



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.1741 of 2020

Dr. (Mrs.) Satyawati Sudhir Joshi,
Age 64 years, Occ. - Teacher,
R/ at Chidanand, 43/ 96,
Navsahyadri Society, Karve Nagar,
Pune – 411 052

... Petitioner

V/s.

1. State of Maharashtra,
Through the Secretary, Higher and
Technical Education Department,
Government of Maharashtra,
Mantralay, Mumbai – 400 032.
2. The Auditor,
Department of Higher Education,
Pune Region, Pune 411 001.
[Summons for Respondents No. 1 and 2
to be served on the Learned Government
Pleader for State of Maharashtra]
3. Savitribai Phule Pune University,
Through its Registrar,
Ganesh Khind Road,
Pune 411 007.
[Summons to be served on the learned
Standing Counsel for the University]
4. The Joint Director,
Higher Education,
Pune Region,
Pune – 411 001.

... Respondents

Mr.Venkatesh A. Shastry for the Petitioner.

Mr.B.V.Samant, Additional Government Pleader with Ms.Ashwini A. Purav, AGP for Respondent Nos. 1 and 2- State.

Mr. Rajendra Anbhule with Ms. Revathi Nair for Respondent No. 3.

**CORAM: NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE: 18 July 2024.

JUDGMENT (*Per Nitin Jamdar, J*):

Rule. Rule made returnable forthwith. Taken up for disposal.

2. The Petitioner, though having completed thirty-three years of service with the Respondent – University, is denied the pensionary benefits. Aggrieved, the Petitioner is before us, with this Writ Petition.

3. The Petitioner was the employee of Respondent No.3 Savitribai Phule Pune University. Respondent No.1 is the State of Maharashtra through the Secretary, Higher and Technical Educational Department. Respondent No.2 is the Auditor, Department of Higher Education.

4. Respondent No.3 - The University had published an Advertisement for filling in various teaching posts in the University departments vide Advertisement No. 55 dated 21 September 1992.

The Petitioner applied for the post of Reader on 23 October 1992. Petitioner was appointed to the post of a Reader in Chemistry in the University Department of Chemistry against the post reserved for the Nomadic tribe category temporarily for six months by order dated 10 August 1993. After that, the services of the Petitioner as Reader were continued against the post reserved for the DT/NT category from 9 July 1994 to 29 June 1995 and 8 July 1995 to 15 October 1995.

5. The applicant submitted an application on 28 January 1995 for the position of Lecturer in Chemistry at the University Department of Chemistry. Subsequently, the applicant was appointed as a Lecturer in Chemistry on a purely temporary basis, effective from 3 November 1995, against the post reserved for the Scheduled Tribes category. This temporary appointment was extended from 24 June 1996 to 12 June 2006, with successive periods of appointments ranging from one to three years.

6. Respondent No.3 – University issued Advertisement No. 21 on 21 April 2006, calling for applications for various teaching positions in the University Departments. In response to the Advertisement, the Petitioner applied for the position of Reader - Open Category at the University Department of Chemistry. Following the application, the duly constituted Selection Committee conducted an interview with the Petitioner on 7 June 2006, and subsequently, based on the Committee's recommendation, the

Petitioner was appointed to the position of Reader - Open Category in the University Department of Chemistry on probation for a period of two years, as per the Appointment Letter dated 20 June 2006. The Petitioner's confirmation to the position of Reader (Open) in the Department of Chemistry was formalised by a letter dated 23 June 2008, with the confirmation becoming effective from 23 June 2008.

7. The Petitioner had five breaks in service amounting to 51 days in their temporary appointments within the reserved categories of DT, NT, and ST. The Vice-Chancellor of Respondent no. 3 University condoned these breaks in service in accordance with the Government Resolution dated 7 March 1986.

8. After serving as a Reader for three years, the Petitioner's title was changed to Associate Professor, and the corresponding pay scale adjustment was implemented. Subsequently, the Petitioner was promoted to the position of Professor in the Department of Chemistry under the Career Advancement Scheme, effective from 23 June 2012. The Petitioner retired upon reaching 60 years of age, as of 30 April 2016. Following the Petitioner's retirement, all pension paperwork and relevant documentation were submitted to the Joint Director of Higher Education in Pune.

9. Since there was no response from Respondent Nos.1 and 2, the Petitioner filed this Writ Petition on 7 January 2020.

10. Reply is filed on behalf of Respondent Nos.1 and 2 and Respondent No.3 - University. Rejoinder affidavit is also filed on behalf of the Petitioner.

