MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 657/2015

Ku.Sandhya Shrawan Makarande,
@ Mrs. Sandhya Uddhav Samudre,
Aged about 51 years, Occ.Service,
R/o 5, Laxmi Apartments, Damle
Layout, Ramdaspeth, Akola.

Applicant.

Versus

1) State of Maharashtra,
Through its Secretary,
Department of Higher and Technical,
Education, Mantralaya, Mumbai-32.

2) Director of Higher Education,
Maharashtra State, Pune.

3) Government College of Education,
Akola, through its Principal.

Respondents

Shri A.C.Dharmadhikari, Ld. counsel for the applicant.
Shri H.K.Pande, Ld. P.O. for the respondent Nos.1 & 2.

Coram:-Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 29th March 2022.

JUDGMENT

Judgment is reserved on 03th March, 2022.

Judgment is pronounced on 29th March, 2022.

Heard Shri A.C.Dharmadhikari, learned counsel for the applicant and Shri H.K.Pande, Ld. P.O. for the Respondents.

2. The applicant is claiming regularization of her services to the post of Assistant Professor in Mathematics in respondent no.3 college from the date of her initial appointment i.e. 23.9.1994, and all consequential benefits.

3. Case of the applicant is as follows. The applicant, pursuant to advertisement dated 4.7.1994 was appointed as Assistant Professor by order dated 23.9.1994, and was continued with technical breaks, by various orders (Annexure A-1 to A-7) in respondent no.3 college. She has acquired a number of educational qualifications (Annexure A-8 to A-14). In the year 2007 she acquired Ph.D. in Education (Annexure E-15). By G.R. dated 23.3.2005 (Annexure A-16) services of the applicants were continued. She has been working on the post continuously since 24.7.2000. Services of five similarly placed employees who had acquired the qualification like the applicant while in service, were regularized on the basis of G.R. dated 23.3.2005. The applicant's regularization was deferred because she had acquired

qualification on Ph.D. after 2005 i.e. in 2007. As per Direction dated 6.7.2010 bearing no.47/2010 (Annexure A-17) issued by respondent no.3 Ph.D. holders of the University who have acquired this qualification on or before 11.7.2009 are exempted from passing NET/SET and other examinations. The applicant acquired Ph.D. from Amravati University on 17.2.2007 and hence she is entitled to get the exemption from passing NET/SET. On 17.8.2015 she made a representation (Annexure A-18) for regularization. Respondent no.3 forwarded it with a recommendation dated 2.9.2015 (Annexure A-19). Though services of similarly placed employees have been regularized, this benefit has not been extended to the applicant. Hence, this application-

3.A. According to the applicant, for the reasons set out as above in the application she would be entitled to relief of regularization of her services, and other consequential benefits.

4. Copy of the advertisement published on 4.7.1994 pursuant to which the applicant was appointed on ad-hoc basis is at p. 100 (Annexure AA-1). Relevant portion of this advertisement reads -

> ३. बी.एड. महाविद्यालयातील अधिव्याख्याते (रु. २२००/४०००)
>
> मॅथेमॅटिक्स, सायन्स, जिओग्राफी व हिंदी या विषयांमधील

वय : कनिष्ठ अधिव्याख्यात्यांकरिता ३० वर्षे आणि वरिष्ठ अधिव्याख्यात्यांकरिता ३५ वर्षे (मागासवर्गीय उमेदवारांकरिता ५ वर्षाने शिथिलक्षम)

अर्हता : यु.जी.सी. व शासनाने निर्धारित केल्याप्रमाणे वरिष्ठ अधिव्याख्यांकरिता मास्तरची पदवी ५५ % गुणांसह आणि कनिष्ठ अधिव्याख्यात्यांकरिता द्वितीय श्रेणी मास्तरची पदवी आणि बी.एड. एम.फिल. पीएच.डी. धारण करणा-या आणि एन.ई.टी. /सी.एस.आय.आर. सर्वसमावेशक चाचणी उत्तीर्ण झालेल्या उमेदवारांना प्राधान्य देण्यात येईल.

In their reply at pp. 54 to 60 respondents no.1 and 2 have contended-

(1) Appointment of the applicant was made on ad-hoc basis. It was made subject to passing NET/SET.

(2) The applicant had acquired qualification of Ph.D. and was therefore, entitled to exemption from passing NET/SET.

5. The Notification of U.G.C. dated 30.6.2010 prescribes the following –

3.3.0 The minimum requirements of a good academic record, 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the master's level and qualifying in the National Eligibility Test (NET), or an accredited test (State level Eligibility Test – SLET/SET), shall remain for the appointment of Assistant Professors.

