

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No.1829 OF 2014

(Suresh s/o. Krishnarao Kitukale .vs. State, through Principal Secretary, Higher and
Technical Education and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

**CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.**

DATE : 27th FEBRUARY, 2015.

Heard Mr.Firdos Mirza, learned Counsel for the petitioner, Mr.T.R.Kankale, learned A.G.P. for respondent nos. 1 and 2, Mr.Pratik Puri, learned Counsel for respondent no.2 and Mr.Abhay Sambre, learned Counsel for respondent no.3.

The only question is whether entitlement of the petitioner to continue in service beyond the age of 60 years and till he attains the age of 62 years has been appropriately looked into as per the State policy incorporated in Government Resolution dt.25.2.2011.

According to Mr.Firdos Mirza, learned Counsel for the petitioner, evaluation has to be done by a Committee which consists of total six members and the Director of respondent no.2 is its Chairman. This Performance Evaluation Committee can forward its recommendation through the said Chairman to the State Government. Here, the petitioner's proposal has not been placed before the said Performance Evaluation Committee at all. The learned

Counsel has invited our attention to the impugned order dt.18.12.2013 passed by the Director of respondent no.2/The Maharashtra State Board for Technical Education which rejects the proposal of petitioner outright observing that the petitioner does not fulfill any of the eight prescribed conditions. He has also taken us through the proposal, as submitted, urging that it's bare perusal shows that atleast three norms are fulfilled by the petitioner.

Mr.T,R.Kankale, learned A.G.P. as also Mr.Abhay Sambre, learned Counsel submit that it is for respondent no.2 to justify the impugned order.

Mr.Pratik Puri, learned Counsel for respondent no.2 submits that, as the proposal does not show compliance of any of the conditions stipulated in the Government Resolution dt.23.11.2011, rejection of proposal by the Director of respondent no.2 is justified.

The impugned order dt.18.12.2013 does not mention that the proposal of petitioner was placed for consideration before the Performance Evaluation Committee. It is an individual act of the Director and is his individual assessment of petitioner's performance. The chart shown to this Court by the petitioner shows some entries against Column nos. 12, 13 and 14.

It is not necessary for this Court to find out whether the material disclosing those entries qualifies the petitioner for grant of extension. The Government Resolution (mentioned supra) has constituted a Performance Evaluation Committee which consists of Director of respondent no.2 and other five persons. The job is, therefore, entrusted to that body. The proposal, therefore, must be first

evaluated by that Committee and after that evaluation, recommendation of the Committee is to be placed through the Chairman of respondent no.2 before the State Government. Perusal of clause (4)(c) and clause (5) as also clause (6) does not show any power in the Director to refuse to place the proposals before the said Performance Evaluation Committee.

The facts show that the case of the petitioner has not been placed before that Committee at all. Thus, the Chairman of respondent no.2 has attempted to act as an Officer competent to filter the proposal to be placed before the Performance Evaluation Committee. The Government has not bestowed those powers upon him.

In this situation or in any other similar matter, if after such exercise of power by him, the incumbent like the present petitioner is required to be continued upto 62 years, it is obvious that the Government will be paying through the public funds for his salary.

Thus, the person like the petitioner will get wages for a period during which he could not work as he has been kept away from the work for no fault on his part. Default may be only attributable to usurpation of powers by the Directors of respondent no.2. We are constrained to make these observations because this may not be the only instance in the State. We, therefore, direct respondent no.1/State Government to look into such matters and to find out the cases in which the said Director has prohibited the Performance Evaluation Committee from applying its mind. The aspect of burden on public revenue, because of such act of said Officer, can then be appropriately considered by the

State Government in terms of the Maharashtra Civil Services (Discipline and Appeal) Rules.

Here, the impugned order dt.18.12.2013 is wholly unsustainable. It is accordingly quashed and set aside. Proposal of the petitioner be placed before the Performance Evaluation Committee within a period of four week from today. The said Committee shall take suitable decision in accordance with law within next four weeks.

Leaving all other rival contentions open and with liberty to the petitioner to approach this Court again if his grievance subsists even thereafter, we partly allow the present petition and dispose of the same.

Costs of Rs.3,000/- shall be paid by the Director of respondent no.2 to the petitioner.

JUDGE

JUDGE