

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.02/2023
IN
ORIGINAL APPLICATION NO.562/2021**

DISTRICT:- PARBHANI

Alka D/o Bhaskarrao Naigaonkar,
Age : 62 years, Occu. : Pensioner,
(Retired as lecturer in History)
R/o : C-38, Yogeshwar Nivas,
Jagruti Colony, Vasmat Road,
Parbhani, Tq. & Dist. Parbhani.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through The Secretary,
Higher & Technical Education Department,
Mantralaya, Extension Bhawan, Mumbai-32.
2. The Director,
Higher Education, Maharashtra State,
Central Bldg, 3 B.J. Medical Road,
Agarkar Nagar, Pune-411 001.
3. The Principal,
Government College of Education,
Jintur Road, Parbhani,
Dist. Parbhani.

...RESPONDENTS

APPEARANCE : Shri S.D.Joshi, Counsel for Applicant.
: Shri V.R.Bhumkar, Presenting Officer for
the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Decided on: 24-11-2023

ORAL ORDER

1. Heard Shri S.D.Joshi, learned Counsel for the Applicant and Shri V.R.Bhumkar, learned Presenting Officer for the respondents.

2. By filing the present review application the applicant has sought review of the order passed by this Tribunal on 20-04-2023 in O.A.No.562/2021. Applicant was appointed as Lecturer on ad-hoc basis for 11 months vide order dated 20-11-1993. Applicant in the year 1994 filed O.A.No.237/1994 thereby seeking her continuation on the said post till regularly selected candidate or MPSC nominated candidate is appointed on the said post. Said O.A. was allowed and on that basis the services of the applicant were continued. On 20-04-2002 Government issued G.R. by taking a policy decision to regularize services of the ad-hoc Lecturers working in Government Colleges. Name of the applicant was included in the list of such candidates to whom the benefit was liable to be extended of that G.R. at Sr.No.15 of Annexure annexed thereto.

3. In the meanwhile, applicant was required to file another O.A. as in her place respondents appointed the

MPSC recommended candidate who was Lecturer in Marathi. O.A. so filed by the applicant was allowed on 22-07-2009. On 27-06-2013 Government issued G.R. thereby regularizing services of non-NET, non-SET Lecturers working in non-agricultural universities and affiliated non-government aided colleges. Applicant got retired on 30-06-2021 on attaining the age of superannuation. As no retiral benefits were extended to her, she approached the Tribunal by filing O.A.No.562/2021 claiming the following reliefs:

“8. RELIEFS SOUGHT:-

- A) *This Original Application may kindly be allowed;*
- B) *By issue of an appropriate order or direction, Respondent Nos. 1 to 3 to treat the services of the applicant as regular w.e.f. the date of initial appointment i.e. from 10/11/1993 till the date of retirement on superannuation on 30/06/2021 and extend all the service benefits due and payable to her and carry out the quantum of pension fixation on that basis and grant other consequential retirement benefits w.e.f. 01/07/2021.*
- C) *By issue of an appropriate order or direction, the respondents No. 1 to 3 may kindly be directed to treat the entire service of about 28 years as regular service and extend all the retirement benefits like regular pension, provident fund,*

along with arrears thereto within in such period as may be deemed fit by this Hon'ble Tribunal.

4. Respondent nos.1 to 3 filed their affidavit in reply on 14-01-2022 in the said O.A. It is a short affidavit of two pages. Paragraph nos.4, 5 and 6 are material in the context of the prayers which were made by the present applicant. We deem it appropriate to reproduce the said paragraphs ad-verbatim which read thus:

“4. I say and submit that as per Government Resolution dated 18.10.2001 and dated 27.06.2013, the service of non-net / set teachers appointed from 23.10.1992 to 03.04.2000 has been continued till the date of retirement. It has been decided now vide Government Resolution dated 29.10.2021 that Pensionary benefits will be payable as per the prevailing policy.

5. I say and submit that the petitioner's appointment is within the period of 23.10.1992 to 03.04.2000. On the basis of Government Resolution dated 18.10.2001, her appointment has been continued as per Government Resolution dated 20.04.2002. Therefore, now as per Government Resolution dated 29.10.2021, taking into account the date of her original appointment she will be paid only pension as per prevailing policy.

