

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3481 OF 2015
WITH
CIVIL APPLICATION NO. 3395 OF 2015

Akole Taluka Education Society	...	Petitioner
V/s.		
The State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 986 OF 2013

Dr. Kishore Raghunath Pawar	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 5677 OF 2013
WITH
CIVIL APPLICATION NO. 693 OF 2015

Dr. Vishwambhar Nagnath Ingole	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 5678 OF 2013

Dr. Suhas Digambarrao Peshwe	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 5679 OF 2013

Dr. Nirmala Arunrao Wankhede	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 6164 OF 2013

Chandrakant Dyanoba Ghumare	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 9820 OF 2013
WITH
CIVIL APPLICATION NO. 2762 OF 2013

Rameshchandra Dhondiba Khandge	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 9821 OF 2013

Shivaji Ambadas Devdhe	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 12051 OF 2012

Dr. Subhash Madhusudan Karande	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 12052 OF 2012

Dr. Krantikumar Rangrao Patil	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 12056 OF 2012

Shivputra Chandramappa Dhuttargaon	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

Mr. A. V. Anturkar – Senior Advocate i/b. Mr. S. B. Deshmukh for Petitioner in WP 3481 of 2015.
Mr. Vikas Mali – AGP for State.
Mr. Sanjay Kshirsagar for Applicants in CAW 3395 of 2015.
Mr. V. A. Shastry for Respondent No. 6 in WP 3481 of 2015 and for Petitioners in WP Nos. 986 of 2015, 5679 of 2013, 9820 of 2013, 9821 of 2013, 12051 of 2012, 12052 of 2012 and 12056 of 2012.
Mr. D. B. Deshmukh i/b. Mr. A. A. Desai for Petitioners in WP 5677 of 2013 and 5678 of 2013.
Mr. Ajay Magdum i/b. Mr. S. S. Patwardhan for Respondent No. 4 in WP 6164 of 2013.
Mr. Subhash Bane i/b. S. B. Legal for Applicant in CAW 693 of 2015.
Mr. Sanjay Thokade for Respondent No. 5 in WP 12056 of 2012.
Mr. Amit Borkar for Respondent No. 5 in WP 12051 of 2012 and 12052 of 2012.

**CORAM : NARESH H. PATIL AND
M. S. SONAK, JJ.**

Date of Reserving the Judgment : 05 January 2016.
Date of Pronouncing the Judgment : 19 January 2016.

COMMON JUDGMENT : (Per : M. S. Sonak, J.)

1] Rule in each of the petitions. With the consent of and at the request of the learned counsel for the parties, Rule is disposed of finally.

2] The learned counsel for the parties agree that these petitions can be disposed of by a common judgment and order. Even otherwise substantially common issues of law and fact arise in each of these petitions and therefore, it would be appropriate to dispose of the same by common judgment and order. The Hon'ble Supreme Court, in its order dated 30 April 2013, made in Petition for Special Leave to Appeal (Civil) No. 16569 of 2013, to which detailed reference will be made later, had in fact issued directions for transfer of all these petitions to the Principal Seat of the High Court, for the purposes of final disposal within a time bound schedule.

3] In pursuance of the aforesaid, the matters were posted before us for final disposal. Accordingly, the petitions were heard for purposes of final disposal.

4] The principal challenge in all these petitions, except writ petition no. 3481 of 2015 is, to clause 11(5) of the Government Resolution (GR) dated 5 March 2011 to the extent the said clause mandates at least two attempts on the part of non government institutions by way of issuing public advertisement, for filling up the post of Principal, before the cases of incumbent Principals can be referred to the Performance Review Committee for extension in the age of superannuation from 62 years to 65 years. The main contention raised in all these petitions is that such condition being not prescribed for government institutions, there is hostile discrimination vis-a-vis Principals in non government institutions, in the matter of benefit of extension in the age of superannuation. All these writ petitions, except writ petition no. 3481 of 2015, have therefore been instituted by incumbent Principals in various non government institutions seeking extension in the age of superannuation from 62 years to 65 years in terms of the GR dated 5 March 2011, but without the application of clause 11(5) thereof, which they impugn as being *ultra vires*, unconstitutional, null and void.

5] The writ petition no. 3481 of 2015 has been instituted by Akole Taluka Education Society, Ahmednagar which has established and operates two non government institutions. In this petition, amongst other

matters, the challenge is to the recommendation dated 14 June 2013 made by the Performance Review Committee and the order dated 29 November 2013 made by the State of Maharashtra accepting such recommendation and extending the age of superannuation of Rameshchandra Khandge (Khandge) from 62 years to 65 years. Both, the recommendation as well as the order, impugned in writ petition no. 3481 of 2015 came to be made during the pendency of and in pursuance of the interim orders obtained by the said *Khandge* in writ petition no. 9820 of 2013 instituted by him. In writ petition no. 3481 of 2015 therefore, the said Khandge has been impleaded as respondent no. 6. In a sense therefore writ petition no. 9820 of 2013 and writ petition no. 3481 of 2015 are cross petitions concerning the issue of extension of age of superannuation of *Khandge*.

6] We have heard Mr. V. A. Shastry who appears for most of the petitioners in this batch of petitions as well as Mr. Anturkar, the learned Senior Advocate who appears for Akole Taluka Education Society in writ petition no. 3481 of 2015. We have also heard Mr. Mali, the learned AGP who appears for the State and Mr. Borkar, the learned counsel appearing for the University. We have also heard Mr. Sanjay Kshirsagar, the learned counsel appearing for the applicants in civil application no.

3395 of 2015, who seeks intervention in writ petition no. 3481 of 2015 and has urged that the society was not in fact authorised to institute writ petition no. 3481 of 2015. We have also heard the other learned counsel appearing in the matters. We have perused the pleadings, record, as well as the orders made in these petitions from time to time. Now, we proceed to dispose of these petitions finally.

