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

**WRIT PETITION NO.9159 OF 2022**

1. Mangal w/o. Bapusaheb Ghotekar,
Age 36 years, Occu. Household,
R/o. Muley Nagar, Near Aksharnandan School,
Nalegaon Road, Udgir, Taluka Udgir,
District Latur

2. Mayuri d/o. Bapusaheb Ghotekar,
Age 17 years, Occu. Education,
Minor U/G of Petitioner No.1/mother
R/o. Muley Nagar, Near Aksharnandan School,
Nalegaon Road, Udgir, Taluka Udgir,
District Latur

3. Madhura d/o. Bapusaheb Ghotekar,
Age 11 years, Occu. Education,
Minor U/G. of Petitioner No.1/mother
R/o. Muley Nagar, Near Aksharnandan School,
Nalegaon Road, Udgir, Taluka Udgir,
District Latur .. Petitioners

**Versus**

1. The State of Maharashtra
Through the Upper Secretary,
Department of Higher and
Technical Education, Mantralaya,
Mumbai-32

2. The Director of Higher Education,
Maharashtra State Pune

3. The Joint Director of Higher Education,
Nanded Regional Office, Nanded

4. Swami Ramanand Teerth Marathwada
University through its Registrar,
Nanded

5. Maharashtra Udaygiri College
Through its Principal, Udgir,
Taluka Udgir, District Latur .. Respondents

Dr. Mr. R. R. Deshpande, Advocate instructed by Ms. Priyanka R. Deshpande, Advocate for Petitioners;

Mr. D. R. Korade, A.G.P. for Respondents No.1 to 3;
Mr. V. P. Latange, Advocate for Respondent No.4;
Mr. K. P. Rodge, Advocate holding for Mr. P. G. Rodge, Advocate for Respondent No.5

**CORAM : S. G. MEHARE &**
**SHAILESH P. BRAHME, JJ.**

**Reserved on : 21-02-2025**

**Pronounced on : 17-03-2025**

**JUDGMENT (PER: S. G. MEHARE, J.) :-**

1. **Rule**. Rule made returnable forthwith. Heard finally with consent of the learned counsel appearing for the parties.

2. The petitioners are the legal heirs of deceased Bapusaheb Dudhaji Ghotekar (here-in-after, referred to as the “deceased employee”). They have filed this writ petition against the communication dated 11.01.2022 of the Joint Director Higher Education, Nanded Region, Nanded / respondent No.3 rejecting the family pension. The petitioners are also seeking the direction against respondents No.1 to 5 to sanction and disburse the family pension and other retiral benefits.

3. The deceased employee was Lecturer with respondent No.5 / College. On 28.09.2000, he was appointed as Lecturer for Political Science in Senior College. He died in harness on 17.04.2021. His service was without break. Respondent No.4/University granted him a permanent approval on 01.03.2001, subject to condition that

the deceased must qualify the National Eligibility Test (NET) / State Eligibility Test (SET) examination. His approval was ad-hoc. Though, it was ad-hoc, no specific time was determined. Respondent No.4 again granted approval vide communication dated 24.10.2007 subject to condition that he (deceased) must qualify NET or SET examination within two years from the date of granting exemption. He was rendering services as regular and permanent employee without interruption. However, Pandemic COVID-2019 claimed his life. After his death, respondent No.5 College sent proposal for family pension. However, respondent No.3 had rejected the proposal on the ground that in view of the communication of the Government dated 11.01.2022, the employees appointed in between 23.10.1992 to 03.04.2000 should be granted retirement benefits. However, the deceased employee was appointed after the said date. He did not possess NET/SET or Ph.D. Therefore, the family pension is not permissible.

4. Respondent No.3 has filed affidavit-in-reply. In the nut-shell, he has a case that since the deceased employee did not qualify NET/SET examination on cut-off date, he was not regular employee, though he had rendered the uninterrupted services till his death. From time to time, the University Grants Commission (UGC) has issued the directions not to appoint the Lecturer who does not possess the qualification. The specific directions were issued by the Government Resolution dated 13.06.2000 not to

appoint non-qualified candidates on the post of Lecturers in the Colleges/Universities and if such appointments are made, no approval/grants could be given to them. If any appointments as such are given, it should be cancelled immediately. The communication of respondent dated 13.01.2005 does not apply to the petitioners, because it was clarification letter mentioning conditions.

