IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 17TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.204573/2018 (S RES)

BETWEEN:

RAJSHEKHAR
S/O SHIVASHARANAPPA BABNOOR,
AGE: 47 YEARS,
OCC: LECTURER IN BOTANY,
HKE SOCIETY'S ARTS SCIENCE
AND COMMERCE COLLEGE,
ALAND, DIST: KALABURAGI.

...PETITIONER

(BY SRI P. VILASKUMAR, SERNIOR COUNSEL FOR
SRI NITESH PADIYAL, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
   DEPARTMENT OF HIGHER EDUCATION
   THROUGH ITS PRINCIPAL SECRETARY
   ROOM NO. 645, 6TH FLOOR M.S.
   BUILDING BENGALURU-560001.

2. THE COMMISSIONER
   DEPARTMENT OF COLLEGIATE
   EDUCATION, 2ND FLOOR, DTE BUILDING,
   PALACE ROAD, BENGALURU-560001.

3. HYDERABAD-KARNATAKA EDUCATION
SOCIETY THROUGH ITS PRESIDENT,
PDA ENGINEERING COLLEGE CAMPUS,
AIWAN-E-SHAHI ROAD,
KALABURAGI-585102.

4. THE PRINCIPAL,
HKE SOCIETYS ARTS SCIENCE &
COMMERCE COLLEGE, ALAND
DIST: KALABURAGI-585102.

5. THE JOINT DIRECTOR
OF COLLEGIATE EDUCATION,
KALABURAGI-585102.

RESPONDENTS

(BY SRI VEERANAGOUDA MALIPATIL, HCGP FOR R1, R2 & R5;
SRI AMRESH S. ROJA, ADVOCATE FOR R3 AND R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE ENDORSEMENT DATED-19.03.2018 WHICH IS AT ANNEXURE-A1 AND DATED 27.03.2017 WHICH IS AT ANNEXURE-1 VIDE NO. ಸಂ: ಕಾಶಿಇ/ಪ್ರಾಕಕ/217/ಜಿ.ಎಂ.ಎಸ್/7/2010-11 WHICH HAVE BEEN PASSED BY THE RESPONDENT NO.2 AND RESPONDENT NO.5 RESPECTIVELY, CONSEQUENTLY DIRECT THE RESPONDENTS TO RECKON THE SERVICES OF THE PETITIONER WITH RETROSPECTIVE DATE OF HIS INITIAL APPOINTMENT i.e., ON 01.07.1991 WITH ALL CONSEQUENTIAL BENEFITS INCLUDING THAT OF FIXATION OF PAY SCALE, ARREARS OF SALARY AND PROMOTIONS ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.10.2024, THIS DAY ORDER WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The petitioner is aggrieved by the impugned endorsement vide Annexure – A dated 19.03.2018 issued by respondent No.2, wherein the petitioner in spite of absorption is denied the benefits of reckoning his service from the date of his initial appointment.

2. Facts leading to the case are as under:

The petitioner, placing reliance on Annexure – B is asserting that he is entitled to reckoning his service rendered as a full time lecturer from the date of appointment i.e., 1991. The petitioner claimed that despite being initially appointed as a full time lecturer and having performed duty as a fully time lecturer working 40 hours per week,

respondents/authorities have denied the benefit by treating the petitioner's appointment as stop gap basis.

3. The petitioner referring to the appointment order, claimed that his service prior to regularization should be reckoned and such an entitlement cannot be denied on the ground that his appointment was temporary in nature.

4. Per contra, respondents/State having filed statement of objections though admits that the petitioner was appointed as a temporary lecturer on a full time basis, however, contends that services of 436 stop gap lectures, who had completed three years of service after 29.01.1992 were regularized on 14.06.1998. The present petitioner, who was appointed in 1991 has completed three years of service only after 29.01.1992. Therefore, the petitioner contends that the petitioner's case has to be considered under category-III of stop gap lecturer and therefore, the petitioner's regularization was clearly prospective in nature and his initial service cannot be counted.