7] Mr. Shastry, who appears for most of the petitioners – Principals in this batch of petitions contended that the condition contained in clause 11(5) of the GR dated 5 March 2011 is discriminatory and violates the guarantee of equality enshrined under Article 14 of the Constitution of India. He submitted that clause 11(5) imposes a pre-condition upon non government institutions to make at least two attempts by way of public advertisements to secure eligible and qualified persons for the post of Principal, before the case of the incumbent Principal can be referred to the Performance Review Committee for extension in the age of superannuation from 62 years to 65 years. He submits that no such pre-condition has been made applicable to government institutions and therefore, the Principals in non government institutions are being discriminated against. He submitted that the service conditions of Principals in government institutions and non government institutions are

virtually identical in most respects. By way of elaboration, he submitted that there was no material difference between the two sets of principals in so far as the qualifications, appointment procedures, pay-scales, teaching programme, workload and other matters are concerned. He submitted that most of the service conditions in respect of the two sets of Principals were in fact determined by the UGC Regulations, which bind the State Government. Therefore, he submitted that there was absolutely no rationale to discriminate against the Principals in non government institutions, by requiring them to wait until the institutions make two attempts for securing other persons and further, forgo the benefit of extended age of superannuation, in case the non government institutions succeed in obtaining suitable persons for the appointment to the post of Principals. Mr. Shastri submitted that such hostile discrimination between Principals of non government institutions and government institutions violates Article 14 of the Constitution of India and therefore clause 11(5) of the GR dated 5 March 2011, which is the root cause for such discrimination is *ultra vires*, unconstitutional, null and void.

8] Although there is no specific challenge to clause 11(3) of the GR dated 5 March 2011, since, the condition imposed in the said clause affects the case of *Khandge*, the petitioner in writ petition no. 9820 of

2013 and Shivputra Chandramappa Dhuttargaon (*Shivputra*), the petitioner in writ petition no. 12056 of 2012 whom Mr. Shastry represents, he contended that the relaxation in the matter of implementation of the said clause granted by this Court in the case of *Satish Agarwal vs. State of Maharashtra*¹, must be extended by analogy or principle to the case of Principals in non government institutions. Clause 11(3) of the GR dated 5 March 2011 provides that the incumbent Principal must have Ph.D. Degree before his case can be considered for extension in the age of superannuation from 62 years to 65 years.

9] Mr. Anturkar, the learned Senior Advocate for the petitioner institution in writ petition no. 3481 of 2015 and for the respondent no. 4 in writ petition no. 9820 of 2013 instituted by *Khandge*, submitted that there is no merit in the ground of discrimination. He submitted that even otherwise, such ground does not survive, as the State has issued Corrigendum dated 9 May 2014 making applicable the condition contained in clause 11(5) of the GR dated 5 March 2011 to government institutions as well. He submitted that even otherwise, the constitutional validity of clause 11(3) of the GR dated 5 March 2011 has already been upheld by the Division Bench of this Court in the case of *Satish Agarwal*

¹ Writ Petition No. 2093 of 2011 and connected matters decided by the Division Bench of this Court on 30.09.2011.

(supra) and the relaxation upto 31 March 2014 was consciously granted only to Assistant Professors, but not to Principals of institutions. He submitted that since *Khandge* admittedly does not possess the Ph.D. Degree, there was no question of he seeking extension from 62 years to 65 years. Mr. Anturkar submitted that a fraud was practiced by *Khandge* upon this Court as well as the Performance Review Committee by holding that he possesses Ph.D. Degree, when in fact, he did not possess the same. Mr. Anturkar also pointed out that fraud was practiced upon this Court in the matter of interim orders by creating an impression that similar interim orders have been made in similar matters, when, in fact, the position was quite otherwise. Mr. Anturkar submitted that the petition instituted by *Khandge* is required to be dismissed and necessary orders made for restitution, in the context of undue benefits obtained by *Khandge* in pursuance of interim orders fraudulently obtained by him.

10] The rival contentions, now fall for our determination.

11] The challenge to clause 11(5) of the GR dated 5 March 2011 does not survive in view of Corrigendum dated 9 May 2014, in terms of which, the condition contained in clause 11(5) of the GR dated 5 March 2011 has been specifically made applicable even to government institutions when it

comes to the extension of age of superannuation of Principals in the government institutions. Therefore, the condition contained in clause 11(5) of the GR dated 5 March 2011 is now uniformly applicable to Principals of both, government as well as non government institutions. There is accordingly no question of infringement of the principles of equality enshrined under Article 14 of the Constitution of India.

12] Even otherwise, we are not prepared to accept that the provisions contained in clause 11(5) of the GR dated 5 March 2011, had in any manner violated the principles of equality enshrined in Article 14 of the Constitution of India. In the matters of public employment, it is almost settled position in law that there should be equality of opportunity. This is best achieved by issuance of public advertisement inviting all eligible persons to apply. This ensures that the best is selected and further, induces transparency in the process. If the GR dated 5 March 2011 as also the UGC Regulations, upon which this GR is premised, are perused, it will be clear that one of the purpose for extension in the age of superannuation was to meet with the shortage of qualified Assistant Professors, Professors, Principals etc. Clause 11(5) had therefore merely provided that the institution should make at least two attempts by issuance of public advertisement to explore the possibility of appointing

suitable candidates to fill up the post of Principals, before, the case of the incumbent Principals can be referred to the Performance Review Committee for extension. There is nothing arbitrary or unreasonable in such a requirement. If the pleadings in the various petitions are perused, there is really no challenge that such a requirement *per se* was either arbitrary or unreasonable. The challenge really was premised upon discrimination, as this condition was initially not made applicable to government institutions. As noted earlier, after the issuance of Corrigendum dated 9 May 2014, the challenge on the ground of discrimination does not survive. The requirement contained in clause 11(5) of the GR dated 5 March 2011 is consistent with principles of transparency and equality of opportunity, which ought to inhere public employment. In fact, had the inapplicability of clause 11(5) of the GR dated 5 March 2011 to government institutions being challenged, such challenge would require some consideration. It is settled position that the guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or a court in a negative manner. If illegality or irregularity has been committed in favour of any individual or group of individuals or a wrong order has been made by any forum, others cannot invoke the jurisdiction of the higher or superior courts for repeating or multiplying the same illegality or irregularity or for insisting that some

wrong order be made. Article 14 of the Constitution of India does not countenance any equality of illegalities. The equality clause enshrined in Article 16 of the Constitution of India mandates that every appointment to public post or office should be made by open advertisement so as to enable all eligible persons to compete for selection on merit. Although, some exception may have been carved to that rule, for example, compassionate appointment, for the purposes of the present case it is not necessary to elaborate upon that.² Accordingly, we see no merit in the challenge to clause 11(5) of the GR dated 5 March 2011.