3.3.1 NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of

Assistant Professors in Universities / Colleges / Institutions.

Provided however, that candidates, who are or have been awarded a Ph.D. Degree in accordance with 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 condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities / Colleges / Institutions.

6. Respondent No.2 wrote a letter dated 13.6.2013 (Annexure R-1) to respondent no.3 stating therein –

डॉ. संध्या समुद्रे हया संचालनालयाच्या १९९४ च्या जाहीरातीनुसार सेवेत रुजू झालेल्या आहेत. त्यावेळेस विद्यापीठ अनुदान आयोग / एनसी टी ई यांच्या अधिसुचनेनुसार व शासनाने मान्य केलेल्या कोणत्या शासन निर्णयानुसार शैक्षणिक अर्हता निश्चित केलेली आहे, त्याअधिसूचनेची व शासन निर्णयाची प्रत संचालनालयास सादर करावी. अध्यापक महाविद्यालयातील अधिव्याख्यातांना सेवेत प्रवेश करणेसाठी किमान कोणती अर्हता आवश्यक आहे. किमान अर्हता धारण करित नसतील तर सेवेत राहणेचा अधिकार कोणत्या शासन निर्णयान्वये आहे. याचाही खुलासा संचालनालयास करण्यात यावा.

Thereafter respondents 1 and 2 filed affidavit-in-reply (at pp.62 to 67) stating therein –

३. विद्यापीठ अनुदान आयोगाच्या दिनांक १९.०९.१९९१ च्या अधिसूचनेनुसार व शासकीय महाविद्यालयातील अधिव्याख्याता पदावरील नियुक्ती करिता किमान शैक्षणिक

अर्हता कोणती असावी हे दिनांक १८.१०.२००१ च्या शासन निर्णयात पुढील प्रमाणे नमूद केले आहे. -

अ)उमेदवाराने चांगल्या शैक्षणिक अहवालासह संबंधित विषयातील पदव्युत्तर पदवी किमान ५५ टक्के गुणासह उत्तीर्ण असणे आवश्यक आहे. याशिवाय

आ)उमेदवाराने विद्यापीठ अनुदान आयोगाची शासकीय पात्रता परिक्षा (नेट/ सेट) उत्तीर्ण होणे आवश्यक आहे.

शासन निर्णय दिनांक १६.०६.२००० अन्वये नियम सर्व विद्यापीठांना व महाविद्यालयांना लागू केले आहेत तथापि सन १९९१ ते सन १९९९ मध्ये नियुक्त सर्व (बिगर/ नेट) अधिव्याख्यात्यांना डिसेंबर २००३ पर्यंत नेट / सेट परिक्षा उत्तीर्ण होणे आवश्यक असल्याची तरतूद शासन निर्णय दिनांक १८.१०.२००१ मध्ये समाविष्ट करण्यात आलेली आहे. श्रीमती समुद्रे यांची हंगामी नियुक्ती सन १९९४ मधील असून उक्त तरतुदीच्या अधिन राहून दिनांक २३.०३.२००५ च्या शासन निर्णयान्वये त्यांची सेवा नेट / सेट पात्रतेच्या अधिन राहून पुढे सुरु ठेवण्यात आली आहे.

7. In her counter affidavit (at pp.68 to 72) the applicant stated –

The U.G.C. qualification only prescribes that at the master's level minimum 55% marks is required and it does not stipulate as mentioned in the affidavit that the Master's degree should be only in Science, Humanities and Arts etc.

To this counter affidavit she attached inter alia Notification dated 30.6.2010 issued by U.G.C..

8. In their reply (at pp.83 to 86) respondents 1 & 2 resisted the application on the grounds that the applicant did not secure 55% marks in P.G. course and more the importantly she did not even

possess P.G. qualification in her subject i.e. Mathematics, she is only B.Sc. and not M.Sc. (Mathematics).

