



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

952 WRIT PETITION NO. 13118 OF 2022

1. Mallikarjun s/o Baswaraj Swami,
Age: 57 years, occu: Service,
R/o. Zunga Nivas, Near Aarya Samaj,
Talves Road, Udgir, Tq. Udgir, Dist. Latur. ...Petitioner

VERSUS

1. The State of Maharashtra,
Through Secretary, Higher Academic (Approval) Section,
Mantralaya, Mumbai-32.
2. Swami Ramanand Teerth Marathwada
University, Nanded, Tq. and Dist. Nanded.
(Through its Registrar).
3. Deputy Registrar, Academic (Approval) Section,
Swami Ramanand Teerth Marathwada University,
Nanded, Tq. & Dist. Nanded.
4. Maharashtra Udayagiri Mahavidyalaya,
Udgir, Tq. Udgir, Dist. Latur.
(Through its Principal). ...Respondents

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Advocate for the Petitioner : Mr. Dhage Vivek J.
AGP for Respondent/State : Mr.PS. Patil
Advocate for Respondent No. : Mr. Malte Uday S.
Advocate for Respondent No.4 : Mr. Rodge Pratap G. and
Mr. Tope Sambhaji Subhashrao

...
CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.
DATE : 25.09.2025

ORAL JUDGMENT : (PER : R.G. AVACHAT, J.)

. Rule. Rule is made returnable forthwith. Heard finally with the consent of the parties.

2. This petition under Article 226 of the Constitution of India, has been filed for the following main reliefs :

“A) This Writ Petition may kindly be allowed;

B) By issuing Writ of Certiorari or orders or directions any other Writ in the nature of Writ of Certiorari, impugned order/communication dated (Approval) Section, Swami Ramanand Teerth 07.12.2022, issued by Deputy Registrar, Academi Marathwada University, Nanded, may kindly be quashed and set aside;

C) By issuing Writ of Mandamus or orders or directions any other Writ in the nature of Writ of Mandamus, the respondent Nos. 2 and 3 may kindly be directed to fix the pay of petitioner as per 7th pay commission and to grant all the monetary benefits for which petitioner is entitled in view of 7th pay commission w.e.f. 01.01.2016.”

3. The petitioner joined on 23.03.2007 as 'Assistant Professor' with the Respondent No.4/College. His appointment was on Contract Basis. Vide order dated 23.03.2009, he was confirmed on the very post. Thereafter, approval to the petitioner's appointment, was granted on 06/08.04.2009.

4. The petitioner had appeared for M.Phil. examination in June 2009. The result thereof was declared in August 2009. The petitioner was successful in the said examination. Meanwhile, the University Grants Commission (hereinafter referred to as 'UGC' for sake of

brevity) passed the 3rd Amendment to above Regulation, declaring that those Assistant Professors, who have passed M.Phil. examination on or before 11.07.2009, would be eligible to serve as Assistant Professors.

5. Since the petitioner passed M.Phil. examination in August 2009, i.e post cut-off date, the Respondent/University withdrawn the approval granted to the appointment of the petitioner. He is, therefore, before us.

6. Since, we are inclined to grant prayers made in this petition, we do not propose to advert to the submissions made by the learned Advocate representing the petitioner. More so, those submissions form part of the reasons in support of the order.

7. On the other hand, the learned Advocate representing the Respondent/University would submit that, the U.G.C governs the necessary affairs of the Universities, in this regard. The Courts can not interpret by supplying any other interpretation, which the UGC never intended. According to him, this Court in the case of **Sudhir Sharadrao Hunge Vs. The State of Maharashtra and Others in Writ Petition No.1489 of 2010** with connected Petitions therewith, has dealt the issue involved herein. Relying on the Judgment of the Hon'ble Apex Court it has been observed that, such Regulations cannot have a retrospective effect. When the U.G.C. regulation has given a specific cut-off date, the effect thereof should not be stretched, to the period post to the said cut-off date. Such an exercise

cannot be done by the Court. According to him, the Authority concerned has a power to grant approval. By virtue of the provisions of The General Clauses Act, 1897, it has every power to withdraw the same. He meant to say that, the submission of the learned advocate for the Petitioner that, the University has granted approval and does not have a power to review or recall the order granting approval, is unsustainable. He has also relied on the Judgment of Apex Court in the case of **P. Sussela and Ors. Etc. Vs. University Grants Commissions and Ors. Etc.** reported in (AIR 2015 SCC 1976).

