

(2013) 08 BOM CK 0209
In the Bombay High Court
Case No : Writ Petition No. 11477 of 2010

Asha Ramdas Bidkar and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2014) 1 ALLMR 116 : (2013) 6 MhLj 657

Hon'ble Judges : Sunil P. Deshmukh, J;A.H. Joshi, J

Bench : Division Bench

Advocate : Pradeep Deshmukh, for the Appellant; K.G. Patil, AGP for respondent Nos. 1 to 3, K.M. Suryawanshi for respondent No.4, Alok Sharma for respondent No. 5/UGC and Smt. Sudha Kulthe for respondent Nos. 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—The petitioners are working as Assistant Professors in the senior colleges run by Balaghat Shikshan Sanstha, Naldurg, Tq. Tuljapur, Dist. Osmanabad. The petitioner Nos. 1 to 19 are working in Yeshwantrao Chavan Mahavidyalaya, Tuljapur, against clear, permanent vacancies. The petitioner Nos. 20 and 21 are appointed against clear and permanent vacancies in Arts, Science and Commerce College, Naldurg, Tq. Tuljapur, Dist. Osmanabad. All the petitioners have been appointed after following the procedure laid down under the Statutes framed by the University. The petitioners possessed all required qualifications except the qualification of passing the National Eligibility Test and State Eligibility Test (hereinafter referred to as, "NET/SET") prescribed from the year 1991 by the UGC. Therefore, petitioners were treated by University as well as by the respondent Nos. 2 and 3, as ad hoc professors, and approval to their appointments were therefore granted as ad hoc appointees.

2. In the background that the petitioners did not possess qualification of NET/SET, they continued to be appointed on ad hoc basis, and the approval on said ad hoc basis too was continued.

3. It is not in dispute on the part of the University Grants Commission or even by the respondent Nos. 1 to 3 that petitioners were appointed, granted approval and their appointments were made in conformity with the rules and regulations, except the passing of NET/SET examination.

4. Based on the scheme announced by UGC and adopted by the State Government, the lecturers in Senior Colleges who possess requisite qualification and qualifying duration of service are entitled for pecuniary benefit of higher scale of pay under the scheme called as "Career Advancement Scheme" ("CAS" for short). According to the petitioners they do qualify for said benefit.

5. The petitioners' request for grant of benefit of the CAS was approved by the competent committee which was constituted pursuant to the directions of the State, at the level of University. Said committee was comprised of the representative of the State Government. However, said favourable representation was not accepted by the respondent Nos. 1 to 3 on the ground that past service of the petitioners could not be recognized for the purpose of granting benefit of CAS, since their past service was treated/approved by the Government as ad hoc employment.

6. Hence, petitioners have filed present petition.

7. This writ petition is opposed by the State on the grounds as averred in the affidavit in reply, which reads thus:

8....The office of the Joint Director, Higher Education, Aurangabad, after taking into consideration all the norms laid down by the UGC/State Government has not granted approval to the recommendations of the Selection Committee for application of benefits of CAS because of the fact that the petitioner's services from the date of appointment till exemption of passing of NET/SET examination, were treated on ad hoc basis and therefore the said services were not eligible/qualified for availing the benefits of Career Advancement/Placement.

8. I say and submit that in the present case, the petitioner was appointed in the year 1993 except one Shri Ambadas Narhari Birajdar, who is appointed in the year 1992 and later on the petitioners have granted exemption from UGC from 4-11-2008 and therefore the petitioner's service from the date of appointment till exemption of passing of NET/SET exam were treated on ad hoc basis and therefore the said services were not eligible for availing the benefits of Career Advancement/placement as claimed by the petitioner in the present writ petition.

(quoted from paragraph No. 8 which is marked twice from the affidavit in reply, appearing at page 67 of the petition paper book)

(Emphasis on underlined portion is supplied by us)

8. During the pendency of the petition, an additional affidavit is filed by the State-respondent No. 3. A copy of Government Resolution dated 27th June, 2013 is annexed to the said affidavit.

9. On perusal of the Government Resolution dated 27th June, 2013, it is evident that the services rendered by the teachers in senior colleges, who do not possess NET/SET qualification are liable to be considered for all purposes if:--

(a) Their appointment is made on regular basis by observing recruitment procedure.

(b) The concerned teacher possesses all other qualifications excluding NET/SET.

(c) The University has approved the qualifications other than NET/SET.

(d) The proposal for grant of exemption of deficiency of NET/SET is furnished to the University and competent committee is to take decision in that regard.

10. It is evident that, an objection is raised by the State that petitioners were treated as ad hoc, and hence, they are not entitled for benefit of CAS. However, Annexure "B" (from page Nos. 19 to 32 of paper book) and Annexure "C" (from page Nos. 32 to 35 of paper book), reiterate that the University Grants Commission, has granted recognition and regularization to the appointments of the petitioners, without passing of NET/SET examination if that deficiency is condoned by the University. It is also directed that in such eventuality, the benefit of CAS be given to the petitioners.

11. The rationale behind granting exemption to the candidates who were duly appointed, save and except, acquiring qualification of NET/SET, was and is that the candidates possessing the said eligibility (NET/SET) were not available and barring that condition of eligibility, rest of the conditions were duly fulfilled by each petitioner.

12. It is thus vivid that appointments of the petitioners were bound to be treated as done on ad hoc basis because they did not possess NET/SET qualification and their status as ad hoc had remained as such barely on the ground that the exemption from acquiring qualification of NET/SET was awaited from the UGC.

13. In this situation, the tag of their being ad hoc teachers, does not and cannot constitute a ground to deny them the benefit of Career Advancement Scheme, even on Government's own showing, and Annexures "B" and "C" referred to hereinbefore.

14. The stand taken by the State is wholly unjust and deserves to be rejected.

15. Therefore, now the respondent Nos. 1 to 3 ought not and cannot deny to the petitioners the benefit of Career Advancement Scheme.

16. This Court, therefore, allows the writ petition in terms of prayer clauses (A) and (B), with modification that interest on arrears shall carry interest @ 6% per annum, from the date when the payment became due. In the circumstances, parties are directed to bear their own costs. Rule made absolute in terms of paragraph No. 17.