

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4025 OF 2016

**Dr. A. B. Poshirkar (Bhoir) } Petitioner
 versus
Thane Municipal Corporation }
and Anr. } Respondents**

Mr. Nilesh Tribhuvann for the petitioner.

Mr. Mandar Limaye for respondent nos.1
and 2.

**CORAM :- S. C. DHARMADHIKARI &
 B. P. COLABAWALLA, JJ.**

DATED :- NOVEMBER 18, 2016

P.C. :-

1. Heard both sides. Perused the writ petition and annexures thereto.

2. The only contention raised before us is that the benefit of the Government Resolution, increasing the retirement age, was not extended to the petitioner on the ground that while serving the Municipal hospital, the petitioner had lodged a complaint against the Dean of that hospital. Therefore, the Dean had a animus and prejudice and which resulted in denial of the benefit under this Government Resolution.

3. We have perused that Government Resolution with the assistance of the learned advocate appearing for the petitioner. A copy of the same is at page 17 of the paper book. It is issued on 28th July, 2014. Since the Government was finding it difficult to administer treatment to patients visiting the hospitals, namely civil hospitals and the dental colleges, it decided to extend the age of retirement from 58 to 62. By the subject resolution, it was increased from 62 to 63. The petitioner feels that he was fit physically and otherwise also eligible and should have, therefore, been continued in service on the strength of this Government Resolution. The denial of the benefit, namely, extension in the age of retirement has caused him loss and prejudice.

4. The impugned order dated 3rd March, 2015 is by the employer of the petitioner, namely, Thane Municipal Corporation. The application of the petitioner for extension of the age of retirement was considered by the Municipal Corporation. It is the Corporation's decision not to allow him to continue in service beyond the age of 62 years. Pertinently, the petitioner had also applied for extension of this benefit to the Corporation itself. The first application may have been submitted through the dean, but we have an application dated 25th August, 2014, which has been made by the petitioner in his capacity as Professor and Head of

Department of Pathology of the Municipal Hospital, Kalwa under the control of Thane Municipal Corporation. That application was addressed to the Commissioner. Thus, the petitioner knew and from inception that it is the Commissioner or the Corporation, who has to take the concerned decision and very little is in the hands of the Dean, save and except forwarding the application. There is no averment in the writ petition that the Corporation called for any comments on this application from the Dean and on account of the said remarks and comments that the petitioner has been declared as unfit to continue in service. A bald allegation that respondent no. 2 is taking revenge against the petitioner has no substance, simply because it is not the second respondent who is the authority empowered to take decision, but it is the Thane Municipal Corporation. In these circumstances, the only contention raised before us has no merit. The writ petition is, therefore, dismissed.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)