5. The Government Resolution dated 25.08.2005 was issued pursuant to the directions of the Hon’ble Supreme Court. The Hon’ble Supreme Court laid down the parameters for regularization of the employees. The deceased did not fall under those parameters. Again, by Government Resolution dated 08.09.2010, it was made clear that the condition laid down in the Government Resolution dated 18.10.2001 i.e. from 1991 onward, the candidates must possess NET/SET qualification for appointing as a Lecturer and it was obligatory. Giving reference of the various writ petitions of the High Court against the norms of appointment as a Lecturer, clarifications were reproduced. By Government Resolution dated 27.06.2013, the services of only those candidates who were appointed between 23.10.1992 to 03.04.2000 were regularized and who did not complete the NET/SET or M.Phil. Examination, vide Government Resolution dated 29.10.2021, the Government adopted application of benefit of old pension scheme to the said candidates. However, the State Government does not

apply the Government Resolution dated 29.10.2021 to the deceased employee, as his appointment was after 04.04.2000. Again, as per the Government decision dated 12.07.1999 about retirement salary and gratuity scheme has been referred to, and pointed out that it would apply for non-teaching employees appointed in non-government aided colleges as per the Government/University average standards. Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, "Rules, 1982") requires the permanent post at the time of the retirement to avail the retirement benefits. Since the deceased employee was not on the permanent post at the time of retirement, no benefits could be granted as claimed by the petitioners. As per Rule 31 of the Rules, 1982, it has been provided that if the duties and the salary of the employee is not regulated by the Government or the condition prescribed by the Government, the services of such employee would not be qualified for pension.

6. Both learned counsels have reiterated the arguments as per their contentions of the petition and the affidavit-in-reply.

7. The learned counsel for the petitioners would submit that since the services of the deceased employee were uninterrupted and approved by respondent/University, his family cannot be deprived of pension and other benefits. The deceased employee was rendering services as a permanent Lecturer. His appointment was not a back door entry, even not irregular.

8. He has referred to the circular/office memorandum of the Central Government dated 05.05.2009 which was about additional relief on disability of the Government servants covered by the Defined Contribution Pension Scheme (NPS). Referring to the various Government Resolutions mentioned above, he submits that not qualifying NET/SET was never an impediment for rendering services as a Lecturer. Neither the University nor the Government raised an objection on his appointment in time, even his services were never terminated. The word “ad-hoc appointment” was formal, but it was never intended that his services were temporary.

9. He has placed reliance on the case of ***Gangasagar w/o. Umrao Kawale and others vs. The State of Maharashtra, Writ Petition No.10170 of 2021 dated 05.02.2024***. In that case, on the basis of facts, after deceased Umrao was appointed in 2006, he had completed M.Phil degree in 2009 and was awarded Ph.D. on 14th October 2017. In those set of facts, the Co-ordinate Bench of this Court held that since the University had granted approval on 13th December 2017 and the fact that the deceased had pensionable service, the pensionary benefits are permissible.

10. He further relied on the case of ***Shri Pradip Nilkanthrao Dhote vs. The State of Maharashtra and others, Writ Petition No.637 of 2022 dated 13.11.2024***. In that case, the ratio laid down by the Co-ordinate Bench, the ratio laid down in

***Gangasagar w/o. Umrao Kawale*** (supra) was followed and the writ petition was allowed.

11. He also relied on the judgment of the Hon'ble Supreme Court in the case of ***The State of Gujarat and others vs. Talsibhai Dhanjibhai Patel, Petition for Special Leave to Appeal (C) No.1109 of 2022*** *(Arising out of impugned final judgment and order dated 13.10.2020 in LPA No.762 of 2020 passed by the High Court of Gujarat at Ahmedabad) dated 18.02.2022.* In that case, it has been held that only on the basis of fact that the original petitioner had rendered services for 30 years as an ad-hoc, the State cannot be permitted to take the benefit of its own wrong. Considering his continuous service of 30 years, he was granted pension/pensionary benefits.

