial appointment, she was holding the requisite qualification as per the U.G.C. guidelines/norms, we do not find any infirmity in the impugned order dismissing the petitioner's application to regularise her services.

In the aforesaid backdrop, the petition is bereft of any merit and stands dismissed. No order as to costs.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)

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