13] There is no specific challenge in this group of petitions to clause 11(3) of the GR dated 5 March 2011. This clause mandates that Assistant Professor, Professor or Principal must have Ph.D. Degree before his case can be considered for extension. The constitutional validity of clause 11(3) of the GR dated 5 March 2011 has been specifically upheld by the Division Bench of this Court in the case of *Satish Agarwal* (supra).

14] Mr. Shastry, the learned counsel for *Khandge* and *Shivputra* whilst conceding that the two petitioners did not possess Ph.D. Degree, submitted that the relaxation from the applicability of clause 11(3) to

² (2009) 5 SCC 65 State of Bihar vs. Upendra Narayan Singh & Ors.

Assistant Professors, as granted by the Division Bench in the case of Satish Agarwal (supra) and as accepted by the State, is required to be extended to the cases of Principals of institutions based either upon analogy or similarity of principles. He has submitted that both these petitioners attained age of 62 years before 31 March 2014 and therefore, they are entitled to the benefit of such relaxation. Mr. Shastry made specific reference to paragraph 30 of the common judgment and order dated 30 September 2011 in the case of Satish Agarwal, which reads this :

“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.”

(emphasis supplied)

15] We are unable to accept the submission of Mr. Shastry. In the first place the constitutional validity of clause 11(3) of the GR dated 5 March

2011 has been specifically upheld by the Division Bench of this Court in the case of *Satish Agarwal* (supra). Secondly, In doing so, the Division Bench of this Court has made a conscious distinction between incumbents holding the post of Assistant Professors on one hand and the posts of Professors and Principals on the other. In so far as incumbent Assistant Professors are concerned, this Court suggested relaxation for limited period of three years i.e. upto 31 March 2014, provided that such Assistant Professors who did not possess the Ph.D. Degree, have received the benefits of Career Advancement Scheme. However, quite consciously, no such suggestion was made in so far as incumbent Professors and Principals are concerned. The Division Bench pointed out that Ph.D. Degree was not an essential qualification in so far as recruitment of Assistant Professors was concerned, whereas, Ph.D. Degree was an essential qualification in so far as Professors and Principals were concerned. Thirdly, the suggestion made by this Court was in fact accepted by the State Government, as is evident from the Corrigendum dated 23 February 2012 to the GR dated 5 March 2011 and a limited exception was made in case of Assistant Professors who do not possess Ph.D. Degree but have received the benefits of Career Advancement Scheme. Admittedly, there is no such Corrigendum in so far as Professors and Principals are concerned. There is accordingly no case

made out to extend such relaxation either by analogy or by any alleged similarity in principle.

16] In the aforesaid regard, reference can usefully be made to the observations contained in paragraphs 23, 24 and 29 of the common judgment and order dated 30 September 2011 in the case of *Satish Agarwal* (supra), which read thus :

“23. Coming to the challenge on insistence of a Ph.D. degree for getting the benefit of enhanced age of superannuation for the teachers as well as the principals, it would be appropriate to consider the educational qualifications prescribed under the UGC Regulations 2010. For the post of Assistant Professor, the minimum academic qualification prescribed is a good academic record with 55% marks or an equivalent : grade at the Master’s Degree level and qualifying in the National Eligibility Test or an accredited test (State Level Eligibility Test -SLET/SET). It has been further stated that NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities /Colleges / Institutions. However, as per Clause No. 3.3.1 the candidates who are or have been awarded a Ph.D. degree in accordance with the UGC (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment

of Assistant Professor or equivalent positions in Universities/Colleges/Institutions. The Ph.D. degree shall be a mandatory qualification for the appointment of professors and for the promotion as professors. It is also an essential qualification for all candidates to be appointed as Associate Professors through direct recruitment. It is thus clear that for appointment as Assistant Professor, the minimum qualification is not the Ph.D. degree but certainly it is one of the qualifications and the candidate with Ph.D. degree is exempted from NET/SET. A Ph.D. degree is not an essential qualification but it is one of the qualifications prescribed. For the post of Principal, a Master's Degree with at least 55% marks by a recognized University with a Ph.D. degree in the concerned/allied/relevant discipline in the institution concerned with evidence of published work and research guidance is the prescribed qualification. At the same time, Associate Professors/Professors with a total experience of 15 years teaching /research /administration in Universities, Colleges and other institutions of higher education are also eligible for being appointed to the post of principals. Clause 4.3.0 of the Regulations has set out the qualification for Associate Professor and the Ph.D. degree is an essential qualification. The Regulations framed by the UGC during the last more than 20 years or so go to show that acquiring of Ph.D. degree even for the post of Lecturer / Assistant Professor has been an indicator of advancing the academic achievements and under the Career Advancement Scheme there is a special

consideration for the Ph.D. degree holders. Whereas for the post of Associate Professor, Professor and Principal, Ph.D. degree is an essential qualification.

24. The Government of Maharashtra while framing the scheme for implementation of the directives of the Government of India as well as the UGC Regulations, by way of policy decision, has set out conditions in Clause 11 of the impugned GR dated 5/3/2011 and unless such policy decision suffers from arbitrariness, inequality, unfairness or otherwise takes away any legal rights or vested rights, this Court under the power of judicial review may not cause interference in such decisions. In addition if the parameters laid down while granting enhancement in the age of superannuation are found to be impracticable / impossible, interference by this Court may also be necessary. But having regard to the figures provided by the learned AGP that out of 155 college teachers whose cases were scrutinised for retention beyond the age of 60 years, during the last few months, 80 of them were Ph.D. degree holders, it would go to show that the requirement of a Ph.D. degree is not impracticable or impossible or that a vast majority of the teachers will not stand to benefit by the enhancement of the age of superannuation. Even otherwise the scope for interference in the academic matters under the powers of judicial review is also limited. In the case of Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [AIR 1984 SC 1543] the Supreme Court held,

“..... the Court should be extremely reluctant to substitute its own views as to that is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.”