8. Our attention has also been adverted to the paragraph Nos.16 to 20 of the Affidavit-in-reply. We have perused those paragraphs. The sum and substance thereof is that, the petitioner ought to have passed the examination, before the cut-off date. When the result of the examination for which the petitioner appeared was declared. After the cut-off date, he can not be deemed to have completed or secured the M.Phil. Degree, before the cut-off date. It has also been averred in Affidavit in reply, that the petitioner did not pass any NET/SET examination within two years as per the Condition No.4(b) mentioned in his Appointment Order dated 23.03.2007.

9. It has further been averred that after issuance of notification for awarding M.Phil. degree, the candidates shall be deemed to have completed and passed M.Phil. from the date of publication of M.Phil. notification by the concerned University. The petitioner did not submit notification issued by the concerned University. The petitioner

shall not be deemed to be qualified before the cut-off date, of 11.07.2009. According to learned Advocate, 3rd Amendment Notification, in no case could be given a retrospective effect.

10. We have considered the submissions advanced. A short question, which falls for consideration in this Writ Petition, is as to whether the candidates who appeared for the examination before the cut-off date but the result thereof is declared after the cut-off date, shall be deemed to have passed such examination after the cut-off date.

11. We are conscious of the fact that this Court can not supply such reasons which could have an effect on legislation or introducing a new interpretation to Rule which has already been in place. In the case at hand, the petitioner appeared for M.Phil. examination in June 2009. The U.G.C Notification came into force on 11.07.2009. The relevant clause thereof reads thus :

(MINIMUM QUALIFICATIONS REQUIRED FOR THE APPOINTMENT AND CAREER ENHANCEMENT OF TEACHERS IN UNIVERSITIES AND INSTITUTIONS AFFILIATED TO IT) (3rd AMENDMENT), REGULATION 2009. (JULY 11, 2009)

4. -----

"NET shall remain compulsory requirement for appointment as Lecturer even for those with Post Graduate Degree. However, the candidates having Ph.D. Degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil. Degree in the concerned subject are exempted from NET for UG level teaching only."

Now, the above provision shall be substituted by the following paragraph :

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/ Colleges/ Institutions.

Provided, however, that "University Grants Commission (minimum standards and procedure for award of Ph.D. Degree), Regulation 2009, shall

be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions."

12. It is true, technically the petitioner could be said, to have not acquired the degree of M.Phil. or passed the same before the cut-off date. The purposive interpretation has to be given to certain provisions. It was not in the hands of the petitioner, as to have this results declared before the cut-off date. It is true that in the case of **Sudhir Sharadrao Hunge** (supra), reliance is made to the law laid down by the Hon'ble Apex Court, specifically in its paragraph No. 10 which reads thus :

"10. From the above, it is clear that the subsequent insertion of compulsory NET/SLET qualification by gazette notification dated 11.7.2009 made by University Grants Commission will have to be held to be prospective in its operation since in all these cases the advertisements as per earlier eligibility qualifications were duly approved and sanctioned by the University and were also published well before the cut-off date, namely, 11.7.2009 and at any rate before the last date of application that was to be made pursuant to these advertisements. Last date of application as per advertisements is a crucial date in accordance with the law laid down by the Hon'ble Supreme Court."

13. The Operative Order passed by the Court in those bunch of Writ Petitions, however, indicates that, the Court has proposed to take somewhat liberal view, in similar set of facts, the Court had directed the Respondent/University therein, to consider the issue of granting approval to the appointment of the petitioners therein.

14. The petitioner herein has even Superannuated, on 30.04.2025. Considering the petitioner to have passed M.Phil. examination, the

Respondent/University even granted approval to his appointment on 29/31.12.10. Moreover, the petitioner had appeared for M.Phil. examination in June 2009 and successfully passed the same. To his utter unfortune, the result thereof was declared, post the cut-off date. In exercise of discretionary power, under Article 226 of the Constitution of India and more so in peculiar facts and circumstances of the case, we are inclined to set-aside the order impugned herein. In result, the Writ Petition succeeds, in terms of the following order :

ORDER

- A) Writ Petition is allowed.
- B) The impugned order/communication dated 07.12.2022, issued by Deputy Registrar, Academic (Approval) Section, Swami Ramanand Teerth Marathwada University, Nanded is quashed and set-aside and Respondent Nos.2 and 3 are directed to fix the pay of the petitioner as per 7th Pay Commission w.e.f 01.01.2016.
- C) The Respondent/University shall take appropriate steps for release of consequential monetary benefits in favour of the petitioner.
- D) Rule is made absolute in above terms.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)