12. He relied on ***Rajkaran Singh and others vs. Union of Inddia and others, Civil Appeal No. of 2024*** *(Arising out of SLP (Civil) No. 30976 of 2017 dated 22.08.2024.* The appellants of that case were appointed on running pay scales. Those were granted other allowances and salary as per 4th and 5th Central Pay Commissions (CPC). 6th Central Pay Commission was made applicable to the Government Employees of the Special Frontier Force (SFF) where they were employed. However, 6th Pay Commission was not extended to them. They had given ad-hoc amount of Rs.3,000/- per month. Upon attaining the age of

superannuation, they claimed pensionary benefits under 6th CPC. However, it was rejected on the ground that he was not a Government employee and had not been appointed by following any Recruitment Rules, and therefore, the Central Civil Services (Pension) Rules, 1972 would not apply to him. Under these premise, the Hon'ble Supreme Court, based upon the material available, held that the appellants meet the characteristics of regular government servants. It was not disputed in that case that the appellants were appointed on a regular pay scale, which held to a formalised employee-employer relationship akin to permanent government employees. The appellants were also given increments and promotions comparable to those of other employees. The appellants had rendered services for over three decades. Under these premise, it has been held that while the duration of service alone may not be determinative, it is a significant factor when considered in conjunction with the other aspects of their employment. Such long-term service suggests a level of permanence and integration into the governmental structure that belies their classification as temporary employees. This similarity in job functions further blurs the line between the appellants' status and that of regular government employees, suggesting that the distinction may be more formal than substantive. Considering the totality of circumstances, it has been held that the denial of pensionary benefits solely on the basis of their temporary status, without due consideration of these factors, appears to be an oversimplification of their employment relationship with the government.

13. He relied on the case of ***Shri. Sudhir Satuji Murkute vs. State of Maharashtra and others, Writ Petiton No.9187 of 2022 dated 20.02.2024***. The facts, in brief, were that the petitioner was appointed as a Library Clerk in 1982. On 16.03.1989, he was promoted as Assistant Librarian pursuant to the instructions given in the Circular dated 10.08.1981 and Government Resolution dated 18.09.1980. After rendering service for almost 20 years, he was promoted to the post of Librarian. He retired on 30.01.2020. However, the retirement benefits were refused. In that case, against uninterrupted services for decades together were considered along with the fact of deduction of various amounts from his salary and promotions granted to him. The doctrine of "legitimate expectation" was applied. The objection to his initial appointment was not in accordance with the procedure. The Court rejected such a contention and gave relief to the employee, in the case relying upon the pronouncements of the Hon'ble Supreme Court;

***(a) Harijan Paniben Dudabhai vs. State of Gujarat, (2016) 12 SCC 801;***
***(b) Man Singh vs. State of U.P., (2022) SCC OnLine SC 726;***
***(c) Porbandar Municipality vs. State of Gujarat and others, 2018 SCC OnLine 475.***

and finally the writ petition was allowed.

14. Other case law relied upon by the petitioners on the similar issue involved in the case of ***Vishwaprakash s/o. Laxman Sirsath and others vs. State of Maharashtra and others, 2003 (2) Mh.L.J. 176.*** In this matter, the doctrine of "legitimate expectation" was considered. The Government Resolution dated 18th October 2001 was under consideration. The State Government put conditions of NET/SET qualification. Sub-clause (b) states that the Lecturers who did not possess NET/SET qualifications by December 2003 and who were appointed during the period from 19th September 1991 to 31st December 1993, would be continued till their retirement. It has been observed that if the Commission does not provide for such a clause in its Regulations, the State Government cannot deviate from said Regulations, in case appointees upto 11th December, 1999 failed to obtain NET/SET qualification by December 2003. It was held that the Government decision of granting concession as set out in Clause 2(b) of the impugned Government Resolution cannot be sustained. The Government Resolution dated 18th October 2001 was under challenge in that case, on the ground that clause protecting the employees who were appointed from 19th September, 1991 to 11th December 1999 and without possessing qualifications of NET/SET, would be protected and they would have to obtain the said qualifications by December, 2003 or before and in case they fail to

acquire these requisite qualifications within the said period, they would be entitled for pay scale of Rs.8000-13500 till their superannuation. The said clause is discriminatory and, thus, violating the guarantee provided under Article 14 of the Constitution. Under these premises, the Co-ordinate Bench rejected petition summarily observing that clause 2(b) of the impugned Government Resolution dated 18th October, 2001 is unsustainable and the same was quashed and set aside. It was also held that the cases of candidates appointed from 12th December, 1999 till 18th October, 2001 were required to be examined so as to ascertain the applicability of the first proviso to clause (2) of the 1991 Regulations as well as 2000 Regulations before their services were sought to be terminated by their respective Universities and/or Colleges/Institutions.

