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

WRIT PETITION NO.12748 OF 2021

1. Dipali w/o Nandkishor Patade,
Age: 42 years, Occ. Household.
2. Sukhada D/o Nandkishor Patade
Age: 19 years, Occ. Education
3. Anandi D/o Nandkishor Patade,
Age : 15 years, Occ. Education,
Minor U/G Petitioner No.1,
Dipali N. Patade, 42 years.

All R/o Angadrao Dhodiram Kale
Behind Pokarna Oil Mill, Moti Nagar
Karneri Road, Dist-Latur

....PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through the Secretary of
Higher Education Department,
Mantralaya, Mumbai-32
- 2] The Director Higher Education,
Maharashtra State, Pune.
- 3] The Joint Director Higher Education,
Nanded Regional office, Nanded.
- 4] Accounts Officer (Grants)
Office of The Joint Director
Higher Education, Nanded Region,
Nanded. Dist. Nanded.
- 5] Swami Ramanand Teerth
Marathwada University,
Through its Registrar,
Dnyantirth, Vishnupuri,
Nanded, Dist. Nanded.

6] Nagnath Arts, Commerce
& Science College, Aundha Nagnath
Through its Principal
Tal. Aundha(Nag.) Dist. HingoliRESPONDENTS

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Mr R. R. Deshpande, Advocate h/f Ms Priyanka Deshpande, Advocate
for petitioners

Mr S. V. Hange, A.G.P. for respondent Nos.1 to 3

Mr S. S. Birajdar, Advocate h/f Mr S. K. Chavan, Advocate for
respondent No.6

CORAM : MANGESH S. PATIL

AND

PRAFULLA S. KHUBALKAR, JJ.

RESERVED ON : 11th February, 2025

PRONOUNCED ON : 6th May, 2025

JUDGMENT (PER : PRAFULLA S. KHUBALKAR, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by
consent of parties.

3. The petition takes exception to the decision of the
respondents, denying family pension to the legal representatives of
deceased employee by excluding the petitioners communicated by
letter dated 30/08/2021. The denial of family pension is primarily on
account of failure of the deceased employee to clear National

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Eligibility Test/State Eligibility Test (NET/SET) examination as required by the order of approval of appointment.

4. The petitioners are the legal representatives of deceased Shri. Nandkishor Sitaram Patade, who had worked on the post of 'Librarian' from 21/06/2001 till his death on 23/04/2021, while in service, due to Covid-19. The primary contention of the petitioners is that deceased Shri. Nandkishor Sitaram Patade, husband of petitioner No.1 and father of petitioner Nos.2 and 3 was appointed on 21/06/2001 by regular selection process and his appointment was duly approved by respondent No.5/University, however, subject to passing of NET/SET examination. It is their specific case that the deceased employee had achieved additional/higher qualification of degree of Ph.D. on 11/04/2017, pursuant to which, he was granted three additional increments. After rendering qualifying service for pension of more than 19 years, he expired at the age of 46 years. Denial of family pension is mainly on account of non-fulfillment of the requirement to obtain NET/SET qualification; and secondly, on the ground that the appointment of the employee was not during the period from 23/10/1992 to 03/04/2000 as stipulated in Clause No.16 of the Government Resolution dated 27/06/2013.

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5. Advocate Mr R.R. Deshpande, holding for Advocate Ms Priyanka Deshpande, learned counsel for the petitioners vehemently submits that the impugned decision denying family pension to the petitioners is arbitrary and illegal since, undisputedly, the appointment of the deceased was approved by the University. He strenuously submits that the instant case is covered by the judgment of the co-ordinate bench of this Court, dated 05/02/2024 in Writ Petition No.10170/2021 (Gangasagar Umrao Kawale and others Vs. State of Maharashtra and others), by which, considering the fact of grant of approval to the appointment, the employee was held entitled to grant of family pension even in absence of NET/SET qualification. He also relies on the judgment in Writ Petition No.10170/2021, another co-ordinate bench of this Court at Nagpur decided Writ Petition No.814/2023 (Vanmala Wd/o Gautam Shambharkar and others VS. State of Maharashtra and others) vide judgment dated 14/03/2024 and Writ Petition No.637/2022 (Shri. Pradip Nilkanthrao Dhote Vs. State of Maharashtra and others) vide judgment dated 13/11/2024, wherein the respective employees were held entitled to pensionary benefits even in absence of NET/SET qualification, by mainly considering the fact that their appointments were duly approved by the University.

