

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.266 OF 2021
AND
ORIGINAL APPLICATINO NO.712 OF 2021**

DISTRICT : RAIGAD

ORIGINAL APPLICATION NO.266 OF 2021

Smt. Sanjivani Shrinivas Paithankar.)
Age : 59 Yrs, Working as Assistant)
Professor, Government College of)
Education, Near S.T. Stand, Panvel,)
District : Raigad and residing at Flat No.)
A-002, Pushpamala Building, Sector-4,)
Navin Panvel, District : Raigad.)...**Applicant**

Versus

1. The Directorate of Education)
[Higher Education], M.S, having)
Office at Central Building, Pune – 1.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Higher & Technical Education Dept.,)
[Higher Education], Having office)
at Mantralaya, Mumbai – 400 032.)...**Respondents**

AND

ORIGINAL APPLICATINO NO.712 OF 2021

Smt. Sanjivani Shrinivas Paithankar.)
Age : 59 Yrs, Working as Assistant)

Professor, Government College of)
Education, Near S.T. Stand, Panvel,)
District : Raigad and residing at Flat No.)
A-002, Pushpamala Building, Sector-4,)
Navin Panvel, District : Raigad.)...**Applicant**

Versus

The Principal.)
Government College of Education,)
Having Office at Near S.T. Stand,)
Panvel, District : Raigad.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 08.03.2022

JUDGMENT

1. In O.A.No.266/2021, the Applicant prayed for direction to the Respondents to regularize her services and to extend all consequential benefits. Whereas, in O.A.No.712/2021, the Applicant has challenged the order dated 25.08.2021 whereby she was asked to clarify how she is entitled to Commuted Leave on medical ground, since her appointment is temporary. These two Original Applications being interconnected are being decided by common order.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is M.A.(English) and M.Ed. In pursuance of Advertisement published by Respondent No.1 – Director of Education dated 15.07.1993, the Applicant applied for the post of Lecturer in

English. Accordingly, she underwent selection process and came to be appointed by order dated 24.08.1993 in pay scale of Rs.2200-4000 on ad-hoc basis till the availability of candidates through MPSC. Accordingly, she joined at Government College of Education, Panvel. In advertisement, there was no condition for fulfilling NET/SET examination. Since date of appointment of the Applicant is in continuous service without any break and due to retire at the end of March, 2022. In terms of G.R. dated 20.04.2002, the Government had taken policy decision not to discontinue Lecturers who have not passed NET/SET subject to undertaking that they will have to pass the said examination upto December, 2003, else their services will be terminated. However, later University Grants Commission, Delhi, the condition of NET/SET has been relaxed in respect of Lecturers who have completed more than 5 years in service and accordingly issued communication dated 04.11.2008. The name of Applicant is amongst the candidates exempted from NET/SET qualification. Thereafter, Applicant made various representation for regularization and all other consequential service benefits. However, it was not responded. Since she is due to retire at the end of March, 2022, she approached Tribunal for regularization in service and consequential service benefits by filing O.A.No.266/2021.

3. Insofar as O.A.No.712/2021 is concerned, the Applicant was on leave from 20.01.2021 to 30.04.2021 on account of Covid-19 positive and was admitted in Hospital. She, therefore, applied for Commuted Leave on medical ground. However, no medical leave was granted and she was called upon by communication dated 25.08.2021 to explain how she is entitled to Medical Leave since her appointment is on ad-hoc basis. The Applicant has challenged the communication dated 25.08.2021 by filing O.A.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

5. Firstly, let us deal with relief claimed in O.A.No.266/2021 which pertained to regularization in service and pensionary benefits. Indeed, the entitlement of the Applicant for pension is no more *res-integra* in view of various decisions rendered by Hon'ble High Court as well as Government Resolution dated 29.10.2021 passed by Government recently. Undoubtedly, at the time of initial appointment of the Applicant, there was no condition for passing NET/SET examination. The Applicant was appointed on ad-hoc basis till availability of regular candidate by MPSC. Indeed, the condition of NET/SET qualification has been relaxed by UGC, as seen from communication dated 04.11.2008 addressed to Registrar, University of Mumbai and the name of Applicant is at Serial No.65 of the list annexed to the communication. The Principal, Government College of Education, Panvel, District Raigad forwarded proposal dated 01.07.2020 to Respondent No.1 for decision about the regularization of Applicant and retiral benefits.

