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

WRIT PETITION No.6359 OF 2008

The State of Maharashtra and Ors.

....Petitioners

Vs.

Shri Sopanrao M. Mahangude

...Respondent

Mr. C.P. Yadav, AGP for Petitioners

None for Respondent

***CORAM : V. M. KANADE &
M.S. SONAK, JJ.***

DATE : JUNE 29, 2016

P.C. :

1. Heard the learned AGP appearing on behalf of the Petitioners -State.
2. The State of Maharashtra is aggrieved by an order passed by the Maharashtra Administrative Tribunal dated 4.1.2008. The Respondent was issued with a show cause notice, initiating a departmental inquiry against him for the alleged misconduct. The Respondent challenged the said initiation of departmental inquiry on the ground that such an inquiry cannot be initiated after a public servant attains age of superannuation. The Tribunal after having noted the relevant provisions of Rule 27 (2) (b) (i) of the Maharashtra Civil

Services (Pension) Rules, 1982, came to the conclusion that the departmental proceedings could not be initiated against a public servant after he attains age of superannuation. It is an admitted position that even a sanction of the State Government was not taken before initiating the inquiry.

3. The State Government relied on the GR which permitted initiation of such an inquiry. The Tribunal, in our view, has rightly come to the conclusion that the Rules framed by the State are framed by exercising the power vested in it under Article 309 of the Constitution of India and as such, therefore, the said Government Resolution while exercising its executive power under Article 162 of the Constitution of India could not have issued by the State Government.

4. In our view, the Tribunal has given cogent reasons while allowing the application filed by the Respondent. The order is not perverse or patently illegal. We are, therefore, not inclined to interfere with the decision taken by the Maharashtra Administrative Tribunal. Writ petition, therefore, is dismissed. Rule is discharged.

M.S. SONAK, J.

V.M. KANADE, J.