6. *I say and submit that pursuant to the order of Hon'ble Tribunal dated 09.12.2021 & now as per the Government Resolution dated 29.10.2021, petitioner/applicant will be paid only retirement benefits as per the prevailing policy, taking into account the date of their original appointment. Hence this affidavit.”*

The Tribunal, however, dismissed the O.A. vide the impugned order passed on 20-04-2023.

5. Shri S.D.Joshi, learned Counsel appearing for the applicant submitted that the applicant has sought review of the said order mainly on the ground that the Tribunal has not considered the evidence on record. Learned Counsel submitted that the contentions raised on behalf of the respondents in their affidavit in reply in a way support the case of the applicant. Learned Counsel further submitted that the G.R. dated 29-10-2021 is also referred in the said affidavit in reply whereby the Government has resolved to make the Government employees entitled for pension whose appointments were continued during the period between 23-10-1992 to 03-04-2000. The learned Counsel submitted that without considering the stand taken by the respondents in their affidavit in reply and without taking into account the G.R. dated 29-10-2021, the

Tribunal has passed the order which has caused serious prejudice to the applicant. In the circumstances according to him the review petition deserved to be allowed. We deem it appropriate to reproduce hereinbelow the entire text of the said G.R. as it is in vernacular, which reads thus:

“दि.२३.१०.१९९२ ते दि.०३.०४.२००० या कालावधीत नियुक्त बिगर नेट/सेट अध्यापकांना सेवानिवृत्तीवेतनाचे लाभ अनुज्ञेय करण्याबाबत.

महाराष्ट्र शासन
उच्च व तंत्र शिक्षण विभाग
शासन निणय क्रमांक: बैठक-२०२०/प्र.क्र. / /विशि-
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प्रस्___:-

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चि प्रयोजनाथ ग्रह ण निणय त ध
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6. According to the applicant in view of the aforesaid G.R. application filed by the applicant was liable to be allowed. However, it is the grievance of the applicant that without considering or without referring to the said decision, Tribunal has dismissed the O.A. filed by the applicant. According to the learned Counsel for the applicant it is apparent error on the face of record and hence the applicant is justified in seeking review of the said order.

7. The contentions so raised are opposed by Shri Bhumkar learned P.O. Learned P.O. submitted that the Tribunal has elaborately discussed the reasons for not holding the applicant entitled for the reliefs claimed by her. In the circumstances, only because some G.R. is not referred to by the Tribunal in the said judgment cannot be held to be an apparent error on the face of record. Learned P.O. submitted that considering the tenor of the judgment the only remedy to the applicant is to file an appeal or Writ Petition against the said order, however, review would not lie. He, therefore, prayed for rejecting the review application.

8. We have duly considered the submissions made on behalf of the parties. We have also perused the judgment delivered by this Tribunal in O.A.No.562/2021. We have also perused the affidavit in reply filed on behalf of the respondents in the said matter as well as G.R. dated 29-10-2021. We may not enter into the discussion whether the aforesaid G.R. would be of any help to the applicant in order to prove her case or whether the affidavit in reply filed on behalf of the respondents supports the case of the applicant. However, not to even refer to the said averments and not to consider the provisions containing in the G.R. in question, is certainly a fact which according to us can be said to be an apparent error on the face of record. It further appears to us that non-reference of the contentions raised by the respondents in their affidavit in reply wherein the respondents have accepted the entitlement of the applicant for pension and certain other benefits also can be held to be an error on the face of record. We are, therefore, inclined to allow the present review application. Hence, the following order:

ORDER

- [i] Review Application No.02/2023 is allowed.
- [ii] Order dated 20-04-2023 passed in O.A.No.562/2021 stands recalled.

[iii] O.A.No.562/2021 be heard in accordance with law and be listed for hearing on 12-12-2023.

[iv] No order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)
Place : Aurangabad
Date : 24-11-2023.

(P.R.BORA)
VICE CHAIRMAN