

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 1000 OF 2015

Shri. Bhagwan s/o. Babshetty Patil **....Petitioner.**

Versus

The State of Maharashtra & Ors. **....Respondents.**

Mr. S.B. Talekar, Advocate for petitioner.

Mr. K.S. Patil, AGP for respondent Nos. 1 to 3.

Mr. V.P. Latange, Advocate for respondent No. 4.

Mrs. Anjali Bajpai Dube, Advocate for respondent Nos. 5 and 7.

**CORAM : T.V. NALAWADE &
INDIRA JAIN, JJ.**

DATED : 7th May, 2015.

ORDER :

1. The petition is filed to direct respondent Nos. 5 and 6, the Institution and the College, employer of the petitioner, to forward the proposal of the petitioner for grant of extension of the period of superannuation from 60 years to 62 years and for relief of setting aside the order of employer dated 1.1.2015 that the petitioner stands retired from service with effect from 31.1.2015. Both the sides are heard.

2. The petitioner was working as Assistant Professor in

the Law College, with respondent No. 6. He completed 60 years of age on 31.1.2015. It is the case of petitioner that he is entitled to the benefits of Government Resolution dated 5.3.2011 of Higher and Technical Education Department of the Government, in which the decision is informed to increase the age of retirement of Professors from 58 years to 62 years. It is contended that there was some litigation between him and the employer and due to that, his case is not considered by respondent Nos. 5 and 6 and the case is not forwarded for review of performance to the Committee constituted under this Government Resolution. It is contended by the petitioner that there is nothing adverse against him and so, he would have got the continuation after review of his performance.

3. It is the case of the College that the continuation of such teaching staff beyond the age of 60 years is subject to clearance regarding physical and mental fitness by the Government Medical Committee and further, the teaching staff must be having necessary qualifications and he needs to satisfy other eligibility conditions mentioned in the Government Resolution. Though it is contended in the reply affidavit by the College that it was necessary for the present petitioner to have Ph.D. degree for getting such continuation as per the

Government Resolution, during arguments this point was not pressed and it was submitted that the petitioner himself did not show interest in getting benefit of the scheme and he did not face the Government Medical Committee for his assessment for physical and mental fitness. It is also contended that he opted for having pensionary benefits and on his request, the matter of pension was processed and so, no relief can be granted to him.

4. The aforesaid Government Resolution shows that before giving the extension of two years, the Committee constituted is expected to take performance review of such teaching staff. On the basis of recommendation of such Committee, the Government can give the extension. In Clause No. 11 of the Government Resolution, the conditions which need to be fulfilled for getting extension are mentioned. One condition is that the Professor/Principal needs to be both physically and mentally fit and for proving that, he needs to produce the certificate issued by the Government Medical Committee before 3 months of date of completion of 60 years of age. Clause No. 12 of the Government Resolution shows that the proposal needs to be forwarded by the concerned Institution one month prior to the date of completion of age of 60 years by the said teaching staff. The Scrutiny Committee constituted for the purpose of

forwarding the proposal for review are mentioned in Clause No. 12.

5. There is one more Government Resolution dated 23.11.2011 which shows that new performance Committees came to be constituted in University for reviewing the cases of the persons like petitioner. There are other eligibility conditions mentioned, but they need not be discussed in the present matter in view of the nature of dispute involved.

6. A copy of letter given by the Principal of the College of the petitioner is produced and this letter dated 25.6.2014 shows that a request was made to the aforesaid Medical Committee to examine the petitioner for the present purpose. It is not disputed that such letter was given by the employer to the petitioner. There is letter of Medical Superintendent of the concerned hospital showing that the petitioner was expected to appear for examination before the Committee on 14.7.2014. The letter was sent on 9.7.2014. Even if, it is presumed that the letter was received late by the petitioner i.e. on 17.7.2014, it was necessary for him to take steps for getting medically examined after 17.7.2014. No such steps were taken by him and so, inference needs to be drawn that he preferred not to appear

before the said Medical Committee. On the contrary, he gave letter to the Principal on 4.10.2014, requesting him to process his matter of pension. Admittedly, the pension matter was processed by the College and it is forwarded to Accountant General, Nagpur. The relevant record in that regard is also produced.

7. It appears that on 8.1.2015 the petitioner gave one more application for giving him extension. The College informed that the petitioner had not taken aforesaid necessary steps and it was too late for him.

8. The learned counsel for petitioner submitted that the petitioner is ready to face the aforesaid Committee of Government Hospital and a direction can be given to consider the petition for the extension of the age of superannuation. This Court has no hesitation to hold that in view of the aforesaid facts and circumstances, such direction cannot be issued. When the Government prescribes some procedure and some conditions are laid down for getting the benefit of such scheme, it is necessary for the persons like petitioner to comply those conditions strictly. The nature of the scheme shows that the extension is subject to performance review and there is discretion with the authority to

give such extension. In view of the nature of scheme, it was up to the petitioner to comply the conditions and he cannot blame respondent Nos. 5 and 6 in this regard. If the procedure is relaxed and the direction is given at this stage, it will create a bad precedent and that direction will be against the policy prepared by the Government. This Court holds that no such directions can be given.

9. In the result, the petition stands dismissed.

[INDIRA JAIN, J.]

[T.V. NALAWADE, J.]

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