11. We have heard Mr. Venkatesh Shastry, the learned counsel for the Petitioner, Mr. B.V. Samant, Additional Government Pleader for the State and Mr. Rajendra Anbhule for Respondent No.3 – University.

12. The University- Respondent No.3, has supported the Petitioner's case. As per the University's stand, the Petitioner's service was continuous from 1993 until the retirement date of 30 April 2016 at the age of 60. The Vice Chancellor of the University, in a communication dated 29 March 2017 to Respondent No.2, stated that the Petitioner's service is deemed as continuous and consequently, the necessary processing of pension papers and the release of pension are to be undertaken.

13. In the Reply filed on behalf of the Respondent–State, it is stated that the service of the Petitioner from 1993 to 2006 was of a temporary nature. Respondent Nos. 1 and 2 are trying to separate the two periods i.e. from 1993 to 2006 and thereafter from 20 June 2006 till 30 April 2016. The Respondent – State contends that from 1993 to 2006, the Petitioner was appointed against the reserved category post. From June 2008, the Petitioner was confirmed as a Reader in the open category, and these two periods need to be

treated differently. The Respondent–State also sought to contend that the Vice Chancellor of Respondent No.3 – University could not have condoned and treated the period as continuous, and it did not have the power to de-reserve the post.

14. The Petitioner on the other hand has relied on Rule - 33 of the Maharashtra Civil Services (Pension) Rules, 1982. Rule – 33 reads thus:

“ A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57.”

Therefore, even assuming that the Petitioner was working temporarily from 1993 to 2006, the Petitioner falls within the ambit of this Rule for receiving pensionary benefits.

15. The second facet sought to be raised by Respondent Nos.1 and 2 is that the Petitioner's appointment should be considered only in the open category on 20 June 2006, confirmed on 23 June 2008. Since the Petitioner's appointment could not be considered from 1993, the Petitioner will be governed by the new pension scheme and cannot have the benefit of old pension scheme for which the cut-off date was 1 November 2005.

16. As far as the appointment of the Petitioner from 1993 to 2006 is concerned, the Petitioner was appointed against the post in the reserved category on several occasions from 1993. The Petitioner was appointed a Reader from 13 August 1993 to 30 June 1994 on the post reserved for nomadic tribes. Thereafter, she was appointed from 9 July 1994 to 29 June 1995 on the post reserved for nomadic tribes. Again from 3 November 1995 to 14 June 1996, 24 June 1996 to 14 June 1997, 23 June 1997 to 15 June 1998, Petitioner was appointed as a Lecturer on the post reserved for Scheduled Tribe. Thereafter, from 16 June 1998 to 15 June 1999, 16 June 1999 to 30 June 2002, and 30 June 2002 to 22 June 2006, Petitioner was in continuous service as a Lecturer on the post reserved for Scheduled Tribe. Thereafter, from 23 June 2006 till her retirement, Petitioner was in continuous service as a Reader in open category post.

17. By way of a Government Resolution dated 7 March 1986, the State Government issued clarifications regarding the pensions of teaching and non-teaching staff in non-agricultural universities. Under this Government Resolution, authority was vested with the University to condone the breaks that did not exceed two years and not more than six breaks. The total number of breaks in Petitioner's service is five, and the days were 51. Based on this Government Resolution, the Respondent - University vide communication dated 26 February 2010 informed the Petitioner that these 51 days break in service stood condoned. Then, by communication dated 28 April 2010, the Petitioner was called upon to deposit an amount of

Rs.1,26,120/- with Respondent No.2 – The Auditor, Department of Higher Education in respect of General Provident Fund. The Petitioner deposited the same. After the Petitioner retired from service on 30 April 2016, the Vice Chancellor wrote to Respondent No.2 stating that Petitioner's breaks were condoned and her service was treated continuously from 1993 to 2006. Till no point in time was any communication sent to the Petitioner that the condonation of the break was improper or that the Petitioner would not be entitled to pension benefits.

18. It can be seen from the record that from 1993 onwards, the Respondent – University kept appointing the Petitioner in the post against the reserved category. At no point was the appointment either refused or discontinued, or the state government raised any objection. Until the Petitioner was appointed in the open category post in 2006, the Petitioner had already worked for almost 13 years, and even the breaks were condoned.

