

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 10838 OF 2011

Prof.Prakash Pandurang Jagtap.	...	Petitioner.
V/s.		
The State of Maharashtra and others.	...	Respondents.

WITH
WRIT PETITION NO. 190 OF 2012

Smt.Neeti Anil Badwe and others.	...	Petitioners.
V/s.		
State of Maharashtra and others.	...	Respondents.

WITH
WRIT PETITION NO. 7478 OF 2012

Dr.Chaitanya Sudhakar Thakur.	...	Petitioner.
V/s.		
State of Maharashtra and others.	...	Respondents.

Neel Pungalia for the petitioner in W.PNo.10838/2011

A.V.Anturkar with Sandeep Phatak i/b. S.B.Deshmukh
for the petitioners in W.PNos.190/2012 and W.PNo.7478/2012.

Mrs.Neha Palshikar Bhide, 'B' Panel A.G.P for respondents
Nos.1 to 3 in W.PNos.10838/2011 and 190/2012 and
for respondent Nos.1 and 2 in W.PNo.7478/2012.

Milind Deshmukh for respondent No.4 in W.PNo.10838/2011.

G.S.Kulkarni i/b. Mrs.M.G.Kulkarni for respondent Nos.4 and 5
in W.PNos.190/2012 and for respondent No.3 in W.PNo.7478/2012.

**CORAM : S.C.DHARMADHIKARI AND
MRS.REVATI MOHITE DERE, JJ.**

DATED : 24th December 2013.

PC.

The petitioners have challenged in these writ petitions the orders/communications dated 21st October 2010 issued by the Joint Director of Higher Education, Kolhapur informing that the Pension-cum-Gratuity Scheme dated 21st July 1983 read with Government Resolution (G.R.) dated 10th August 1994 is not applicable to the petitioners.

2. Mr. Anturkar, learned counsel appearing for the petitioners in all these petitions has contended, firstly, that prior to 1st October 1982 teaching and non-teaching employees working or retired from private aided affiliated colleges were governed by the Contributory Provident Fund Scheme ("C.P.F. Scheme" for short) in which the management of the college as well as employees were required to equally contribute the amount at the rate of 9% of their salary every month. The fund so constituted consisting of management's and employee shares was payable to the employee with simple interest, upon his/her retirement as contributory provident fund.

3. By the G.R. dated 21st July 1983, the first respondent introduced a Pension-cum-Gratuity Scheme for teaching as well as non-teaching employees of the private aided affiliated colleges in the State. The scheme was clarified by subsequent G.R. dated 20th June 1984 and

15th December 1984. Mr.Anturkar submits that in the petitions the petitioners have pointed out salient features of this scheme and have urged that the scheme should be made applicable to those employees who were in service but expired on the last date prescribed for giving option to switch over to the Pension-cum-Gratuity Scheme from C.P.F. Scheme. This is also clarified by the G.R. Mr.Anturkar submits that in para-7 of memo of first writ petition it has been stated that Pension-cum-Gratuity Scheme was more beneficial than the C.P.F. Scheme for the teaching employees working in the private aided affiliated colleges. Therefore, it was represented to the State Government by the association of employees, who had opted for C.P.F. Scheme, that the benefits of the Pension-cum-Gratuity Scheme should be made applicable even to those who had given option but failed to exercise the same. It was pointed out to the Government that continuance of C.P.F. Scheme in respect of those, who exercised their option was causing great hardships and amounted to denial of the benefits which were available to the employees who belonged to the same class on the criteria of exercise of option. In these circumstances, a further G.R. dated 10th August 1994 was issued and it was clarified that benefits of the Pension-cum-Gratuity Scheme would be made applicable to all the employees irrespective of their exercising option for C.P.F. Scheme.

4. Relying upon this G.R., copy of which is annexed to the petition, it is submitted by Mr.Anturkar that the petitioners opted in March 1984 for C.P.F. Scheme but by virtue of this G.R. they sought a switch over and it is that request which has been denied by the impugned decision of the Joint Director.

