



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

WRIT PETITION NO. 1676 OF 2017

Amol S/o Ashokrao Zalte,
Age : 41 Years, Occu. : Service,
R/o 18, Surananagar,
Jalna Road, Aurangabad,
District Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32.
2. The Joint Director of Higher
Education, Aurangabad Division,
Aurangabad.
3. Dr. Babasaheb Ambedkar
Marathwada University, Aurangabad
through its Registrar.
4. Shri Saraswati Bhuwan Education
Society, Aurangabad's College of
Science, Aurangabad,
Through its Principal.
5. Yogesh S/o Diliprao Rajendra,
Age : 38 Years, Occu. : Service,
R/o C/o T. G. Ratnaparkhi,
Plot No. 5/8, Vidhata Housing
Society, Near Sant Tukaram Natya
Mandir, Gulmohar Colony, CIDCO,
N-5, Aurangabad, Dist. Aurangabad.

6. Shri Saraswati Bhuvan Education
Society, Saraswati Nagar,
Aurangpura, Chhatrapati
Sambhaji Nagar (Aurangabad)
Through its General Secretary/
President .. Respondents

Shri S. R. Barlinge, Advocate for the Petitioner.
Mrs. S. S. Joshi, A.G.P. for the Respondent Nos. 1 and 2.
Shri S. S. Thombre, Advocate for the Respondent No. 3.
Shri A. S. Deshpande, Advocate for the Respondent No. 4.
Shri R. A. Joshi, Advocate for the Respondent No. 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT ON : 03.09.2024
JUDGMENT PRONOUNCED ON : 19.09.2024

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent at the admission stage.

2. The petitioner who is working as a lecturer in the respondent No. 4 - college is seeking direction for granting him temporary approval for the period preceding to acquisition of M. Phil. degree and permanent approval from acquisition of M. Phil. He is also seeking disbursement of salary as per the Government Resolution dated 04 April, 2012.

3. The respondent No. 4 – Science college is affiliated to the respondent No. 3 - university and is run by the respondent No. 6 - educational institution. The petitioner and respondent No. 5

are the employees of respondent No. 6. By letter dated 08.07.2003 issued by the respondent No. 3 - university addressed to respondent No. 4 – college, permission was granted to fill in various posts comprising of thirteen posts of lecturers in the subject of Computer Science on non grant basis. Later on vide Government Resolution dated 04.04.2012, four posts of Computer Science were brought on grant in aid basis.

4. We are called upon to determine as to whether the petitioner was having requisite qualification when he was appointed as a lecturer in Computer Science on 08.10.2003 and the qualification of M. Phil. acquired by him subsequently on 22.05.2009 can be treated as requisite qualification at the relevant time. To delve on the controversy, it is expedient to disclose the qualifications prescribed by the UGC and the changes brought up from time to time.

5. The University Grants Commission (for short 'UGC') would prescribe the qualification for appointment of teachers in various streams of education as per Section 26 of the University Grants Commission Act. By notification published in the month of March 2000, the minimum qualification for the post of lecturer in the Humanities, Social Science, Science, Commerce, Physical Education, Foreign Languages and Law was as follows :

“NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil, degree or have submitted Ph. D. thesis in the concerned subject upto 31st December, 1993 are exempted from appearing in the NET examination.”

6. Thereafter, Regulation of 2000 was amended on 31 July 2002 and came to be recognized as First Amendment Regulation 2002 substituting the qualification for the post of lecturer as :

“NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph. D. degree. However, the candidates who have completed M. Phil degree by 31st December, 1993 or have submitted Ph. D. thesis to the university in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case of such candidates fail to obtain Ph. D. degree, they shall have to pass the NET examination.”

7. Thereafter, second amendment was introduced with effect from 14.06.2006 substituting earlier qualification as follows :

“NET shall remain the 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.”

8. The third amendment was introduced in the Regulation on 11.07.2009 substituting earlier qualification in following terms :

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

Provided, however, that candidates, who are or have been awarded Ph. D. degree in compliance of the “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/SET for recruitment and

appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.”

9. The qualification prescribed by third amendment was adopted by the State Government and brought into effect from 11.07.2009 vide Government Resolution dated 12.11.2009.

