This Order is modified/corrected by Speaking to Minutes Order dated 18/04/2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5089 OF 2015

Mrs. Madhuri Sanjeev Ratnaparkhi
& ors. ..Petitioners
Vs.
The State of Maharashtra & ors. ..Respondents

.....

Mr. Uday P. Warunjikar for petitioners.
Ms. Rimi Jain I/b. Rui A. Rodrigues for respondent Nos.2 and 3.
Mrs. R.M. Shinde, AGP for State.

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CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.

RESERVED ON : 6th FEBRUARY, 2019
PRONOUNCED ON : 15th MARCH, 2019

JUDGMENT (PER M.S.KARNIK, J.):-

. Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners are challenging the decision dated 27/11/2015 taken by the respondent No. 1 – Principal Secretary, Higher and Technical Education Department, rejecting the proposal of the petitioners for

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converting the part time lecturer posts in the college to full time posts.

3. The facts of the case in brief are as under :

The petitioner No.1 was appointed on temporary basis as a part time Lecturer in the subject of Family Management Resources on 17/8/1993. After following the procedure prescribed by the Maharashtra Universities Act, 1994 (hereinafter referred to as 'the said Act' for short) , the petitioner No.1 was appointed on the post of part time Lecturer with effect from 25/7/1995. The petitioner No.1's services came to be confirmed by the Registrar of the University vide order dated 4th September, 1997. The petitioner No.1 was granted senior scale with effect from 19/3/2005 on completion of the requisite number of years of service. Likewise the petitioner No.2 and petitioner No.3 were appointed as part time Lecturers.

4. As there was workload of full time Lecturers available, the respondent No.2 – SNDT Women's University, made a request to the respondent No.1 – Joint Director of

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Higher Education for permission to convert the part time Lecturer posts into full time Lecturer posts, with a request that the petitioners be appointed in the said posts. The communication making this request for conversion of part time Lecturer posts into full time posts was sent on 11/2/2011 by the respondent No.3 to the Joint Director of Higher Education. Even the respondent No.2 – SNDT Women's University, on 28/6/2011, made a specific recommendation to the Joint Director in favour of the petitioners.

5. The respondent No. 2 – University granted approval to the petitioners' appointment on full time basis considering the workload available vide orders dated 11/6/2010 and 6/4/2011. Thus, by these orders, existing permanent posts of part time Lecturer, was converted to that of full time Lecturer posts by the respondent No.2 – University. The petitioners since the date of the conversion are rendering services as full time Lecturers on the said posts.

6. The petitioners place reliance on the G.R. dated

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8/8/1996, which is at page 30 of the paper-book. This G.R. provides that if a part time teacher is appointed by following due process of selection by Selection Committee, and if he is holding necessary educational qualifications, upon the post being converted into a full time post, the part time Lecturer is to be appointed in the full time post without going through the process of regular Selection. It is submitted that the University by three different letters had requested for conversion of the part time Lecturer posts into full time posts. Not only that, the appointments are made as full time Lecturer effective from 11/6/2010 in case of the petitioner No.1 and from 6/4/2011 in case of the petitioner Nos.2 and 3. The petitioners are discharging their duties as full time Lecturers in these posts.

7. Relying on the University Statute 124, learned Counsel for petitioners submitted that if, for any subject, the part-time teacher is appointed through the proper selection committee after following due procedure, and if subsequently workload in the same subject is increased to 12 periods or more

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due to any reason, then such part-time teacher shall be made full time. It is the contention of learned Counsel that the workload is more than 12 periods in a week and even the respondent No.2 in terms of the G.R. and the Statute converted the post of part time Lecturers into full time Lecturers subject to the approval of the Director of Higher Education, Pune.