5. Mr.Anturkar has submitted that in the writ petitions there are specific instances given by the petitioners and of such of the employees who had opted for the very benefits and they were granted the same. The specific instances which have been cited by Mr.Anturkar are stated in memo of Writ Petition No.190/2012 (Smt.Neeti Anil Badwe and others V/s. State of Maharashtra and others). Mr.Anturkar has, therefore, submitted on the basis of these very illustrations and instances that the petitioners also should have been granted the same benefits and the order of the Joint Director, therefore, deserves to be set aside because it is discriminatory and arbitrary and in violation of mandate of articles 14, 16, 21 and 300A of the Constitution of India. Upon being pointed out that there is vital difference between the Pension-cum-Gratuity Scheme and C.PF. Scheme and both cannot be equated, Mr.Anturkar submitted fairly that in the light of the decision of the Constitution Bench of the Hon'ble Supreme Court in *Krishena Kumar v. Union of India*, 1990 (4) SCC 207, the first point is not pressed by him. He does not equate both schemes and, therefore, the petitioners cannot be heard to say, according to him, that the Pension-cum-Gratuity Scheme and C.PF. Scheme are at par with each other.

6. Further Mr.Anturkar submits that the challenge to the impugned order on the wording of the G.R. dated 10th August 1994 is alive. That is also alive because similar benefits as are claimed by the present petitioners were claimed by the teachers whose instances have been cited in memo of Writ Petition No.190/2012. They relied on the

G.R. of the very date and, therefore, the petitioners' case is on all fours and par with these teachers. Mr.Anturkar has taken us through the affidavit in reply filed by the State and submitted that the specific allegations in the writ petitions have not been denied.

7. On the earlier occasion we have heard Mr.Anturkar for the petitioners and Ms.Palshikar for respondent Nos.1 to 3. With their assistance, we have perused the memo of writ petitions, annexures thereto and the reply affidavits. We enquired from the learned A.G.P. as to whether the G.R. dated 10th August 1994 has either been superseded, modified or cancelled by any further circular or resolution. It is fairly stated that neither there is any clarification nor any supersession of this resolution.

8. What we have noted is that the Joint Director of Higher Education has informed the petitioner by the order dated 21st October 2010 that on 19th November 2009 a judgment was delivered by the Division Bench of this Court at Nagpur in Writ Petition No.109/2009 and in that judgment the Division Bench had directed that once the option is exercised for the C.PF. Scheme or Pension-cum-Gratuity Scheme, that option is final and cannot be changed. The petitioner in the first petition, namely, Prof.Prakash Pandurang Jagtap has sought a switch over prior to four months of his retirement. In such circumstances, he cannot be granted the benefits of Pension-cum-Gratuity Scheme.

9. Mr.Anturkar has taken us through the aforesaid judgment of the Division Bench of this Court and with his assistance and of the A.G.P we have perused the copy thereof which is placed on our file. That Division Bench judgment has been delivered in the case of ***Smt.Maya d/o. Hariharrao Deshpande v. The State of Maharashtra and others***, Writ Petition No.109/2009 decided on 19th November 2009. Therein the petitioner was employed with respondent No.4 on 3rd July 1973 and remained in service till she attained an age of 60 years which is the age of superannuation. The Court decided the controversy on the footing that there is only one G.R. of the Government, namely, G.R. dated 21st July 1983 and that prescribed that option once given is final. However, the G.R. dated 10th August 1994 was placed on record. The Division Bench was of the view that the petitioner before the Court desires to resile from her option. Though she believed that this would not amount to resiling from the option, but her claim was that despite of her option for C.P.F. Scheme, she should be given pension by disregarding her option. The Division Bench relied upon the earlier judgment of the Division Bench of this Court in ***Retired Employees of Non-Govt. College Association, Nagpur v. State of Maharashtra and others.***, 1987 Mh.L.J. 326 and held that once the employee of the private aided college appointed prior to 1982 and continued in service thereafter exercises an option then that option cannot be altered for the simple reason that this is a retraction. In para-13 of the judgment, the Division Bench has held as under:

13. It is seen that the employees, who remain in employment after 1st October, 1984 and opt for such Contributory Provident Fund, are not entitled to

pension, once they opt for Contributory Provident Fund, and this aspect was never under challenge in past and even now it is not under challenge.