9. By letter dated 7.11.2019 (pp. 91) respondent no.1 had communicated to respondent no. 2 –

> यानुषंगाने आपणांस कळविण्यात येते की, शासन निर्णय दिनांक २३.०३.२००५ अन्वये श्रीमती संध्या समुद्रे यांच्या सेवा नेट सेट उर्त्तीर्ण होण्याच्या अधीन राहून नियमित करण्यात आल्या आहेत. श्रीमती समुद्रे यांनी सन २००७ मध्ये पीएचडी पदवी प्राप्त केली आहे. त्यांनी एम.एस्सी (संप्रेषण) ही पदव्युत्तर पदवी दिनांक ३०.०७.२००४ रोजी ६४.१७ टक्के गुणांसह उत्तीर्णकेली असल्याबाबतची गुणपत्रिका मा.न्यायाधिकरणास सादर केली होती. तथापि श्रीमती संध्या समुद्रे या गणित (अध्ययन पद्धती) या विषयाच्या अधिव्याख्याता असल्याने त्यांनी एम.एस्सी गणित या विषयात पदव्युत्तर पदवी ५० % गुणांसह उत्तीर्ण होणे आवश्यक आहे. त्यामुळे त्या सहायक प्राध्यापक पदासाठी आवश्यक असलेल्या अटी मधील महत्वाची अट- ५०% गुणांसह पदव्युत्तर पदवी ही अट पूर्ण करीत नाहीत. यास्तव श्रीमती संध्या समुद्रे (मकरंदे) यांच्या सेवेत नियमित करता येणार नाहीत. श्रीमती संध्या समुद्रे मूळ अर्ज क्र.६५७ / २०१५ मध्ये केलेल्या **Pursis** च्या अनुषंगाने तातडीने अतिरीक्त शपथपत्र दाखल करुन सदर वस्तुस्थिती मा.न्यायाधिकरणाच्या निदर्शनास आणण्यात यावी.

10. By filling a rejoinder (pp. 94 to 99) to which the advertisement dated 4.7.1994 is attached, the applicant asserted that she possesses the requisite qualification as prescribed in the advertisement, and also reiterated the contentions raised in the application. The applicant further asserted -

> ***Applicant would also like to invite attention to Annex. B annexed to said Govt. Resolution dt.23.3.2005 more particularly a candidate at sr.no.3 Smt.Kedar Vijaya Vishwanath who was serving at Ambejogai in her case a***

very lenient view is taken & afforded all service benefits which is totally contrary to the stand now taken in case of applicant vide letters supra mentioned.

The last mentioned assertion cannot be considered because Smt. Kedar has not been impleaded.

11. In their counter affidavit-in-reply (pp. 101 to 103) respondents no.1 & 2 have contended that the applicant did not possess qualification prescribed by U.G.C./ Government / MPSC Rules viz. M.Sc. in Mathematics with 55%, M.Ed. in Mathematics with 55% and NET / SET/ Ph.D. in Mathematics.

12. In her further rejoinder the applicant maintained that at the time of her initial appointment she was holding a Master's Degree i.e. M.Ed. with 56% marks, on the basis of G.R. dated 23.3.2005 she was continued along with those who had acquired qualification of Ph.D. while in service, services of these persons were regularized and services of the applicant were not regularized only because she had acquired qualification of Ph.D. afterwards i.e. in the year 2007.

13. In their affidavit-in-reply (at pp. 111 to 115) to the rejoinder of the applicant respondents 1 & 2 have asserted –

In the advertisement itself dated 04.07.1994 it is already mentioned that, the requisite qualification will be applicable for the post as prescribed by U.G.C. and Government such as

Master Degree with 55% percentage and in case of M.Ed., M.Phil., Ph.D., preference will be given to the candidate. The applicant is misinterpreting the requisite qualification as prescribed by the U.G.C. norms. The applicant from the beginning has not possessed the master degree qualification as basic qualification. As per the U.G.C./Govt./M.P.S.C. Rules following qualification is required–

a) M.Sc. in Mathematics 55%,

b) M.Ed. and

c) NET/SET/Ph.D. in Mathematics.

14. In her additional affidavit (at pp. 117 to 123) the applicant has reiterated –

In the said advertisement it is clearly mentioned that a candidate who possesses qualification of Master's Degree/Ph.D. at least in 2nd class will be given preference. It is submitted that in the said Advertisement it is nowhere mentioned in which subject a Master Degree/Ph.D. should be obtained. In fact, at the time of first appointment applicant was holding a Master Degree in M.Ed. i.e. Education with 56% marks.

15. Additional counter affidavit-in-reply of respondents 1 and 2 is at pp.128 to 132 in which they have stated –

The U.G.C. Rules as to the qualification for appointment have been adopted by the Government of Maharashtra. The basic qualification for appointment of the Lecturer in Mathematics subject is M.Sc. in

Mathematics, M.Ed., NET/SET or Ph.D.. The applicant is only B.Sc. and not M.Sc.in Mathematics. Further, the applicant is not NET/SET or Ph.D. in Mathematics Subject.