In the case of State of U.P. vs. Johri Mal [AIR 2004 SC 3800] a three-Judge bench while dealing with the limitations / parameters while exercising the power of judicial review stated that the scope and extent of power of the judicial review under Article 226 of the Constitution would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. The Supreme Court reiterated the following guidelines on the scope of judicial review:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain

well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

29. It was also urged before us by the learned counsel for the petitioners that insistence on a Ph.D. degree for enhancement in the age of superannuation has come as a sudden jolt by the impugned GR and at the fag end of their career and it is without leaving any scope, despite their best desires and efforts, to obtain a Ph.D. degree. It was submitted that in some cases it is possible that the teachers were genuinely interested in enrolling themselves for Ph.D., but because of the local conditions in the colleges concerned, they could not do so and for the reasons not attributable to them. Number of such

teachers might have otherwise contributed for higher academic standards by writing books or publication of research papers. There may be some teachers whose books form part of the syllabus and, therefore, it would be harsh to call upon such teacher, all of a sudden to produce a Ph.D. degree certificate. The insistence of the State Government on such conditions is unreasonable and in some cases impossible to achieve.

We have no doubt that there is some merit in these arguments. However, we have already stated that under the powers of judicial review, there is no case made to cause interference in the impugned policy decision to insist on a Ph.D. degree, as one of the conditions for the benefit of enhanced age of superannuation. However, our suggestion to extend a concession for a limited period of three years to the Assistant Professors who are the beneficiaries of the Career Advancement Scheme, has been accepted by the State Government so as to subject them to performance assessment by the Committee. Such a response by the State Government also meets the twin object of compassion and equity and the State Government has been fair in accepting our proposal".

(emphasis supplied)

17] In view of the aforesaid, it is quite clear that *Khandge* and *Shivputra*, who admittedly do not possess Ph.D. Degree were not entitled to claim any extension in the age of superannuation from 62 years to 65

years in terms of the GR dated 5 March 2011. By virtue of interim orders made by this Court, to which detailed reference will be made hereafter, it may be true that directions had been issued for the consideration of the cases of *Khandge* and *Shivputra* by the Performance Review Committee for extension. However such consideration had to be in accordance with law, which would *inter alia* include the provisions contained in clause 11(3) of the GR dated 5 March 2011. Upon satisfaction that *Khandge* and *Shivputra* did not possess the essential qualification of Ph.D. Degree, the Performance Review Committee was not justified in making a recommendation for extension. In any case, the State was not justified in accepting such recommendation and granting extension to *Khandge* and *Shivputra*. It is not clear whether *Shivputra* has in fact been granted extension or not. *Khandge* and *Shivputra*, were accordingly not entitled to any extension beyond the age of 62 years. There is no merit in the challenge to clause 11(5) of the GR dated 5 March 2011. Similarly, the benefit of relaxation from applicability of clause 11(3) of the GR dated 5 March 2011 cannot be extended to incumbent Principals who do not possess Ph.D. Degree. Therefore, all the writ petitions except writ petition no. 3481 of 2015 are liable to be dismissed and are hereby dismissed. However, writ petition no. 3481 of 2015 succeeds and Rule is made absolute therein, in terms of prayer clauses (B) and (BB).

18] There is no merit in civil application no. 3395 of 2015 taken out by some of the trustees of the Akole Taluka Education Society. It is the case of the said trustees that there were no proper resolutions which enabled the society to institute writ petition no. 3481 of 2015. The applicants in the said civil application have not been able to substantiate their contention. The applicants in the said civil application, appear to be supporters of *Khandge* and the civil application appears to have been filed, only to support or continue the illegal extension of *Khandge*. It is possible that there are disputes between the trustees *inter se*. We were informed that such disputes are pending before the Charity Commissioner, which is perhaps the proper Authority to resolve the same. However, the attempt on the part of the applicants to object to the very institution of writ petition no. 3481 of 2015, neither appears to be above board nor in the interests of the society itself. Accordingly, though formal order permitting intervention had not been made, Mr. Sanjay Kshirsagar was heard in support of the applicants contention that writ petition no. 3481 of 2015 was instituted without valid resolutions. There is no merit in the contention. Accordingly, the civil application no. 3395 of 2015, stands disposed of.

19] As noted earlier, writ petition no. 9820 of 2013 instituted by *Khandge* and writ petition no. 3481 of 2015 instituted by Akole Taluka Education Society, were in the nature of cross petitions. Therefore, consequent upon dismissal of writ petition no. 9820 of 2013, it is only obvious that *Khandge*, who may have received some benefits under the interim orders made in the said petition, cannot retain such benefits. As a corollary therefore even Akole Taluka Education Society were not to have instituted writ petition no. 3481 of 2015, the same would not enure to the continuation of *Khandge* beyond the age of 62 years. Therefore, even if we are to accept the objection raised by the applicants in the civil application no. 3395 of 2015, the same would not benefit the continuation of *Khandge* as Principal of the institution.