8. The proposal of the petitioners for approval was forwarded to the Joint Director of Higher Education. The Joint Director of Higher Education recommended the case of the petitioners on 1/1/2013 to the Director of Higher Education. The Director of Higher Education forwarded the proposal of the petitioners to the Principal Secretary of the Higher and Technical Education viz. the respondent No.1 herein on 15/6/2013. The proposal forwarded for approval remained pending with the respondent No.1 without any decision being taken.

9. In the meantime, respondent No.2- University issued an advertisement for filling up the posts occupied by the

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petitioners. This Petition therefore came to be filed. By an order dated 29/10/2015, this Court directed the respondent No.1 to decide the proposal forwarded by respondent No.2. During the pendency of this Petition, by an order dated 27/11/2015, the proposal for approval of the petitioners' appointment was rejected.

10. Learned AGP appearing on behalf of the respondent No.1 invited our attention to the affidavit-in-reply filed by Mr. Rohidas B. Kale, In charge Joint Director, Higher Education, Mumbai Region, Mumbai, on behalf of the respondent No.1. In the affidavit it is stated that by a G.R. dated 27/5/2009, staffing pattern of the respondent No.2 – University was fixed after approval of the High Power Committee constituted under G.R. dated 10/1/2001. As per the staffing pattern there is one part-time post sanctioned for the subject of Family Resource Management and two part-time posts sanctioned for Food Science and Nutrition for respondent No.3 – College. In paragraph 6 of the affidavit-in-reply, it is stated that the staffing

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pattern sanctioned for S.N.D.T. Women's University is as per the G.R. dated 27/5/2009 which was inter alia approved by the High Power Committee headed by the Chief Secretary constituted vide G.R. dated 10/1/2001 and therefore, it is not possible to make any changes in the said staffing pattern at their level. This has been informed to respondent No.2 – University by letter dated 27/11/2015.

11. We have heard learned counsel for the petitioners and learned AGP appearing on behalf of the respondent No.1 as well as learned counsel appearing on behalf of the respondent Nos. 2 and 3. We have also gone through the Petition and the annexures thereto. We have perused the affidavit-in-reply filed by the respondent No.1 as also the rejoinder filed by the petitioners thereto.

12. The petitioners were working as part time Lecturers and appointed by a duly constituted Selection Committee as per the Rules in force. It is not in dispute that the workload in the respondent No.3 – college increased, therefore, the respondent

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No.2 – University converted the posts of part time Lecturers to full time Lecturer posts and a proposal thereon was submitted to the Joint Director of Higher Education for approval.

13. Even the appointment of the petitioners on part-time basis was in accordance with prescribed selection procedure under Section 76(2) of the said Act. On account of there being workload for full time Lecturers, the respondent No.2 – University converted the existing permanent post of part time Lecturers to those of full time Lecturers. It is specifically mentioned that the posts are converted to full time due to increase in workload as per G.R. dated 8/8/1996. This was, however, subject to approval of Director of Higher Education, Pune.

14. That there is adequate workload for full time lecturers is not in dispute. Even the Joint Director of Higher Education recommended the case of the petitioners for approval and for passing appropriate order for conversion of the part time lecturer post to full time lecturer posts. Even after certain

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queries were raised, on compliance, the Joint Director of Higher Education again recommended the case of the present petitioners on 1/1/2013 to the Director of Higher Education who forwarded the proposal to the Principal Secretary, Higher and Technical Education Department.

15. The Statutes of the respondent No.2 – University, more particularly Statute 124 clearly mentions that if, for any subject, a part-time teacher is appointed through a properly constituted selection committee and if subsequently workload in the same subject is increased to 12 periods or more, due to any reason, then such part-time teacher shall be made full time. As observed earlier, the part-time appointment of the petitioners is through the proper Selection Committee constituted for the purpose. In terms of the statute, even the University having realised that the workload has increased and that there being adequate workload for a full time Lecturer, has submitted the proposal for approval for conversion of the post of part-time Lecturers as full time. Pursuant to the conversion of the posts to

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full time by the University, the petitioners have been discharging their duties as full time Lecturers. The proposal for conversion and approval was recommended by the Joint Director of Higher Education and even the Director of High Education has forwarded the recommendations to the respondent No.1.