To this affidavit they have attached extract of the Gazette of India dated 18 September 2010 which prescribes the following qualification for the post of Assistant Professor –

4.4.0 ASSISTANT PROFESSOR

4.4.1. Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication

i. Good academic record as defined by the concerned University with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign University.

ii. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the U.G.C., or similar test accredited by the U.G.C. like SLET/SET.

iii. Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1, candidates, who are, or have been awarded a Ph.D. Degree in accordance with 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 condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or

equivalent positions in Universities/Colleges/ Institutions.

iv. NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.

16. The only point on which the applicant and the respondents are at variance is whether on the date of the advertisement the applicant possessed the qualification prescribed for the post of Assistant Professor by U.G.C..

17. According to the applicant, the advertisement dated 4.7.1994 prescribes P.G. qualification in any discipline with 55% marks and the applicant possessed this qualification since she was M.Ed. i.e. Master of Education and she had secured 56% marks in this examination. According to the respondent, the advertisement refers to the Master's Degree in the discipline as fixed by U.G.C. and Government and not just in any discipline. The advertisement states –

> अर्हता : यु.जी.सी. व शासनाने निर्धारित केल्याप्रमाणे वरिष्ठ अधिव्याख्यात्यांकरिता मास्तरची पदवी ५५% गुणांसह आणि कनिष्ठ अधिव्याख्यात्यांकरिता द्वितीय श्रेणी मास्तरची पदवी आणि बी.एड. एम.फिल. पीएच.डी. धारणकरणा-या आणि एन.इ.टी /सी.एस.आय.आर.., सर्वसमावेशक चाचणी उत्तीर्ण झालेल्या उमेदवारांना प्राधान्य देण्यात येईल.

The aforequoted portion fully supports contention of the respondent that Master's Degree in the relevant discipline was prescribed under the advertisement for the post of Assistant Professor. The applicant does not dispute that she is B.Sc. and does not posses Post Graduation Degree in Mathematics i.e. M.Sc.

18. According to the respondents, the applicant did not possess necessary qualification prescribed in Notification of U.G.C. dated 30.6.2010. I have already quoted this portion of Notification dated 30.6.2010. It is apparent on record that the applicant did not possess such qualification on the date of the advertisement. The question is whether the qualification prescribed in Notification dated 30.6.2010 will be applicable. This will have to be answered in the negative. The qualification prescribed by U.G.C. which was applicable on the date of the advertisement shall be relevant. So far as this aspect of matter is concerned, I have quoted relevant portion of reply of respondents 1 & 2 (at pp. 62 to 67). This portion of the reply refers to Notification dated 19.9.1991 issued by U.G.C.. It also refers to G.R. dated 18.10.2010 stipulating qualification for the post of Assistant Professor. Relevant part of Notification dated 19.9.1991 issued by U.G.C. reads –

1. Short Title, application and commencement:

i. These regulations may be called the University Grants Commission (Qualification required of a person to be appointed to the teaching staff of the University and institutions affiliated to it) Regulations, 1991.

ii. They shall apply to every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated College recognised by the Commission, in consultation with the University concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institutions deemed to be a University under Section 3 of the said Act.

iii. They shall come into force with immediate effect.

2. Qualification:

No person shall be appointed to a teaching post in Universityor in any of institutions including constituent or affiliated colleges recognised under Clause (f) of Section 2 of the University Grants Commission Act, 1956 or in an institution deemed to be a University under Section 3 of the said Act in a subject if he does not fulfil the requirements as to the qualification for the appropriate subjects as provided in the Schedule 1. Provided that any relaxation in the prescribed qualifications can only

be made by a University in regard to the posts under it or any of the institutions including constituent or affiliated colleges recognised under Clause (f) of Section 2 of the aforesaid Act or by an institution deemed to be a University under Section 3 of the said Act with the prior approval of the University Grants Commission.

***Provided further that these regulations shall not be applicable to such cases where selections through duly constituted selection committees for making appointments to the teaching posts have been made prior to the enforcement of these regulations*.**

Subject of G.R. dated 18.10.2001 is

विद्यापीठीय व महाविद्यालयीन अधिव्याख्याता पदाकरिता बिगर नेट/सेट अर्हता धारक अधिव्याख्यात्यांच्या सेवा पुढे चालू ठेवणेबाबत...