20] There is yet another serious matter in these batch of petitions. This concerns the manner in which the interim orders were secured by the petitioners. Besides, now that all the petitions except writ petition no. 3481 of 2015 are being dismissed, it is necessary to make appropriate orders of restitution, considering that at least some of the petitioners have obtained undue benefits on account of the interim orders secured by them in these petitions. It is settled position in law that interim order merges with the final order. If writ petition is dismissed, interim order

stands nullified automatically. The party whose writ petition is dismissed cannot take advantage of its own wrong. An undeserved benefit taken by a party under an interim order has to be neutralized and it is the duty of the Court to neutralize the same.³

21] In the aforesaid regard, we must note that these batch of matters comprise petitions instituted before the Principal Seat (Bombay), Nagpur and Aurangabad Benches of this Court. Most of the incumbent Principals, who have instituted these petitions, were represented by Mr.V.A. Shastri and this circumstance has some relevance. There appears to be merit in the contention of Mr. Anturkar that the interim orders were obtained from one Bench by holding out, to put it very mildly, inaccurately, that similar interim orders have been made by the other Bench or Benches. Thereafter, such interim orders were cited from time to time and on basis of same, most of the Petitioners have managed to continue in employment beyond age of superannuation of 62 years, without any real justification. We are satisfied that the *modus operandi* adopted by the Petitioners, including in particular the Petitioners like *Khandge* and *Shivputra*, who did not even possess Ph.D. degrees, was by no means above board.

3 (2010) 1 SCC 417 Amarjeet Singh & Ors. vs. Devi Ratan & Ors..

22] In most of the matters, interim relief was secured by the Petitioners by informing the Court that an interim order has been passed by the Aurangabad Bench of this Court in writ petition no. 775 of 2013 on 21 February 2013. This is evident from the order dated 11 March 2013 made in writ petition no. 12051 of 2012 and four connected matters made at the Principal Seat at Bombay. The perusal of the interim order dated 21 February 2013 in writ petition no. 775 of 2013 made by the Aurangabad Bench would reveal that no interim relief permitting continuation of the incumbent Principals was ever granted by the Aurangabad Bench, though, it may have projected by the Petitioners to be so. The interim order dated 21 February 2013 in writ petition no. 775 of 2013 made by the Aurangabad Bench, reads thus:

*"IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 775/2013
Dr. Shankar Ganpatrao Bhange.
... Petitioner..*

versus

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

*Shri V.A. Shastry, Advocate for petitioner.
Shri V.H. Dighe, AGP for respondent nos.1 to 3.*

*.....
CORAM: A.H. JOSHI &
SUNIL P. DESHMUKH, JJ.
DATE : 21.02.2013*

ORDER :

1] We had passed order on 5.2.2013 directing the learned

AGP to take instructions as to the time frame within which the decision in relation to assurance recorded in the minutes of meeting appearing at page no. 68 Item No.3 thereof would be reached.

2] At the out set, learned AGP states that he has instructions to request the Court to seek adjournment for two months. No commitment is coming forward as to the time frame within which decision would be taken.

3] Insofar as the petitioner is concerned, he shall be required to offer himself for consideration and decision by Performance Review Committee, as required to be done through the impugned Government resolution Clause 11. We direct that let the petitioner offer himself for such review and it shall be without prejudice to the petitioner's rights and challenges as raised and set up in present writ petition and as a ground of estoppel or otherwise against him.

4] All that the petitioner wants is that in the event the decision is unfavourable to him and the management is required to issue an advertisement, it shall not be available to set up against the estoppel or otherwise to prejudice the petitioner's challenge and the interest.

5] We direct that:

a] If the petitioner offers himself for review as to performance and the decision is unfavourable to him, the same shall be subject to outcome of this petition and any interim order(s) as may be passed by this Court.

[b] If the post held by the petitioner is required to be

advertised, the petitioner be given 15 days prior notice.

[c] S.O. to 18.04.2013.

[d] Authenticated copy of the order to the learned Advocates for the parties be issued on demand as per rules.

sd/-

(SUNIL P. DESHMUKH, J.)

sd/-

(A.H. JOSHI, J.)

23] In writ petition no. 9820 of 2013 (Aurangabad Bench writ petition no.1996 of 2003) instituted by *Khandge*, on 26 February 2013, upon hearing Mr. V.A. Shastry, the following interim order was made:

**“FARAD CONTINUATION SHEET NO
IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD
WRIT PETITION NO. 1596 OF 2013
(Rameshchandra Dhondiba Khandge Vs. The State of
Maharashtra & Ors.)**

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

Court's or Judge's orders

Mr. V.A. Shastry, Advocate for petitioner.

Mrs. A.V. Gondhalekar, A.G.P. For respondent Nos.1 to 3.

CORAM :

R. M. BORDE AND

T. V. NALAWADE, JJ.

DATE :

26th February 2013.

PER COURT:

1. *Issue notice to respondents, returnable after four weeks.
The learned A.G.P. waives notice for respondent Nos. 1 to 3.*
2. *We have perused the order passed by the Division
Bench of this Court in Writ Petition No. 775/2012 dated*

21.2.2013. In consonance with the directions issued by the Division Bench of this Court, we issue following directions:-

(i) It would be open for the petitioner to offer himself for review as to performance and if the decision is unfavourable to him, the same shall be subject to outcome of this writ petition.

sd/-

*[T.V. NALAWADE]
Judge*

sd/-

*[R. M. BORDE]
Judge*

24] The writ petition nos. 12051, 12052, 12055 & 12056 of 2012 and writ petition no. 986 of 2013 were instituted by the Principals at the Principal Seat at Mumbai. Again, Mr. Shashtry, who appeared for all the Petitioners, informed the Division Bench that the interim order has been made by the Aurangabad Bench in writ petition no. 775 of 2013 on 21 February 2013 and on the said basis secured interim relief which have enabled the Petitioners in the said petitions to continue in service beyond the age of superannuation of 62 years. The interim order dated 11 March 2013 made in the said petitions at the Principal Seat (Bombay) reads thus:

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

WRIT PETITION NO.12051 OF 2012

*Dr. Subhash Madhusudan Karande ...Petitioner
V/s.*

State of Maharashtra & Ors. ...Respondent

WRIT PETITION NO.12052 OF 2012

Dr. Krantikumar Rangrao Patil ...Petitioner

V/s.

State of Maharashtra & Ors. ...Respondent

WRIT PETITION NO.12055 OF 2012

Dr. Smt. Deepa Vivek Deshpande ...Petitioner

V/s.

State of Maharashtra & Ors. ...Respondent

WRIT PETITION NO.12056 OF 2012

Shivputra Chandramappa Dhuttargaon ...Petitioner

V/s.