10. It is the case of the petitioner that he was holding qualification of B. Sc. and Masters of Computer Application (M.C.A.). The respondent No. 4 - college was permitted to fill in the posts. Accordingly advertisement was published on 23 August 2003 for thirteen posts of lecturers in the subject Computer Science on non grant basis. The petitioner was recommended by the duly constituted selection committee. He was appointed vide order dated 08.10.2003 for the period from 08.10.2003 to 30.04.2004 on non grant basis. After efflux of time his services were continued by further orders of continuation issued on 30.04.2004, 12.06.2005, 12.06.2006, 15.06.2007 and 16.06.2008.

11. The petitioner acquired M. Phil. qualification on 22.05.2009. The respondent No. 4 - Principal submitted the proposal seeking approval to his appointment on 08.09.2012. Certain deficiencies were notified by the university to the college. The services of the petitioner were approved vide order dated 12.03.2023 by the respondent No. 3 - university *ex post facto* and temporarily for the year 2003-2004. Thereafter repetitively the college submitted representations to the university seeking permanent approval, but no response was given, which was the

cause of action for the petitioner to approach the High Court.

12. The learned counsel Mr. S. R. Barlinge appearing for the petitioner submits that the appointment of the petitioner was made after following due procedure of law and he has been continuously rendering the services for more than 20 years. He would submit that at the time of appointment he was holding post graduation in the Computer Science and thereafter acquired M. Phil qualification on 22.05.2009, which was prior to cut off date of 11.07.2009. He would submit that the petitioner was exempted from appearing for the examination of National Eligibility Test (NET) due to acquisition of M. Phil. qualification before the cut off date in consonance with Regulation of 2009. Thus, his services should have been approved permanently and he is entitled to receive salary as per the Government Resolution dated 04.04.2012. He would further submit that the respondent - university arbitrarily and highhandedly granted temporary approvals though the petitioner was qualified and appointed after following due procedure of law.

13. The learned counsel further submits that inaction on the part of the respondent - university in granting permanent approval is against the law laid down by the Division Bench of this Court in the matter of **Sau. Seema Vijay Rane Vs. The State of Maharashtra and others in Writ Petition No. 6943 of 2013 vide judgment dated 22.09.2014**. It is further submitted that vide circular dated 04.12.2023, Masters of Computer Application has been declared to be equivalent to

Masters in Computer Science. The learned counsel would further submit his reply to the preliminary objection regarding maintainability of the petition that the remedy U/Sec. 79 of the Maharashtra Public Universities Act, 2016 (hereinafter referred as to the 'Act') is not an efficacious one and the petition is maintainable.

14. The respondents contest the petition by filing distinct affidavits in reply. The respondent Nos. 5 and 6 have been added subsequently due to supervening events. The respondent No. 5 is appointed on 31.07.2023 to the post of Assistant Professor in Computer Science in pursuance of advertisement dated 07.05.2023.

15. The respondent Nos. 1 and 2 have adopted the submissions of the respondent - management and the university.

16. The learned counsel Mr. S. S. Thombre, appearing for the respondent No. 3 - university submits that the petition is not maintainable in view of alternate remedy U/Sec. 79 of the Act. On merits he submits that the petitioner was never appointed by the management after following due procedure of law against a permanent vacant post. He was appointed temporarily by the principal and he was never having requisite qualification. He would further submit that continuation of the petitioner from 2003 was at the behest of the principal and not the management. It is further contended that the proposal seeking approval to his appointment was never forwarded by the management to the

university anytime after his appointment on 08.10.2003. He was granted approval temporarily for the year 2003-2004 vide letter dated 12.03.2013 for the first time. Lastly, it is contended that the petitioner is not entitled to receive permanent approval to the post in question for want of necessary qualification and his appointment was not in accordance with law.

17. The learned counsel Mr. Ajay S. Deshpande appearing for the respondent Nos. 4 and 6 submits that the petitioner was not having requisite qualification when he was inducted in the service. His qualification of M.C.A. was post graduation in Management and not Computer Science. The learned counsel would point out from para No. 11 of his reply, the difference between these qualifications. The post in question is of Assistant Professor in Computer Science. It is contended that as per UGC Regulation of 2000, first amendment of 2002, second amendment of 2006 and third amendment of 2009, the petitioner was lacking the qualification. The respondent - management could not recruit the post in question for considerable period for various reasons. On 17.05.2023 the advertisement was published for recruitment of three posts of Assistant Professors in the Computer Science and the respondent no.5 was selected.