6. The issue of entitlement to pension about Lecturers who were appointed without NET/SET examination firstly came for consideration before Hon'ble High Court in ***Writ Petition No.13166/2017 [Maruti D. Patil Vs. State of Maharashtra] decided on 03.10.2018*** and then again came before Hon'ble High Court in ***Writ Petition No.755/2019 [Ranpise Vijaykumar Baburao Vs. The State of Maharashtra] decided on 9th April, 2019***. In Writ Petition No.755/2019, Hon'ble High Court in Para Nos. 8 and 9 held as under :-

“8. *The issue is no more res integra. The Division Bench of this Court of which one of us (Gavai, J) was a party, through judgment and order dated 3rd October 2018 in Writ Petition No.13166/2017 (Maruti Dattatraya Patil Vs. The State of Maharashtra and ors.), has observed thus:*

“8. It can be thus seen that vide aforesaid G.R., the State Government has exempted the lecturers who are appointed between 23/10/1992 to 03/04/2000 and who were not possessing the net-set examination, M.Phil. and Ph.D. qualification. Only requirement is that the appointment of these lecturers is required to be made after following due selection process. The other requirement is that appointment of such lecturers ought to have been approved by the University and University should have submitted the proposal for

grant of approval of such teachers to the University Grant Commission.”

9. *Indisputably, the petitioner’s appointment is during the period exempted by the said G.R.. So not only the petitioner’s appointment is approved by the University but he has also been granted exemption.”*

7. The said issue again came up for consideration before Hon’ble High Court in **Writ Petition No.2068/2019 decided on 29.07.2019** and in **Writ Petition No.11316/2015 decided on 28.08.2019**. Hon’ble High Court granted relief of pension on the basis of last drawn salary and the Judgment in Writ Petition No.2068/2019 was confirmed by Hon’ble Supreme Court. Then again, same issue came up before Hon’ble High Court in **Writ Petition No.8724/2021 [Suklal Bansilal Marathe Vs. The State of Maharashtra] decided on 05.10.2021**. Hon’ble High Court after taking note of earlier decisions referred to above, the order of Government denying pension was quashed and set aside and directed the Government to grant pension on the basis of last drawn salary.

8. Apart, in view of all these decisions, the Government finally relented and by G.R. dated 29.10.2021 had taken decision to grant pension of such Lecturers/Associate Professors who were appointed in between 23.10.1992 to 03.04.2000 by deleting Condition No.18 of G.R. dated 27.06.2013 whereby Lecturers were held entitled to defined contributory pension scheme. As such, in view of all these decisions and recent G.R. dated 29.10.2021, Applicant’s claim for pension is totally infeasible and deserves to be granted.

9. The Applicant has claimed regularization with all consequential service benefits and now she is retiring at the end of this month. In view of the decision rendered by Hon’ble High Court in various Writ Petitions referred to above, the Applicant is held entitled to pension.

10. Insofar as O.A.No.712/2021 is concerned, the perusal of record reveals that Applicant had applied for Medical Leave by application dated

03.05.2021 and requested to grant Medical Leave from 21.01.2021 to 30.04.2021 (prefixing days i.e. Saturday and Sunday were holidays). In support of application, she also produced Medical Certificates issued by Hospital. However, instead of granting leave, she was asked to show the provision under which she is entitled to leave since her appointment is temporary. The perusal of discharge summary issued by Hospital reveals that Applicant was admitted in Hospital on 24.01.2021 and discharged on 25.02.2021 and she was diagnosed as 'Covid-19 Positive Critical acute respiratory distress syndrome with Type II Diabetes. As such, there is no denying that Applicant was hospitalized due to infection of Covid-19. As rightly pointed out by learned Advocate for the Applicant, the Government had taken decision to grant special leave to Government servants who are infected by Covid-19 disease. As such, Government's stand that Applicant was temporary employee, and therefore, she was not entitled to Medical Leave is totally irrational and illogical. As concluded above, the Applicant is entitled to treat her service as pensionable service, consequently, now the Government Respondent cannot take such a rigid and totally arbitrary stand that Applicant is not entitled to Medical Leave. The Respondents are, therefore, directed to grant leave for the period from 20.01.2021 to 30.04.2021 and necessary orders to that effect are required to be passed by Respondent/Principal, Government College of Education, Panvel.

11. The totality of aforesaid discussion leads me to sum-up that Applicant is entitled to pension and for grant of Medical Leave for the period from 20.01.2021 to 30.04.2021. Hence, the order.

ORDER

- (A) The Original Application No.266 of 2021 is allowed partly.
- (B) The Applicant is declared entitled to grant of pension considering her service from initial date of appointment and pension papers be accordingly processed.

- (C) O.A.No.712 of 2021 is allowed. The impugned communication dated 25.08.2021 in respect of leave is quashed and set aside.
- (D) The Respondents are directed to grant Medical Leave for the period from 20.01.2021 to 30.04.2021 and necessary orders to that effect be passed within a month from today.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 08.03.2022
Dictation taken by :
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2022\March, 2022\O.As.266 & 712.21.w.3.2022.Regularization of service.doc

Uploaded on