State of Maharashtra & Ors. ...Respondent

WRIT PETITION NO.986 OF 2013

Dr. Kishore Raghunath Pawar ...Petitioner

V/s.

State of Maharashtra & Ors. ...Respondent

Mr. Venkatesh A. Shastry for the petitioners.

CORAM: V. M. KANADE &

SMT. R. P. SONDURBALDOTA, JJ.

DATED : MARCH 11, 2013

1. Issue notice to the respondents, returnable after four weeks. Hamdast granted.
2. The grievance of the petitioners in these petitions is that though the State Government has by issuing a Notification, adopted the policy of the Central Government as laid down in Central Government Notification dated 31st December 2008, yet the State Government, at the same time, by virtue of clause 11(5) has not extended the benefit to the Principals who are working in non-Government colleges. It is, therefore, submitted that the said policy is discriminatory and arbitrary and violative of Article 14 of the Constitution of India. It is submitted that the petitioners are likely to retire in March 2013 and April 2013 and therefore, their services be protected in the meantime.

3. *We are informed that an interim order has been passed by the Aurangabad Bench of this Court in Writ Petition No. 775 of 2013 on 21st February 2013.*

4. *In the meantime, the petitioners will be permitted to continue to work as Principal of their respective colleges, subject to the result of the above petitions.*

5. *It is clarified that, in the meantime, the Performance Review Committee is directed to review the performance of the petitioners in these petitions. The respondent University to constitute a Performance Review Committee as expeditiously as possible.*

sd/-

sd/-

(SMT. R.P. SONDURBALDOTA, J.) (V.M. KANADE, J.)

25] Armed with the interim order dated 11 March 2013 made in writ petition no. 12051 of 2012 and connected matters, Dr. Nirmala Arunrao Wankhede, Petitioner in writ petition no. 2296 of 2013 (now renumbered as writ petition no. 5679 of 2013) attempted to secure a similar interim order from the Nagpur Bench for continuation in service beyond the age of superannuation. Again, Dr. Nirmala Wankhede was also represented by Mr. V.A. Shastri. The Bench at Nagpur, upon noticing the fact that there was no interim relief for continuation in services ever granted in writ petition no. 775 of 2013, by order dated 24 April 2013, declined to grant interim relief to Dr. Nirmala Wankhede. The interim order dated 24 April

2013 made in writ petition no. 2296 of 2013, reads thus :

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

WRIT PETITION NO. 2296 OF 2013

(Dr. Nirmala Arunrao Wankhede vs. State and Ors.)

Office Notes, Office Memorandum of Coram,
appearance, Court's orders of direction
and Registrar's orders.

Court's or Judge's orders.

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

DATE : APRIL 24, 2013.

*Heard Mr.V.A.Shastry, learned Counsel for the petitioner
and Mr.S.B.Ahirkar, learned A.G.P. for respondent nos. 1 to 3.*

Notice returnable on 17.6.2013.

*The petitioner challenges validity of clause 11(5) of the
Government Resolution dt. 5.3.2011 on the ground that it
requires him to first wait for the result of advertisement before
facing the evaluation of his performance by the Performance
Review Committee. This treatment extended to the employees
like him of Non-Government Institutions is urged to be violating
Article 14 as the Principals in the Government Institutions are
not required to wait till such advertisements are issued and
they can directly face the Performance Review Committee.*

*The learned Counsel for the petitioner states that the
petitioner is due for superannuation on 31.5.2013. Hence,
following the orders of the Division Bench of this Court
dt.11.3.2013 passed in Writ Petition No.12051 of 2012 and
Others at Bombay and the order dt.26.3.2013 passed in Writ
Petition no.1911 of 2013 at Aurangabad, further continuation
of the petitioner should be ordered and his retirement should*

be stayed.

We have perused the orders dt.11.3.2013 and 26.3.2013. Perusal of the order dt.11.3.2013 reveals that the Division Bench was informed about the interim order passed by the Aurangabad Bench in Writ Petition No.775 of 2013 on 21.2.2013. Perusal of the latter order dt.26.3.2013 passed in Writ Petition No.1911 of 2013 at Aurangabad reveals that it is solely based on the order dt.11.3.2013 passed at Bombay in the Writ Petition mentioned above.

The orders dt.11.3.2013 and 26.3.2013 do not record any reason for staying the superannuation. In this view of the matter, we requested Mr.Venkatesh Shastry, learned Counsel for the petitioner to show us the order dt.21.2.2013 passed at Aurangabad in Writ Petition No.775 of 2013. Mr.Shastry could not immediately produce that order. He sought short postponement. After procuring that order, after about half an hour, he has taken us through the same. Perusal of that order reveals that it does not evaluate the question of hostile discrimination. It also does not consider the question of staying the superannuation after reaching the age of retirement.

As the petitioner can always be compensated in case he succeeds, we reject the request for grant of ad interim relief at this stage.

Mr.S.B.Ahirkar, learned A.G.P. waives notice on behalf of respondent nos. 1 to 3."

JUDGE

JUDGE

26] Dr. Nirmala Wankhede carried the order dated 24 April 2013, by which she was denied interim relief, to the Hon'ble Supreme Court by way of Petition for Special Leave to Appeal (Civil) No. 16569 of 2013, presumably on the ground that similar interim reliefs have been granted by Aurangabad Bench and at the Principal Seat at Bombay. The Hon'ble Supreme Court by order dated 30 April 2013 dismissed the Special Leave Petition by issuing directions for consolidation of all matters and made certain observations, which are self explanatory. The order dated 30 April 2013 made by the Hon'ble Supreme Court reads thus:

*S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G
Petition (s) for Special Leave to Appeal (Civil) No(s.)
16569/2013*

*(From the judgment and order dated 24/04/2013 in WP No.
2296/2013 of The HIGH COURT OF BOMBAY AT NAGPUR)*

<i>NIRMALA ARUNRAO WANKHEDE</i>	<i>Petitioner (s)</i>
<i>VERSUS</i>	
<i>STATE OF MAHARASHTRA & ORS.</i>	<i>Respondent (s)</i>
<i>(with appln(s) for exemption from filing O.T. and with prayer for interim relief)</i>	

Date: 30/04/2013 This Petition was called on for hearing today.

