

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 243 of 2012 (D.B.)**

Ashok S/o Vishnupant Thorat,
Aged about 57 years, R/o Pushpagandha Colony,
Near Rohini Park, Kathora Road,
Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Higher Education,
Mantralaya, Mumbai-32.
- 2) Director of Higher Education,
State of Maharashtra,
Central Building, Pune-1.
- 3) Director,
Government Vidarbha Institute of Science
and Humanities, Kathora Road, Amravati.

Respondents.

Shri R.V. Shiralkar, Vipul B. Bhishe, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for the respondents.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri A.D. Karanjkar, Member (J).**

JUDGMENT

Per : Member (J).

(Delivered on this 30th day of January,2019)

Heard Shri R.V. Shiralkar, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. It is case of applicant that he was appointed as Lecturer (Marathi) in Maharashtra Education Services (MES), Group-B by the MPSC in the year 1985. The applicant was appointed to teach in the Junior College. The Recruitment Rules to fill the posts of Lecturer in MES service Group-A came in force in the year 2006 and it was provided that while filling the post of the Lecturer in Group-A 25% posts shall be filled by the promotion and 75% by nomination. It is submitted that the applicant is the Member of S.C. and physically handicapped persons. The applicant thereafter completed M.Phil. on 24/06/2009. After completing the M.Phil., the applicant requested the respondents to consider him for the promotion as Lecturer Group-A.

3. It is grievance of the applicant that the respondents were bound to prepare the list of the eligible Group-B Lecturers to be promoted in the Group-A, but it was not done. Secondly according to the applicant as he was physically handicapped person under the disability and therefore as per the provisions under 'The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act 1995' the respondents were bound to mark a post to promote the physically handicapped person. It is submitted that in the year 2007, 31 Group- B Lecturers were promoted as Group-A

Lecturers and on 02/06/2009 one Smt. Nandini M. Mahulkar came to be promoted as Group-A Lecturer though she was junior to him. It is contended that the junior Lecturers to the applicant were promoted as Group-A Lecturer disregarding seniority of the applicant, therefore, discourage of justice is caused. The applicant time to time made representations to the respondents, but it was in vain. In this background, the applicant is claiming to declare that the action of the respondents not considering the case of the physically handicapped applicant and not promoting him as Group-A Lecturer is illegal and arbitrary and direction be given to the respondents to promote the applicant as Group-A Lecturer since 02/06/2009 when Ku. Nandini M. Mahulkar was promoted. The applicant is also claiming the other consequential reliefs.

4. The respondent nos. 2 and 3 have submitted their reply-affidavit which is at page nos.48 of the P.B. It is specific contention of the respondents that the applicant was not possessing the required qualification, the applicant should have obtained the M.Phil. degree before December,1993, similarly as the applicant was not Ph.D. or he had not passed the NET/SET examination, therefore, he was not eligible for promotion. It is submitted that the applicant cannot claim the promotion as of right and he cannot compare his case with Ku. Nandini M. Mahulkar. It is contended that Ku. Nandini Mahulkar had completed her M.Phil in the year 1990 and as she had obtained

M.Phil degree before 1993, therefore, she was exempted. Secondly it is submitted that Ku. Nandini Mahulkar was B.Sc., M.Sc., B.Ed. and she was appointed to teach subject Botony, therefore, there was no question of violation of seniority. It is submitted that there is no substance in the case and the O.A. be dismissed. The applicant has submitted rejoinder and the respondents have replied the rejoinder.

5. We have heard the oral submissions on behalf of the applicant and the respondents. The material questions are (a) whether the applicant was eligible for promotion, (b) whether any Lecturer junior to the applicant in Group-B was promoted and (c) whether promotional posts of Group A were vacant in the Senior College to teach subject Marathi. The learned counsel for the applicant has placed reliance on the Notification dated 14/06/2006 issued by the University Grants Commission (UGC). It is submitted that the regulation was amended on 14/06/2006 and it was incorporated in the regulation as under :-

“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 31/12/1993 are exempted from appearing in the NET examination. Similarly, the following portion was added in the regulation NET shall remain compulsory

requirement for appointment as Lecturer for those whose 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, were exempted from NET for UG level only.”

6. Thus in view of this amendment in the regulation, the Lecturers who had obtained M.Phil degree before 31/12/1993, were exempted from appearing in the NET examination. The learned counsel for the respondents invited our attention to the third amendment effected in the Regulation in the year 2009. This third amendment was incorporated on 01/06/2009 and the earlier amendment effected in 2006 was deleted and it was substituted by the following portion –

“NET shall remain the minimum eligibility condition for recruitment –

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) Regulations,2009, shall be exempted from the requirement of the minimum eligibility conditions of NET/SLET for recruitment and appointment of Assistant Professor or equivalent position in the Universities/ Colleges / Institutions”.

7. Thus it appears that the earlier provision which was NET shall remain compulsory requirement for appointment as Lecturer and the candidates having Ph.D. degree in the concerned subject or who had passed M.Phil. examination before 1993 were exempted from NET for PG level and UG level teaching. The candidates having M.Phil degree in the concerned subject, were exempted from NET for UG level teaching only. This provision was deleted by the amendment which came into force on 01/06/2009. In view of this amendment, it is necessary to examine the claim of the applicant. The applicant passed the M.Phil degree on 24/06/2009, but as per the amendment effected in the regulation on 01/06/2009, the candidates who were possessing Ph.D. degree, were exempted from passing NET/SLET examination for their recruitment and their appointments as Assistant Professor or equivalent position in the Universities/Colleges/Institutions. Thus, it seems that before the applicant passed the M.Phil examination, the regulation came to be amended and it became necessary to possess the Ph.D. degree or to clear NET/SLET examination. There is no dispute that the applicant was not holding this eligibility and qualification for promotion.

8. The second point is that though it is contention of the applicant that Ku.Nandini Mahulkar was junior to him, but she was promoted as Lecturer, Group-A is concerned, we would like to point out that the applicant was appointed to teach Marathi subject in the

junior college, whereas, Ku. Nandini Mahulkar was appointed to teach Botony subject as she was B.Sc.,M.Sc, B.Ed. in that subject, in view of this fact, it is not possible to accept that the applicant and Ku. Nandini Mahulkar, were standing on the same level. The applicant could have been promoted at the most to the post of Lecturer in Marathi in Group-A. The applicant had no right to claim the promotion on the ground that there was vacancy in the senior college to fill the post of Lecturers in other subjects, therefore, we do not see any merit in this contention.

9. During the course of argument, query was made as to how many posts of Marathi Lecturers, Group-A, were vacant and how many Group-B Lecturers were promoted as Group-A Lecturers after 24/06/2009. The applicant was unable to point out that any post of Group-A Lecturer to teach Marathi subject was vacant and any Group-B Lecturer was promoted as Group-A Lecturer. It is settled position that in order to promote a person, the promotional post must be vacant. If promotional post is not vacant, a person cannot claim promotion, merely because, he possesses the required eligibility and qualification. It is not contention of the applicant that he was not given benefit of time bound promotion scheme. In the present case this important aspect goes to the root of the matter. As there was no promotional post vacant to promote the applicant, consequently, the question never arosed to promote the applicant. Had it been a fact

that the respondents promoted any Group-B Lecturer junior to the applicant to teach Marathi in the Senior College, then matter would have been different. In view of this matter, we do not see any merit in the application. Hence, the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(A.D. Karanjkar)
Member (J).

(Shree Bhagwan)
Member (A).

Dated :- 30/01/2019.

*dnk.