18. The learned counsel Mr. R. A. Joshi appearing for the respondent No. 5 submits that the appointment of the petitioner was temporary in nature and by efflux of time the vacancy had occurred. After creation of vacancy the procedure required to be followed U/Sec. 79(4) of the Maharashtra Universities Act, 1994

was not undertaken by the management. He would submit that continuation of the petitioner after 30.04.2004 was not in accordance with law. He would adopt the submissions of management and the university in respect of qualification and the appointment of the petitioner. He would further submit that the respondent No. 5 is appointed as Assistant Professor in Computer Science. He is having qualification of M. Sc. M. Phil. Ph. D. in the subject in question. He refers to the following judgments of the Supreme Court and this Court :

- (i) Vidyavardhaka Sangh and another Vs. Y. D. Deshpande and others reported in (2006) 12 SCC 482.
- (ii) Sudhir Narayan Sawant Vs. The State of Maharashtra and others reported in 2006(5) Mh. L. J. 96.
- (iii) Ram and others Vs. The State of Maharashtra and others reported in 2016 (1) All M. R. 214.

19. Having considered rival submissions of the parties, it reflects from record that the petitioner was having B. Sc. and M.C.A. qualification when he was appointed on 08.10.2003. His appointments were temporary in nature on year to year basis till 2019-2020. Even the approvals were granted on year to year basis. The respondent No. 5 is appointed as Assistant Professor and by virtue of the order dated 23.06.2023 it is subjected to outcome of this petition.

20. The respondent No. 3 - university raises a preliminary objection regarding maintainability of the petition in view of Sec.

79 of the Act. The matter pertains to disbursement of salary which is within the purview of the respondent Nos. 1 and 2. It also pertains to the qualification of the petitioner as prescribed by the U.G.C. The grievance of the petitioner is against the university and its functionaries for not granting permanent approval. Considering the peculiar nature of the controversy, we are of the considered view that alternate remedy provided by Sec. 79 of the Act is not efficacious and the present petition is maintainable.

21. The petitioner was appointed on 08.10.2003 for one academic year on non grant basis. At the relevant time Regulation of 2002 vide its first amendment was in force with effect from 31.07.2002. The petitioner was not having NET or M. Phil. Hence he was not having requisite qualification. The NET was compulsory qualification as prescribed by U.G.C. Regulation of 2002. He was continued as a lecturer and for the first time approval was granted on 12.03.2013 temporarily for the year 2003-2004. For want of qualification, the respondent No. 3 - university rightly accorded temporary approvals every year.

22. The petitioner acquired M. Phil. on 22.05.2009, which is contended to be prior to cut off date that is 11.07.2009. At the time of his induction in service on 08.10.2003 he was governed by the qualification prescribed by Regulation of 2002 which was in force from 31.07.2002. His qualification at the time of induction cannot be said to be regulated by third amendment, Regulation 2009 which is enforced on 11.07.2009.

23. Regulation 2000 granted exemption from passing NET examination for the candidates having acquired M. Phil. degree prior to 31.12.1993. Thereafter Regulation of 2002 granted such exemption to all candidates having acquired M. Phil. degree prior to 31.12.1993 at the time of appointments. Petitioner was appointed on 08.10.2003 and was not having M. Phil. Regulation of 2006 also granted exemption from NET for U.G. level to the candidates having M. Phil. degree. By last Regulation of 2009, M. Phil degree ceased to be qualification to seek exemption from NET. It was enforced from 11.07.2009. The exemptions for the candidate having M. Phil. degree for those who were having M. Phil. degree on the date of appointment either before Regulation of 2002 or those who were/are appointed after Regulation of 2006.

24. It is not that the acquisition of M. Phil before the cut off date prescribed by the UGC Regulation 2009 is decisive so as to treat a candidate as qualified. The date of induction in the service and the prescribed qualification at that time are relevant. Precisely for this reason the judgment cited by him in the matter of Sau. Seema Vijay Rane Vs. The State of Maharashtra and others (supra) is not applicable to his claim.

25. The purport of all the Regulations of UGC is that the candidate must possess NET or alternatively M. Phil./ Ph. D. at the time of appointment. No concession is provided for them to acquire M. Phil./Ph. D. on any future date. Already acquired M.