15. To counter the arguments of the learned counsel for the petitioners, the learned A.G.P. has reiterated the facts of the case. He has vehemently argued that the deceased did not have qualifying services for pension. He cannot take the benefit of the Government Resolution to put into service for the reason that his appointment was not as permanent employee and he was appointed on 04.04.2000. Therefore, Government Resolution dated 29.10.2021 would not apply to him. Since his appointment was not made on regular basis, there was no scope for regularizing his service. The regularization cannot be given to the employees

whose services were ad-hoc. He has referred to the Notification of the UGC dated 04.04.2000 and the Government Resolution dated 13.06.2000 to show that a specific direction was issued by the UGC not to appoint the Lecturers who did not possess the requisite NET/SET qualifications. Since it was made mandatory from 1991, the specific directions were also issued to remove from services, if any such Lecturer has been appointed. In a nut-shell, he would submit that though there were regulations and directions of the UGC, the deceased employee was appointed. The University never granted him a permanent approval. The deceased employee was knowing well that he had not been granted permanent approval. Even then, at his own risk, he was rendering services. In this situation, he could not be equated as a permanent employee. A conditional approval was also granted to him to get NET/SET qualified, even that condition was not fulfilled. Therefore, his services would not be qualified for pension. He would submit that Rules 30 and 31 of the Rules, 1982 would apply to this case. The impugned order is legal, proper and correct. Granting pension to such employee would unnecessarily burden the exchequer. His appointment was basically not legal and proper. Therefore, an uninterrupted service of the deceased employee may not be a ground to consider the claim of the petitioners and grant them pension.

16. There is no quarrel on the fact that the approval to the

appointment of the deceased employee was ad-hoc and conditional. His approvals dated 01.03.2001 and 24.10.2007 were ad-hoc and conditional. The UGC having enabling powers has determined the qualification for the post of Lecturer. NET/SET was the compulsory qualification to be appointed as the Lecturers in the college. There were many appointments of Lecturers between 19.09.1991 to 11.12.1999 who did not possess the NET/SET qualification. Considering the large number of appointments, the Government has passed Resolution dated 18.10.2001. The Government has taken a policy decision about the appointments after 19.09.1991 till 11.12.1999 that the orders of the Government of Higher and Technical Education dated 22.12.1995 was cancelled and protected the services of the Lecturers appointed during the above period on the condition that they should complete NET/SET examination till December 2003. Whoever could not qualify this examination, their services were also protected. However, some service benefits were denied. It is specifically mentioned in that Government policy that the Lecturers appointed after 1999, that policy would not apply to them. A specific direction was issued to the Educational Institutions that after 04.04.2000 there should be no appointment of the Lecturers. The petitioners are trying to get benefit of this Government Resolution contending that the deceased employee had rendered his services uninterruptedly for more than 20 years. However, his appointment of 28.09.2000 is apparently after the cut-off date. Under this premise, it is to be answered, whether the petitioners are entitled to pension and other service benefit for rendering his uninterrupted services.

17. The foremost condition to receive the pension is that the employee should be a permanent employee. Admittedly, the University has granted approval to his posting in the year 2001 and 2007. It has been tried to argue that no objections were raised either by University or the Government, then they cannot deny the status of permanency to the service of the deceased employee. It is also not disputed that the UGC has issued the strict instructions to the institution on appointment of the candidate who does not possess the qualification determined by it. Admittedly, the approvals were conditional. In the first approval it was a condition that his appointment was ad-hoc till he qualify NET/SET. The College had sent another proposal for approval to the University for exempting the deceased from qualifying NET/SET examination. This order has reference of the order of UGC dated 09.08.2007. The College was informed the decision of UGC that it was of the view that since no NET qualified candidates were available at the time of interview, exemption was granted, subject to the condition that NET exemption should be cleared in the relevant subject within two years from the date of said communication. In other words, the conditional exemption was granted that such candidate who does not possess the NET

qualification should clear it within two years. The deceased employee accepted this communication. However, he did not complete NET.