This G.R. states –

<u>प्रस्तावना-</u> विद्यापीठ अनुदान आयोगाने दिनांक १९.९.१९९१ रोजी निर्गमित केलेल्या अधिसूचनेतील विनियमांनुसार कला, चिज्ञान, वाणिज्य, विधी, शिक्षणशास्त्र, सामाजिक शास्त्रे, शारिरीक शिक्षण व परकीय भाषा या शाखातील अशासकीय व शासकीय महाविद्यालयातील अधिव्याख्याता पदावरील नियुक्तीकरीता किमान शैक्षणिक अर्हता खालीलप्रमाणे विहीत केली आहे.

अ) उमेदवाराने चांगल्या शैक्षणिक अहवालासह संबंधित विषयातील पदव्युत्तर पदवी किमान ५५ % मार्कासह उत्तीर्ण केली असली पाहीजे.

ब) याशिवाय विद्यापीठ अनुदान आयोगाची राष्ट्रीय पात्रता परिक्षा वा विद्यापीठ अनुदान आयोगाने अधिस्वीकृती दिलेली राज्यस्तरीय पात्रता परिक्षा (नेट/सेट) उत्तीर्ण केली असली पाहिजे.

२. दिनांक १९.९.१९९१ नंतर अधिव्याख्याता पदावर नियुक्ती दिल्या जाणा-या प्रत्येक उमेदवाराने वरील शैक्षणिक अर्हता/पात्रता धारण करणे विद्यापीठ अनुदान आयोगाच्या विनिमय १९९१ अनुसार बंधनकारक आहे.

It further states—

शासन निर्णय :- राज्यामध्ये अकृषि विद्यापीठे व महाविद्यालयांमधून १९.९.१९९१ ते ११.१२.१९९९ पर्यंत नियुक्त झालेल्या बिगर नेट/सेट अधिव्याख्यात्यांची संख्या ६००० च्या आसपास होते. हे लक्षात घेऊन, तसेच या अधिव्याख्यात्यांच्या नियुक्त्यांना ७ ते ८ वर्षे झाली असल्यामुळे त्यांच्या सेवा पुढे सुरु ठेवण्याबाबत लोकप्रतिनिधीनी वेळोवेळी केलेले प्रयत्न व त्यामुळे अंशत: शासन निर्णयात केलेले बदल लक्षात घेऊन विद्यार्थ्यांचेही शिक्षंकावाचून नुकसान होऊ नये या कारणास्तव रात्यातील १९.९.१९९१ नंतर लागलेल्या बिगर नेट/सेट परिक्षा धारकाबाबतचा धोरणात्मक निर्णय शासनाने घेतला आहे. तो पुढील प्रमाणे आहे :-

१) शासन निर्णय उच्च व तंत्र शिक्षण आणि सेवायोजन विभाग क्रमांक एनजीसी १७९४ /७९४५ /विशि-४ दिनांक २२.१२.१९९५ रोजी जे आदेश काढले आहेत ते रदद् करण्यात येत आहेत.

२) खालील अटींवर दिनांक १९.९.१९९१ ते ११.१२.१९९९ या कालावधीत अनुदानित, विना अनुदानित महाविद्यालयातून व संस्था यामधून त्यावेळेच्या निवड समितीमार्फत नियुक्त झालेल्या अधिव्याख्यात्यांच्या सेवा खंडीत होणार नाहीत :-

अ) या कालावधीत नियुक्त्या झालेल्या सर्व (बिगर नेट/सेट) अधिव्याख्यात्यांनी डिसेंबर २००३ पर्यंत नेट/सेट परिक्षा उत्तीर्ण होणे आवश्यक आहे.

It is not in dispute that since the applicant had acquired qualification of Ph.D. she was entitled to get exemption from passing NET /SET. The main hurdle in the way of granting reliefs claimed by her would be the required qualification prescribed in Clause (अ) which is quoted above.

20. Discussion made hereinabove will show that the applicant did not possess requisite qualification i.e. M.Sc. Mathematics on

the date of the advertisement / at the time of her initial appointment as Assistant Professor. If the words in the advertisement relating to qualification for the post of Assistant Professor are interpreted in the manner suggested by the applicant, qualification prescribed by U.G.C. would be rendered redundant which could never have been intended. Therefore, her prayers for regularization of services and consequential benefits cannot be granted. Hence, the order.

ORDER

(i) Application is dismissed.

(ii) No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 29/03/2022.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno	:	Raksha Shashikant Mankawde.
Court Name	:	Court of Hon'ble Member (J).
Judgment signed on and pronounced on	:	29/03/2022.
Uploaded on	:	29/03/2022.*