Phil. prior to appointment is treated to be alternate qualification to dispense with NET qualification. Any theory of incumbent that he acquired qualification before 11.07.2009 runs counter to true spirit to introduce the qualification and therefore it is unacceptable.

26. The appointment of the petitioner though was in pursuance of advertisement dated 23.08.2003, there is no record to show that duly constituted selection committee was there to conduct the interviews and to recommend the candidates. It reveals from Exhibit - F that the selection committee was not comprising of the members in consonance with Statutory provisions. The learned counsel for the respondent No. 3 - university Mr. Thombre has rightly submitted that the selection of the petitioner was not by recommendation of duly constituted selection committee.

27. It further reveals that the orders of appointment and continuation were signed by the principal only. The office bearers of the respondent No. 6 were not involved in appointing and continuing the petitioner. It is incomprehensible as to why the proposal seeking approval to his appointment was not immediately forwarded to the university after 08.10.2003. The proposal appears to have been forwarded on 08.09.2012. Certain deficiencies were notified by the university by letter dated 05.02.2013. The respondent - college or the management did not rectify the defects or remove the deficiencies. In this regard the communication dated 06.08.2012 issued by the principal has

been pressed into service to show that deficiencies were removed. We are unable to accept the stand of the petitioner. The deficiencies were notified on 05.02.2013. No communication showing removal of deficiencies after 05.12.2013 is pointed out.

28. The unexplained and abnormal delay of about nine years in securing approval to the appointment of the petitioner creates doubt. No resolution is produced on record to show that the recommendation of the selection committee was accepted by the management and thereafter he was issued order of appointment on 08.10.2003 by the management. We, therefore, find substance in the submissions of the respondent Nos. 3, 4 and 6 that appointment of the petitioner was not in accordance with law and he was appointed and continued by the principal only.

29. The petitioner was having post graduation in M.C.A., which is not equivalent to post graduation in Computer Science. The averments of para No. 10 and 11 of the affidavit in reply of the respondent No. 4 are not controverted by the petitioner. We are inclined to accept the submission of Mr. A. S. Deshpande that the petitioner was having post graduation in Management Science and not in Science and Technology. For this reason also we find that the petitioner was not having the requisite qualification at the relevant time.

30. Granting equivalence to the qualification which is pressed into service by the petitioner was in 2023, later point of time, which is inconsequential. Rather it substantiates the stand of

the respondent/University that till 2023 the two subjects were distinct. There was no such equivalence when the petitioner was appointed.

31. The learned counsel for the respondent No. 5 referred to the judgment in the matter of Vidyavardhaka Sangh and another Vs. Y. D. Deshpande and others (supra). We have gone through para No. 4 of the judgment. Applying the principle, it can be held that after 30.04.2004, by efflux of time the vacancy was created and thereafter it was not filled in by legal mode. We have also considered judgment in the matter of Sudhir Narayan Sawant Vs. The State of Maharashtra and others (supra). We have gone through the relevant paragraph No. 6. In the case in hand also the petitioner was being appointed on year to year basis instead of resorting to the regular mode of recruitment to fill in any permanent vacancy.

32. The learned counsel Mr. R. A. Joshi refers to the judgment in the matter of Ram and others Vs. The State of Maharashtra and others (supra). In that matter also the petitioners were appointed in the year 2001 on temporary basis. Thereafter they were appointed in the year 2003 by following due procedure of law. Though they acquired M. Phil. qualification in 2009, they were denied permanent approval. Hence they had approached the High Court. It was their stand that as M. Phil was acquired before 11.07.2009, they ought to be held as qualified being exempted from NET. The submission was disapproved by the

coordinate bench in following manner :