18. In view of the earlier approval, the management continued his services. The first approval of the University was conditional and ad-hoc. It has been argued that though the approval was not for a specific period, the approval order itself falsify contention of the petitioners that it was not for a specific period. The appointment was approved till the deceased employee qualify NET/SET examination. Therefore, it would not lie in the mouth of the petitioners that though the approval was ad-hoc, it was not for a specific period. It was the deceased employee knowing well that he had to clear the NET/SET but did not clear the same. In such a situation, it would be difficult to accept that rendering the services uninterruptedly for more than 20 years were the services like a permanent employee. The document i.e. copies of the service book placed on record shows that from time to time yearly increments were granted to him. It is in these set of facts, we are of the opinion that barely granting increment would not mean, the deceased got the permanency. Increments were granted considering the inflation.

19. So far as the case of the petitioners that the Government Resolution dated 18.10.2001 would apply and protect the service

of the deceased employee, the learned A.G.P. is correct in pointing out that the appointment of the deceased employee was after the cut-off date i.e. 11.12.1999 / 04.04.2000. To get the exemption from NET/SET and protection to the services, the UGC had intimated from time to time to all the concerned not to continue service of such employee who does not possess the requisite qualification and their services should be terminated. However, the Management in its adamancy may have turned blind eye and did not terminate the services. This seems to be deliberate defiance of the direction of the highest institution of the education.

20. The Hon’ble Supreme Court in various cases relied upon by the petitioners took a view that rendering the services for uninterrupted period without any objection by the Government or University as the employee should be granted the compensation and pensionary benefits.

21. Here the facts of the case reveal that the deceased employee was well aware of the nature of his appointment and conditions imposed upon him. It appears from the record that the condition to qualify NET/SET in his first approval was not complied with but an attempt was made through the Management to seek exemption. On that request also, again the University intimated the Management that if any such appointment is there, they must have to qualify NET/SET within two years. It was a second

intimation to the deceased that his services were not permanent, but as it is seen in many matters, the appointments in the private colleges are collusive and the persons interested are appointed and the services are allowed to be rendered for a long period. No one should take the benefit of their deliberate acts. The facts of the case at hand reveals that the Management deliberately did not terminate the services of the deceased after the period granted to him by UGC as well as the Government to qualify NET/SET. This seems to be not fair. Granting pension and pensionary benefits. It is a burden on the Government exchequer. The Government exchequer should not be burdened for the wrongs committed by the parties.

22. Chapter V of the Rules, 1982 is regarding the qualifying service for pension. Rule 30 of the Rules, 1982 which has been pressed into service by the learned A.G.P. speaks of "commencement of qualifying service". The qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Provided that at the time of retirement, he shall hold substantively a permanent post in Government service or hold a suspended lien or certificate of permanency. Rule 31 of the Rules, 1982 is about "conditions subject to which service qualifies". The service of a Government servant shall not qualify unless his duties and pay are

regulated by the Government or under conditions determined by the Government.

23. Reading these two Rules, there appears force in the arguments of the learned A.G.P. that since the deceased was not permanent in service, he has no qualifying service for pension. In view of the basic defect in the appointment of the deceased employee, which in fact an illegal appointment, it would be unjustifiable to show sympathy towards the family who lost their earning member. It seems to be wilful default of the Management and the deceased employee in not getting qualified for the permanent post of Lecturer. We are bound by the law, hence, cannot travel beyond the law and exercise discretion. Pensions are governed by the Rules, 1982 the Court should adhere thereto. In such a situation, the discretionary relief could also not be granted to the petitioners. To sum-up, we have express our opinion that though the deceased employee had rendered uninterrupted service for more than 20 years, the petitioners are not entitled to the pension and pensionary benefits except the benefits receivable under Law.

24. For the above reasons, we dismiss the writ petition. Rule stands discharged. No order as to costs.

**[ SHAILESH P. BRAHME ]**
**JUDGE**

**[ S. G. MEHARE ]**
**JUDGE**

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