CORAM:

*HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI*

*For Petitioner (s) Mr.Nishant Ramakantrao Katneshwarkar, Adv.
For Respondent (s)*

Upon hearing counsel the Court made the following

O R D E R

Taken on board.

This petition is directed against order dated 24.04.2013 passed by the Division Bench of the Bombay High Court, Nagpur Bench in Writ Petition No. 2296 of 2013 whereby the petitioner's prayer for stay of her superannuation was declined.

Learned counsel for the petitioner invited our attention to orders dated 11.03.2013 and 26.03.2013 passed by the Division Bench of the High Court at the Principal seat and the Aurangabad Bench whereby the petitioners of those cases were allowed to continue in service by prima facie accepting their argument that the action of the State not to amend Clause 11(5) of the Government Resolution has resulted in violation of their fundamental right to equality.

Although, we are extremely sceptical about the justification of passing an interim order which entitles an employee/officer to continue in service beyond the prescribed age of superannuation, we do not want to express final opinion on the issue because that may prejudice the cause of the persons in whose favour the interim orders have been passed by the Division Benches of the High Court at the Principal Seat and the Aurangabad Bench. Nevertheless we are satisfied that the reasons assigned in the impugned order for refusing interim relief to the petitioner cannot be termed as irrelevant so as to warrant interference by this Court under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

However, keeping in view the nature of the case as also the fact that the writ petitions have been filed before the Principal Seat as well as Benches of the High Court, we request the Chief Justice of the Bombay High Court to order transfer of all the cases to the Principal Seat of the High Court and direct that the same be listed before an appropriate Bench.

We also request the concerned Bench of the Bombay High Court to make an endeavour to finally dispose of all the writ petitions as early as possible but latest by 31.08.2013.

The Registry is directed to send copy of this order to the Registrar General, Bombay High Court by fax. The Registrar General shall immediately place the order before the Chief Justice for necessary directions.

(Satish K. Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

27] As noted earlier, on 24 April 2013, the Division Bench at Nagpur, upon consideration of the interim orders made in writ petition no. 775 of 2013 (Aurangabad Bench) and writ petition no. 12051 of 2012 and other matters (Bombay), declined the interim relief to Dr. Nirmala Wankhede. On the very next day, i.e., 25 April 2013, *Khandge* , again represented by Advocate Mr. V.A. Shastry, secured interim reliefs for continuation in services beyond the age of superannuation from the Aurangabad Bench, by suppressing the order dated 24 April 2013 in Dr. Nirmala Wankhede's case by the Nagpur Bench. We are of the opinion that the said learned counsel, in all fairness, should have placed before the Aurangabad Bench, the order dated 24 April 2013 made by the Division Bench at Nagpur. The learned counsel, having appeared before the Nagpur Bench just on the previous day, was very much aware of the order made by the Division Bench of Nagpur, declining interim relief, even after taking into

consideration the interim order made in writ petition no. 775 of 2013 (Aurangabad Bench) and writ petition no. 12051 of 2012 and other connected matters, at the Principal Seat (Bombay). There was neither any question of ignorance nor any question of memory lapse involved. We are satisfied that correct facts and relevant orders were not brought to the notice of the learned Judges taking up the matters at Aurangabad Bench and the Principal Seat at Bombay. In this manner, *Khandge*, secured the following interim relief from the Aurangabad Bench on 25 April 2013, which reads thus:

*"IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 1596 of 2013
Rameshchandra Dhondiba Khandge ... Petitioner
versus
State of Maharashtra & others. ... Respondents

Shri V.A. Shastry, Advocate for Petitioner.
Shri K.G. Patil, AGP for Respondent Nos.1 to 3.*

*CORAM: R.M. Borde and
SUNIL P. DESHMUKH, JJ.
APRIL 25, 2013*

P.C.

1. *Learned Counsel for the Petitioner invites our attention to identical matters wherein orders have been passed, viz. the order dated 11.3.2013 passed by the Division Bench of this Court at Principal Seat at Bombay, in Writ Petition No. 12051 of 2012 and connected petitions, and in Writ Petition No. 12054 of*

2012 dated 18.3.2013.

2. Adopting the view taken by the Division Bench at Bombay, we also deem it appropriate to direct that the petitioner shall be permitted to continue to work as Principal of his college, subject to the result of this petition.

3. In the meantime, Respondent-University is directed to constitute Performance Review Committee. Said committee is directed to review performance of the petitioner as expeditiously as possible.”

sd/-

(SUNIL P. DESHMUKH, J.)

sd/-

(R. M. BORDE, J.)

28] From the aforesaid narration of events, it is quite clear that the interim orders were secured by the Petitioners, without being candid to the Court. An impression was created that the other Benches, in identical matters had granted interim reliefs and on the basis of such impression, further interim reliefs were secured. The distinction that at least two of the Petitioners, i.e., *Khandge* and *Shivputra* did not even possess Ph.D. degree , which was an essential pre-requisite, was never pointed out. Rather, an impression was created that even their cases are '*identical*' to the cases instituted by incumbent Principals possessing the Ph.D. degree. To our queries, Mr. Shastry replied that he had merely made reference to "*interim order*" but had not specifically stated anything about "*interim relief*". Mr. Shastry was unable to really explain us the fine

distinction between “*interim order*” and “*interim relief*” . At the very least, we must observe that the manner in which the Petitioners in these batch of petitions have secured interim reliefs, leaves much to be desired. We refrain from saying much, except perhaps to refer to certain observations made by the Hon'ble Supreme Court in the context of abuse of legal process and the role of advocates, when they appear before the courts of law.