“24. Upon careful perusal of the contents of the aforementioned requirement of minimum qualification qua the petitioners, since according to them their appointments were from the year 2001 onwards, the clause (4) of the aforementioned minimum qualification would be relevant. The Regulations 2000 as mentioned in the clause of the aforementioned Gazette publication, it is mentioned that, NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil degree or have submitted Ph.D. thesis in the concerned subject upto 31st December, 1993 are exempted from appearing in the NET examination. If the further Regulation, 2002 are perused, in that also the candidates who have completed the M.Phil by 31st December, 1993 were exempted from appearing passing NET examination. Thereafter, there was second amendment and as per the Regulation 2006, 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. If the petitioners' cases are carefully considered in the light of the aforementioned relevant clause of the Regulations 2000, 2002 or 2006, the petitioners were not possessing the M.Phil qualification at the relevant time of their appointments, though they were possessing Master's degree in their respective subjects. The relevant date for considering the qualification of the petitioners for the appointment on the post of Lecturers was governed by Regulations 2000 and 2002 as the petitioners claimed that, their selection was by properly constituted Selection Committee. At the relevant time, admittedly, the

petitioners neither completed M.Phil, nor they were having Ph.D. degree. As per information placed on record by the petitioners themselves, first time in the year 2009, they completed M.Phil. Therefore, the petitioners case is not covered by the judgment of the Bombay High Court, bench at Nagpur in the case of **Sudhir S/o Sharadrao Hunge and another V/s The State of Maharashtra and others in Writ Petition No. 1489 of 2010, decided on 02.07.2010**. In the facts of that case, the Division bench of the Bombay High Court bench at Nagpur was considering all together different fact situation, in as much as, soon before 3rd amendment Regulation 2009, the petitioners in that case were possessing M.Phil qualification, and in pursuant to the advertisement they did apply for the post of lecturers, and at the time of actual issuance of appointment letters, the Regulations came into force making the NET qualification compulsory for the appointment of lecturers. Therefore, the Division Bench keeping in view the facts of that case, held that, the eligibility of the petitioners would relate back to the date of first advertisement and the new conditions/qualifications introduced by the Regulation 2009 would not apply in the cases of those petitioners, who were already fulfilling the M.Phil qualification on the date of advertisement and filing application for appointment on the post of lecturers.

25. The Respondent No. 3 has brought on record, and which is not disputed by the petitioners that, as per the first amendment of Regulation 2002, the date for submission of Ph.D. thesis was extended from 31st December, 1993 to 31st December, 2002. The candidates, who have completed M.Phil degree or have submitted Ph.D. thesis in the concerned subject upto 31.12.1993 were exempted from appearing in the Net/Set

examination. Even by subsequent 2nd amendment to Regulations, the same position continued and those who are having Ph.D. degree and acquired M.Phil before the cut of date mentioned in the said Regulations were granted exemption from passing NET examination. As already observed, at the relevant time the petitioners were not possessing M.Phil before cut of date prescribed in the regulations, at the time of their appointments. All the petitioners have acquired their M.Phil qualification after June, 2008. Upon perusal of the documents placed on record, it is clearly seen that, the petitioners were appointed on contract basis. The petitioner no.1 was appointed on 26th July, 2002, the petitioner no. 2 was appointed on 30th August, 2001 and the petitioner no.3 was appointed on 3rd August, 2001, and at the relevant time, they were not having required qualification of passing NET/SET examination. It is also brought on record by Respondent No.3 that, the approval for appointment on contractual basis is granted to the appointments of the petitioners till 26th January, 2008, and the scheme for appointing the candidates on the contractual basis came to an end on or about June, 2008. However, it appears that, Respondent – college continued the petitioners as lecturers as contended by the petitioners in the Petition. The proposal of the petitioners for the continuation for eleven months was submitted, however, the University has declined to grant approval since according to the learned counsel appearing for the Respondent – University, the scheme for reappointing the candidates on contractual basis came to an end on or about June, 2008.”

33. Applying the same principle in the present matter we hold that the petitioner was not qualified and his acquisition of M. Phil in 2009 is inconsequential. We cannot accept submissions of

the learned counsel Mr. S. R. Barlinge for the petitioner.

34. The further relief of the petitioner in respect of disbursement of salary also cannot be granted for want of material particulars. There is nothing on record to show that even the petitioner was not disbursed the salary/honorarium payable to him as an ad hoc employee or on Clock Hour basis. The petitioner did not make any representation for any disbursement of the salary.

35. The writ petition is devoid of any substance. It is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

36. After pronouncement of judgment, learned advocate for the petitioner would request for extension of interim relief for a reasonable time to enable the petitioner to approach the Supreme Court.

37. Learned advocate for the respondent No. 5 and the learned advocate for the respondent No. 6/Management oppose the request.

38. Interim relief granted earlier to continue for a period of two (02) weeks from today.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]