5. The respondents have contended that the petitioner has worked as a stop gap lecturer from 01.07.1991 to 13.06.1998 and the petitioner is regularized pursuant to the order passed by the Apex Court in W.P.No.873/1990 and therefore, the petitioner, who false under III Category is not entitled for regularization of service rendered on stop gap basis from 1991 to 14.06.1998.

6. Heard the learned counsel appearing for the petitioner, learned High Court Government Pleader appearing for respondent Nos.1, 2 and 5 and standing counsel appearing for respondent Nos.3 and 4.

7. Before this Court delves in reviewing the order under challenge, this Court deems it fit to extract appointment order issued in favour of the petitioner and similarly placed lecturers which is evidenced at Annexure – B. The same is extracted which reads as under:

> *"The following candidates are hereby temporarily appointed as Full-Time Lecturers, on a*

consolidated salary of Rs.1010/- p.m in the arts, Science & Commerce College, Aland for a during of 3 months, with effect dated:- 1-7-1991,

Sl.No.	*Name*	*Subject*
1.	*Smt Usha Sasnoor*	*Lecturer in English*
2.	*Sri. Rajashekhar.S.Batnoor*	*Lecturer in English*
3.	*Sri. Dilipkumar Nagavi*	*Lecturer in English*
4.	*Sri. Kanchate Anilkumar*	*Lecturer in English*
5.	*Sri. Ashok Dongre*	*Lecturer in English*
6.	*Sri. Shrishail.C.Masute*	*Lecturer in English*
7.	*Sri. Shivanand Hungund*	*Lecturer in English*

8. On reading the wordings in the appointment order, it is clearly evident that the petitioner was temporarily appointed as a full time lecturer on a consolidated salary of Rs.1,010/- per month. The records also reveal that the petitioner was not issued by successive appointment orders for every three months. Therefore, based on 1991 order, the petitioner has in fact worked as a full time lecturer.

9. This factual matrix is also admitted by the respondents. Therefore this Court deems it fit to cull out

paragraph Nos.15 and 18 of statement of objection which read as under:

> *"15. It is submitted that after securing the details from the college authorities along with connected records, the case of the Petitioner was examined by the Department. Since, the Petitioner had been appointed as temporary lecturer on full time basis receiving Rs.10/- less salary than the regular lecturers, his case was considered similar to that of the case of stop gap lecturers and accordingly, it was decided to consider his case in accordance with the decisions taken in Stop gap lecturers' case. As stated earlier, as per the provisions made in Clause(5) of the Government Order dated 03/10/1981, the Aided College Management were permitted to appoint temporary full time lecturers with a remuneration of Rs.10/- less than that of the salary of regular lecturers. These lecturers approached Hon'ble High Court for regularisation of services and ultimately, the said issue attained finality in W.P No.873/90, wherein the Hon'ble Supreme Court on 29/01/1992 issued direction to regularize services of such temporary teachers who had worked as such for 03 years till 29-01-1992. In pursuance of orders of Hon'ble Supreme Court, services of those stop-gap lecturers who have*

completed 03 years as on 29/01/1992 were regularized.

18. It is submitted that accordingly services of 436 stop gap lecturers, who had completed 3 years of service after 29/01/1992 ware regularized on 14/06/1998. Since the Petitioner had completed 3 yrs of service after 29/01/1992, his case was considered under category 3 of stop gap lecturers' case and approval of Government was sought for regularizing Complainant's services from 14/06/1998 and the Government on 02/01/2018 accorded permission for regularization of complainant service from 14/06/1998. Copy of the Government letter dated: 02-01-2018 is produced as ***Annexure-R5****. Accordingly, orders were issued on 25/01/2018 regularizing Petitioner's services from 14/06/1998. Copy of Order dated: 25/01/2018 is produced as* ***Annexure-R6****."*