10. However, the attention of the Division Bench was not invited to the G.R. dated 10th August 1994 in its entirety. The Government was aware of the hardship of such to those who were covered by the earlier G.R. dated 21st July 1983. The Government, therefore, directed that all such employees who have been employed in the educational institutions, viz., non agricultural universities and affiliated non-government colleges after 1st October 1982 and are in service or would be recruited thereafter then all such teaching and non-teaching employees would be entitled only to the Pension-cum-Gratuity Scheme. Therefore, such of the employees who have not taken advantage of the Pension-cum-Gratuity Scheme, then, irrespective of whether they opted for C.P.F. Scheme or otherwise, they would only be entitled to the Pension-cum-Gratuity Scheme. This clearly means that such of the employees who have not given any option, viz., for C.P.F. Scheme even they would be entitled to the benefit of the G.R. dated 10th August 1994. Those who have given an option for C.P.F. Scheme or such of those who have not given option for Pension-cum-Gratuity Scheme, the G.R. clarifies that in case of both only the Pension-cum-Gratuity Scheme would be applicable from the date of issuance of the G.R.

11. The petitioners in each of these petitions have stated that they joined the services of the University on the dates mentioned in the petitions. They may have been recruited or appointed prior to 1st October 1982. However, the G.R. dated 10th August 1994 applies only to those

who are appointed after 1st October 1982 and are in service on the date of the issuance of G.R. In such circumstances, in the light of the date of their appointment, if they are in service on 10th August 1994, then, they would be entitled to the benefit of the same. We find that this is a stipulation in this G.R. and based on which the petitioners have stated that the benefit has been extended by respondents by allowing switch over or change in number of cases, namely, Shri Avinash V. Dharmadhikari and Prof.Dr. A.S. Nigwekar and in both cases though the G.R has been referred, what the Government has said is that they were entitled to the benefits flowing from this G.R. of 1994. This specific allegation and statement have not been dealt with leave alone denied by respondent Nos.1 to 3. In fact, G.R. dated 10th August 1994 referred to the earlier G.R of 1993. It also states that the option once exercised would be final. However, what has been noted by the G.R. of August 1994 is that such of the persons who have been appointed after 1st October 1982 and were in service, those employees would be entitled to the benefits of the Pension-cum-Gratuity Scheme. Mr.Anturkar has rightly placed reliance upon the wording of G.R. of 1994 which refers to the set of employees appointed after 1st October 1982 and in service and those appointed after 10th August 1994. What we have found is that in the cases of Mr.Dharmadhikari and Prof.Nigwekar it has not been clarified by the petitioners as to what was the date of their appointment. Annexure-P to Writ Petition No.190/2012 and based on which the illustrations are cited would go to show that the same does not indicate the date of appointment of Prof. Nigwekar. It does not indicate as to how and in what manner the benefit of G.R. of 1994 has been extended to Prof.Nigwekar.

12. We find that though the Division Bench judgment has been relied upon by the Joint Director of Higher Education, the said judgment dealt with the case, where the employee had been appointed prior to 1st October 1982. The G.R. of 1994 has been issued in cases of those employees who have been appointed after 1st October 1982 and are in service. It also applies to those who have been appointed after 10th October 1994. We do not know in what circumstances, and despite judgment of the Hon'ble Division Bench and, equally, of the Hon'ble Supreme Court the benefit has been extended to Mr. Nigwekar and Mr. Dharmadhikari. It is, therefore, not clear to us that from the illustrations and these two instances that the Government has deviated in any manner from the contents of the G.R. dated 10th August 1994 or the orders which have been passed in the above cases.

13. In the circumstances, though we are not inclined to accept the contention of Mr. Anturkar in the teeth of clear pronouncement of law by the Hon'ble Supreme Court, yet, this is a fit case for referring the matter back to the Joint Director for fresh examination of the cases of the present petitioners in the light of the illustrations referred by us and G.R. dated 10th August 1994. We do not think that the Division Bench has laid down a law which can be said to be contrary to the decision of the Hon'ble Supreme Court or ignoring the G.R. dated 10th August 1994. However, if that G.R. has restricted application and to certain categories of employees, if the benefit has still been extended to said Prof. Mr. Nigwekar who happened to be earlier Vice Chancellor of the Pune University and

Chairman of the University Grants Commission and Mr. Dharmadhikari who was Deputy Finance Officer of the Pune University, which has not been clarified in the affidavits filed on behalf of respondent Nos.1 to 3. In these circumstances, the Joint Director of Higher Education should examine the cases of the petitioners in the light of these two illustrations and the G.R. dated 10th August 1994. He should pass a fresh order in terms of this resolution and communicate the same to the petitioner as expeditiously as possible and within a period of three months from the date of receipt of this order.

14. All the writ petitions are disposed of in the aforesaid terms. There shall be no order as to costs.

(REVATI MOHITE DERE, J.)

(S.C.DHARMADHIKARI , J.)