16. The G.R. dated 8th August, 1996 clearly mentions that if the appointment of a teacher on a part time post is in accordance with the procedure prescribed, then, for the purpose of his appointment on full time basis, there is no need to undergo a fresh selection process. The petitioners have requisite qualifications required for appointment as Lecturers. In fact though the proposals for approval were submitted as far back as in 2009 and 2011, the impugned order rejecting the proposals came to be passed only on 27/11/2015.

17. As narrated earlier, in view of the increased workload, the University converted the post of part time Lecturers to full time and the petitioners are working as full time Lecturers pursuant to such conversion. The record clearly

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indicates that there is more than adequate workload available for the posts of full time Lecturers on which the petitioners are appointed. The University having taken a decision in terms of the statutes applicable to them, converted the posts of part time Lecturers to full time Lecturers in view of the increased in workload, and as even the Joint Director of Higher Education positively recommended the proposal of the University for such conversion, there was no reason why the said proposal deserved a rejection.

18. The impugned order mentions that as per the staffing pattern of the University there are seven approved posts of part time Lecturers. For S.N.D.T. College of Home Science, Pune, three part-time Lecturers posts are approved. The only reason for rejection of the proposal is that since the staffing pattern is in place, the three posts of part-time Assistant Lecturers cannot be converted into full time Assistant Lecturer posts. This reasoning, in our opinion, is not just and proper. The staffing pattern undoubtedly is based on the workload available

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at the relevant point of time. Over a period of time as the workload is increased, as per the provision in the statute viz. Statute 124, the University decided to convert the part time posts held by the petitioners to full time basis. When there is a adequate workload available on which the petitioners are already discharging their duties, and as there exists a provision in the statute for such a conversion, rejecting the proposal for approval on the ground that the staffing pattern is finalized as per G.R. dated 27th May, 2009 is unsustainable. No doubt, G.R. dated 27th May, 2009 provides for fixing a staffing pattern, but to then say that changes in the staffing pattern is not possible despite admitted increase in workload is untenable. The G.R. dated 27/5/2009 only provides for a staffing pattern which was approved by the High Power Committee headed by the Chief Secretary which was constituted vide G.R. dated 10/1/2001. The staffing pattern obviously is based on the workload that existed as on the date when the proposal for finalizing the staffing pattern was submitted. The said G.R. does not override the Statutes of the University as also the earlier G.R. of 1996.

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Nor does the fixing of the staffing pattern take away the power of respondent No.1 to approve proposals in case of increase in workload. In view of the specific provision viz. Statute 124 which exists and also in view of the G.R. of 1996, we do not find that the respondent No.1 is justified in rejecting the proposal for approval for conversion of the posts of part-time Lecturers to that of full time Lecturers. On the contrary, this was a fit case for the respondent No.1 to have granted approval for such conversion, as not only the University in accordance with Statute 124 as well as the G.R. of 1996, converted the posts of part time Lecturers to full time Lecturers posts in view of the increase in workload; but even the petitioners who are discharging duties as full time Lecturers were appointed initially as part time Lecturers after a proper selection process, who by virtue of G.R. of 1996 need not undergo a fresh selection process and are entitled to continue on the posts upon its conversion to full time.

The Petition, therefore, deserves to succeed.

19. The impugned order dated 27/11/2015 is quashed

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and set aside. The respondent No.1 is directed to approve the proposal submitted by the respondent No.2 as recommended by the Joint Director of Higher Education in terms of his recommendation dated 4/5/2012 at Exhibit 'N' which is at page 38 of the paper-book.

20. Rule is accordingly made absolute with no order as to costs.

(M.S. KARNIK, J.) **(S.C. DHARMADHIKARI, J.)**

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