19. The learned AGP sought to contend that Respondent – University could not have de-reserved the post, and there is a procedure prescribed for de-reserving the post. The argument of the learned AGP is not a ground taken in the reply. It was contended that the General Administration Department has issued a Government Resolution dated 5 December 1994 wherein it is mentioned that if the post is to be de-reserved, certain conditions

must be followed. Despite publishing an advertisement for 6 years in the SC-ST category, the Respondent – University continued the Petitioner belonging to the open category, which is not per the Government Resolution. Based on this and the Government Resolution dated 31 October 2005, introducing a Defined Contributory Pension Scheme, it was contended that the earlier service of the Petitioner prior to 1 November 2005 cannot be considered. The Petitioner will have to be considered as having been appointed on 23 June 2006 in the regular category. The learned AGP also sought to advance the argument that the amendment carried out to Rule-33 would not apply to the case of the Petitioner, and the Respondent – University could not have exercised the power under the Government Resolution dated 7 March 1986 after giving amendment of the Rule.

20. The argument raised by the learned AGP partly based on reply and the defence orally would lead to highly inequitable circumstances. The Petitioner has admittedly served for more than 33 years. At no point in time did either the Respondent – University or the State Government raise any objection and has continued the Petitioner from 1993 till the Petitioner retired after 3 decades of service in the year 2010 and it is after rendering continuous service of 33 years (with technical breaks condoned) that the Petitioner in her advanced age is rendered without any pensionary benefits.

21. The Respondent – University supports the stand of the

Petitioner. The power exercised by the Respondent - University under the Government Resolution dated 7 March 1986 has not been objected to. The Respondent - University has informed the Petitioner as far back as 26 February 2010 that a 51-day break in service was condoned. The Petitioner was asked to deposit Rs.1,26,120/- with the Auditor, which the Petitioner had deposited. The Petitioner's appointments prior to 2006 were all in clear vacancies. In the re-joinder, the Petitioner has asserted and it has not been controverted that from 13 August 1993 till 22 June 2006, the Petitioner even received the salary which was subjected to revision as per 5th and 6th Pay Commission.

22. The appointments of the Petitioner from 1993 were on permanent, clear and vacant posts. Post was vacant because, despite repeated advertisements, no candidates from the concerned category were available. All the parameters of de-reservation of the post, even as per the Government Resolution dated 5 December 1994, existed. It is not in dispute before us, because of not controverting this assertion, that from 1993 to 2006, the post was repeatedly advertised, and no candidates were available; therefore, Petitioner was given appointments. Therefore, all that remains is a formality of an order passed by the State Government declaring the de-reservation of the post for the concerned period.

23. The Petitioner's salary came to be processed. At no point in time, during her entire tenure, did the objection that was sought to

be raised after her retirement ever be raised. The proposal for de-reservation of the post had to be submitted by the Respondent – University, and if the Respondent - University did not submit the said proposal, it was not the Petitioner's fault.

24. If the University could not continue the Petitioner, the Petitioner should have been informed where the Petitioner could have found work elsewhere. If the proposal had been rejected, and the Petitioner could have worked elsewhere. Both the University and State Government did not take objection while the Petitioner continued to be in service. At this stage, depriving the Petitioner of the pensionary benefits on the ground that a formal order of de-reservation was not passed, even though ingredients were satisfied, would be unjust.

25. Therefore, appropriate course of action would be to direct the Respondent – University to submit a proposal for de-reservation in respect of the Petitioner's appointment from 1993 to 2006 and the State Government would take a decision thereupon. When the formal order of de-reservation is passed, breaks having been condoned, the Petitioner's services from 1993 till 2006 will have to be counted for the old pension scheme and to be paid to the Petitioner. After the formal proposal is so submitted by the Respondent – University, the State will keep in mind the entire factual perspectives, the observations in this decision, the object of

payment of pensionary benefits to the employees and pass necessary orders on the proposal for de-reservation.

26. Accordingly, it is declared that the Petitioner is entitled to pensionary benefits considering the Petitioner's service from 1993. Before the pension papers are processed, a formal proposal be submitted by Respondent No.2 – University to Respondent No. 4 – Joint Director for de-reservation within three weeks, and Respondent No.1 -State will accordingly issue necessary orders thereupon after keeping in mind the observations made in the judgment and take steps to disburse the pensionary benefits to the Petitioner within 8 weeks.

27. Rule is made absolute in the above terms. Writ Petition stands disposed of accordingly.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)

L.S. Panjwani, P.S.