10. The stand taken by the respondents/State which is extracted supra also clearly acknowledges that the petitioner was in fact though appointed as a temporary lecturer, the same was on full time basis and the petitioner only received Rs.10/- less salary than the regular lecturers. This Court in earlier round of litigation, remitted the matter

only to ascertain whether petitioner's appointment was part time or full time. After remand, respondent No.2 though refers to the order passed by this Court, however, strangely does not advert the nature of appointment order issued to the petitioner. After remand, it appears that the emphasis is more on as to whether the petitioner falls under category-III of stop gap lecturers wherein the authorities have resolved that such stop gap lectures, who are regularized in 1998 and had not completed three years as on 29.01.1992 are not entitled to seek reckoning of their service from the date of their initial appoint on stop gap lectures.

11. On examination of the records, this Court is of the view that the appointment order clearly designates the petitioner as full time lecturer. Furthermore, respondents admit as outlined in paragraph No.15 of the statement of objections, the petitioner was appointed as a full time lecturer during the period in question. The respondents strangely are highlighting more on that the appointment is temporary in nature. The issue of temporary appointment is

not a guiding factor to examine as to whether petitioner's prior service needs consideration. The core question is whether the petitioner was initially appointed as a full time lecturer. This factual matrix is admitted in statement of objections which is culled out supra. The impugned endorsement issued by respondent No.2 does not substantiate sufficient grounds to deny continuity of service based on temporary or stop gap nature of the appointment. The petitioner's case cannot be considered under III category as claimed by respondents/State. The judgment cited by the State in the W.P.Nos.87071-87081/2022 has no application to the present case on hand. In the said case, the petitioner was issued appointment order for a period of three months and with official break in service, petitioner was appointed by issuing fresh appointment order to every three months. There it is clearly indicated that the lecturers were appointed as temporary stop gap lecturers. In the present case on hand, the petitioner is clearly appointed temporarily but as a full time lecturer and the respondents themselves have

admitted that he was receiving Rs.10/- less than the regular lecturers appointed permanently. These significant factors distinguish the petitioner's case. Therefore, the authority contrary to the directions issued by this Court wherein the authority was called upon to examined whether the petitioner was appointed as full time lecturer or as a part time lecture has deviated contrary to directions and has issued the impugned endorsement declining to reckon the prior service only on the premises that the petitioner was appointed as a stop gap lecturer and falls under III category. It is not forthcoming on record whether this appointment order was cited in earlier round of litigation which prompted this Court to remand the matter to the authority to look into the records and ascertain whether the petitioner's appointment was as a part time lecturer or full time lecturer. However, in the captioned petition, the petitioner has placed on record appointment order and respondent acknowledges that the petitioner has appointed as a full time lecturer and the salary paid to the petitioner also appears to be marginally less than

the regular lecturers. All these significant details leads to inference that petitioner was appointed as a full time lecturer. A feeble attempt by the State by citing documents along with statement of objections indicating that the strength of students was negligible and therefore, the petitioner has not discharged a full time lecturer clearly runs contrary to their own pleadings in the statement of objections. Therefore, the impugned endorsement at Annexure-A issued by respondent No.2 is liable to be set aside.

12. For the foregoing reasons, this Court passes the following:

ORDER

(i) The Writ Petition is hereby allowed.

(ii) The impugned endorsement dated 19.03.2018 issued by respondent No. 2 is quashed.

(iii) Respondents are directed to treat the petitioner's service as continuous from the date of initial

appointment as a full-time lecturer, in accordance with the appointment order marked as Annexure-B. The service rendered by the petitioner prior to regularization shall also be taken into consideration.

(iv) The petitioner's entitlements, including any consequential benefits, shall be determined by the authorities in accordance with law.

(v) The entire process shall be completed within a period of four months from the date of receipt of a certified copy of this order.

SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE

RSP
List No.: 19 Sl No.: 1
CT-SW