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6. Per contra, advocate Mr S. V. Hange, learned A.G.P. for respondent Nos.1 to 3 and advocate Mr S. S. Birajdar, holding for advocate Mr Chavan, learned counsel for respondent No.6 vehemently oppose the petition mainly highlighting that the deceased had not acquired the requisite qualification and was not covered by the Government Resolution dated 27/06/2013. Their primary contention is that the approval was granted to petitioner's appointment subject to compliance of orders issued by the University Grant Commission (UGC) and the Government from time to time, including acquiring NET/SET qualification.

7. Having considered the submissions, rival contentions fall for our consideration.

8. The controversy revolves around entitlement of the petitioners to family pension despite deceased employee having not acquired the NET/SET eligibility. It is pertinent to note that the order granting approval to the appointment of the deceased was subject to compliance with the orders and regulations issued by the UGC and the Government from time to time, including acquiring of NET/SET qualification. Relevant to note, Government Resolution dated 27/06/2013 provided exemption from NET/SET qualification to the

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employees appointed during 23/10/1992 to 03/04/2000. In the instant matter, the deceased was appointed on 21/06/2001 i.e. not during the period from 23/10/1992 to 03/04/2000. It is important to note, the approval was granted by the University specifically making it subject to regulations of UGC and State Government issued from time to time regarding NET/SET qualification. The UGC Regulations 2009 prescribes minimum qualification and contains provisions regarding exemption from NET/SET for the candidates possessing Ph.D. qualification. The deceased herein had completed his Ph.D. in 2017, while he was in service. Further, there is no dispute that the appointment was made by a duly constituted selection committee and it was approved by the University and thus, in view of office order dated 05/11/2008 issued by UGC, the deceased was entitled to claim exemption from NET/SET. Thus, in the facts of the instant case, the deceased was entitled to claim benefits of regulations and orders of UGC issued from time to time.

9. The twofold reasons to deny family pension are dealt with by the co-ordinate benches in above-referred judgments. Considering similar situation of appointment dated 09/03/2002, the co-ordinate bench had granted pensionary benefits to the deceased employee vide

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judgment dated 05/02/2024 in Writ Petition no.10170/2021 by primarily considering that the appointment was duly approved. Further, another co-ordinate bench in Writ Petition No.637/2022 has held the employee entitled to grant of pensionary benefits by considering the order dated 05/11/2008 passed by the UGC which had granted exemption from NET/SET examination by primarily considering the fact that the employee was appointed by a duly constituted selection committee.

10. Having considered the controversy involved in the instant matter, we find that the view taken by the co-ordinate bench in Writ Petition No.10170/2021 is applicable to it. It is, therefore, profitable to reproduce relevant paragraphs from the said judgment :

“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.

7. Since the University has granted approval on 13th December 2017 and the fact that the deceased had put in pensionable service, definitely the Petition deserves to be allowed.

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

11. This apart, while considering the purport of the order dated 05/11/2008 passed by the UGC, another co-ordinate bench in Writ Petition No.637/2022 has held the employee entitled to pensionary benefits by relying upon the judgment in Writ Petition No.10170/2021, of which relevant paragraphs are reproduced below :-

“5. Our attention is invited to the order dated 5.11.2008 passed by the University Grants Commission (for short "U.G.C.") wherein the petitioner was granted exemption from

appearing in NET/SET examination as the petitioner was selected by duly constituted Selection Committee.

6. *In this background, respondent No.2 the Joint Director of Higher Education has instead of appreciating the exemption granted by U.G.C. and also the approval to the appointment of the petitioner, proceeded to overwrite the exemption granted by U.G.C. dated 5.11.2008 thereby forming the basis of non-holding NET/SET qualification by the petitioner for disqualifying him from getting the retirement benefits.*

7. *The aforesaid issue, in our opinion, is covered by the decision dated 5.2.2024 of Division Bench at Aurangabad in Writ Petition No.10170/2021 (Gangasagar W/o Umrao Kawale and two others V/s. The State of Maharashtra and others).
.....”*

12. Having considered the factual aspects of the instant case, we find no reason to take a different view in view of the fact that the deceased employee had rendered 19 years of service after having been appointed through the regular selection process. We are of the considered view that the decision of the respondents denying pensionary benefits is unsustainable and the petition deserves to be allowed. Hence, we find it appropriate to quash the impugned communication dated 30/08/2021 issued by respondent No.4 and dated 02/09/2021 issued by respondent No.6. We hold that the petitioners are entitled to grant of family pension of deceased Shri. Nandkishor Sitaram Patade. Accordingly, the respondents are directed to process,

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sanction and disburse the family pension and other retiral benefits to the petitioners, within a period of three months from today.

13. The writ petition is allowed in above terms.

14. Rule is made absolute.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)

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