

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 5108 OF 2011

MOHAN KANAYALAL CHHAJED

VERSUS

THE STATE OF MAHARASHTRA AND ORS.

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Advocate for Petitioner : Mr. S.S. Kulkarni

APP for Respondent/State : Mr. K.J. Ghutte

Advocate for Respondent No.4 : Mr. A.R. Girase

Assistant Solicitor General for Respondent No.5 : Mr. S.B.
Deshpande

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CORAM : S.S. SHINDE

& P.R. BORA, JJ.

RESERVED ON : April 23, 2015

PRONOUNCED ON : May 05, 2015

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ORDER (PER S.S.SHINDE, J):-

This Writ Petition takes exception to the Government Resolution dated 5th March, 2011 issued by the State of Maharashtra through Higher and Technical Education Department, Mantralaya, Mumbai.

2. It is not in dispute that, the said Government

Resolution dated 5th March, 2011 issued by the State of Maharashtra through the Department of Higher and Technical Education was under challenge before the Principal Seat of the Bombay High Court in the case of **Satish Kundanlal Agrawal V/s The State of Maharashtra and others** in Writ **Petition No. 2093 of 2011** and other connected matters, decided on 30th September, 2011, and upon hearing all the parties, the Bombay High Court rejected the challenge to the validity of the clauses 11(1), 11(3) and 11(4) of the said Government Resolution dated 5th March, 2011. The Bombay High Court, in the above referred case, in para 30 has held thus:-

“30. In the premises, we hold that clauses 11(1), 11(3) and 11(4) of the GR dated 5th March, 2011 do not suffer from any infirmities/unconstitutionality and hence the challenge to the validity of the said clauses is hereby rejected. However, we direct, by way of exception, for the limited period up to 31st March, 2014, to place the cases of the Assistant Professors who do not possess a Ph.D. degree but have received the benefits of the Career Advancement Scheme, before the Performance Review Committee and the said committee shall assess their performance as per the parameters set out for

deciding their retention beyond the age of 60 years.

The composition of the Performance Review Committees, shall be as under :-

(a) For the post of Principal :-

- (i) Vice Chancellor/Pro Vice Chancellor of the concerned University- Chairman.
- (ii) Director, Higher Education – Member.
- (iii) Dean/Professor in the subject concerned-Member
- (iv) Registrar of the University – Member Secretary.

(b) For Professors, Associate/Assistant Professors in the non-agricultural Universities :-

- (i) Vice Chancellor of the concerned University- Chairman.
- (ii) Nominee of the Vice Chancellor who is a well known educationist – Member.
- (iii) Professor and Head of the Department of the concerned subject- Member.
- (iv) Dean/Expert of the concerned subject- Member
- (v) Director, Higher Education – Member.
- (vi) Registrar of the University – Member Secretary.

(c) For Assistant Professors/Associate Professors in the colleges :

- (i) Pro Vice Chancellor/director of BCUD of the concerned University – Chairman
- (ii) head of the Department of the concerned subject in the University – Member.
- (iii) Principal of the concerned college – Member
- (iv) Expert in the concerned subject and nominated by the Vice Chancellor – Member.
- (v) Joint Director Higher Education of the concerned region- member.
- (vi) Controller of Examinations of the concerned University – Member Secretary.

The Performance Review Committee meetings shall be held at the University headquarters and every month. The Principals of the concerned colleges shall forward the names of the college teachers six months before he/she attains the age of sixty years, to the concerned University along with the consent for being retained beyond the age of 60 years to the Registrar of the concerned University to take appropriate steps so that the Performance Review Committee meets and the performance assessment exercise is completed at least two months before the teacher attains the age of 60 years.

The State Government to issue the modified GR/notification on the lines of the draft of the said notification placed before us, within a period of two weeks from today so as to constitute the Performance Review Committees and to set out the parameters for performance assessment.”

3. In the said case, this Court at Principal Seat has issued directions to the Respondents that, the performance review of the College University Teachers and Principals who have retired during the intervening period i.e. from 28th February 2011 onwards be completed as expeditiously as possible and in any case within a period of six weeks from the issuance of the revised notification. The Principals/Lecturers/Professors who are found to be fit for being continued till the age of 62 years or 65 years as the case may be, shall be entitled for the payment of salary for the intervening period.

4. The learned counsel appearing for the petitioner orally submits that, the petitioner did appear before the Committee constituted in pursuant to the said judgment and

he has received the benefits except salary. In our opinion, since the challenge to the Government Resolution dated 5th March, 2011 has been rejected in the case of Satish Agrawal (supra), in the light of the reasons assigned in the said judgment, this Petition deserves no consideration, accordingly same stands disposed of. As orally informed by the learned counsel of the petitioner that, the petitioner did appear before the Committee constituted in pursuant to the said judgment and he has received the benefits except salary, we make it clear that, the benefits received by the petitioner shall remain unaffected. The respondents to take expeditious steps to disburse the amount of salary, if already not disbursed.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

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