29] In case of *Kishore Samrite vs. State of Uttar Pradesh & Ors.*⁴, the Hon'ble Supreme Court has observed thus:

“The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. The principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court have often been stated. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with ‘unclean hands’. Courts have held that such litigants are neither entitled

4 (2013) 2 SCC 398

to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there

is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

30] In case of *D. P. Chadha vs. Triyugi Narain Mishra & Ors.*⁵, in the context of role of advocates in the administration of justice, the hon'ble Supreme Court has observed thus :

"24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are

5 (2001) 2 SCC 221

called – and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but over zealousness and misguided enthusiasm have no place in the personality of a professional.

25. *An advocate while discharging duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.*

26. *A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.”*

31] We must also note that when these matters were taken up for final hearing on 5 January 2016, Mr. Shastri, learned counsel for the Principals, in all seriousness submitted that since in pursuance of interim orders, incumbent Principals have continued in service and even obtained service benefits, the petitions should be disposed of as infructuous and even the Petitioners might not want to pursue these petitions any further. This submission was perhaps made under the misconception that benefits secured under an interim order are irreversible, even if the writ petition is formally withdrawn or dismissed. The legal position is however, otherwise.

32] In case of *State of U.P. v. Harendra Kunwar*⁶, the Hon'ble Supreme Court did not approve the dismissal of the petition as infructuous, where the Petitioners on the basis of interim order continued in service beyond 58 years and upto 60 years. The matter was remanded to the High Court with a direction to deduct the benefit reaped by the petitioners for two more years under the interim orders, in case 58 years is found to be the correct age of retirement. The relevant observations read thus:

"2. We are indeed surprised that in the first place the learned single Judge should have disposed of the matter holding that the writ petition had become infructuous on the respondent

herein attaining the age of 60 years. The High Court should have realised that he had reaped the benefit of an extended service of two years under an interim order of the High Court. The High Court should, therefore have considered whether he deserved that benefit or did not deserve it as per the rules. If he did not deserve it the High Court ought to have recorded a finding in that behalf and should also have directed him to refund the benefit that he had received by way of undeserved continuance in service. Instead the High Court disposed of the matter as having become infructuous and the Division Bench even found fault with the State for having preferred an appeal against that order, the High Court also overlooked the fact that for the purpose of assessing the retiral benefit it would be required to go into the question whether the age of retirement was 60 years or 58 years. Therefore, the issue having been left open, even if the State works out the pensionary benefits on the premise that the age of retirement was 58 years since its order of retirement dated 17th July, 1990 had not been quashed, there would be a second round of litigation questioning the fixation of retiral benefits. We are, therefore, of the opinion that the High Court was wrong in disposing of the writ petition and thereafter dismissing the appeal filed by the State Government.

3. We, therefore, allow this appeal and set aside the order of the learned single Judge as well as the Division Bench and remit the matter to the High Court for disposal in accordance with law. We may also make it clear that if the High Court comes to the conclusion that the age of retirement was

correctly determined by the State Government as 58 years the High Court will deduct the undeserved benefit which the respondent reaped by continuance in service for two years beyond the age of retirement of 58 years and deduct the salary and allowances from the terminal benefits which the respondent would be entitled to and also make a specific direction in that behalf at the time of fixation of pensionary benefits. It is time that such an action is taken to deter people from questioning the age of retirement or date of birth at belated stages: otherwise that tendency to bring such cases and reap the benefit under interim order will not be controlled. No order as to costs."

(emphasis supplied)

33] In the case of *Indian Council for Enviro-Legal Action vs. Union of India & Ors.*⁷, the Hon'ble Apex Court has held that it is bounden duty and obligation of the court to neutralise any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party. The stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risk and costs of the party obtaining the stay. After

⁷ (2011) 8 SCC 161

the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Any leniency would seriously affect the credibility of the judicial system. Unscrupulous litigants must be prevented from taking undue advantage by invoking jurisdiction of the court. No litigant can derive benefit from the mere pendency of a case in a court of law. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

34] In the case of *Amarjeet Singh & Ors. vs. Devi Ratan & Ors.*⁸, the Hon'ble Apex Court has held that no litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim orders stand nullified automatically. A party cannot be allowed to take any advantage of its own wrongs by getting an interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes

⁸ (2010) 1 SCC 417

applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court.

35] In case of *Kalabharati Advertising vs. Hemant Vimalnath Narichania and others*⁹, in the context of effect of interim reliefs, where the main petition is either dismissed or withdrawn, the Hon'ble Apex Court has observed thus:

15. No litigant can derive any benefit from the mere pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done

9 (2010) 9 SCC 437

to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the court. (vide: Dr. A.R. Sircar (Dr.) v. State of Uttar Pradesh - 1993 Supp. (2) SCC 734; [Shiv Shanker v. SRTC](#)- 1995 Supp. (2) SCC 726; the [Arya Nagar Inter College v. Sree Kumar Tiwary](#)- AIR 1997 SC 3071; [GTC Industries Ltd. v. Union of India](#)- AIR 1998 SC 1566 and [Jaipur Municipal Corpn. v. C.L. Mishra](#)- (2005) 8 SCC 423.

36] In case of *Ram Krishna Verma vs. State of U.P.*¹⁰, the Hon'ble Supreme Court examined the issue while placing reliance upon its earlier judgment in [Grindlays Bank Limited v. ITO](#)-AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. A similar view has been reiterated by this Court in *Mahadeo Savlraam Shelke v. Pune Municipal Corpn.*- (1995) 3 SCC 33.

¹⁰ (1992) 2 SCC 620

37] In case of *South Eastern Coalfields Ltd. Vs. State of M.P.*¹¹, the Hon'ble Supreme Court examined this issue in detail and held that no one shall suffer by an act of the Court. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences.

11 (2003) 8 SCC 648

38] In the aforesaid decision of *South Eastern Coalfields Ltd.* (supra), the Hon'ble Supreme Court at paragraph 28 observed thus:

"28.Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the Court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated....."

39] The aforesaid judgments are passed on the application legal maxim *sublato fundamento, cadit opus*, which means in case a foundation is removed, the superstructure falls.

40] In case of *Badrinath v. State of T.N.*¹², the Hon'ble Supreme Court has held that it is settled legal proposition that the forum of writ court cannot be used for the purpose of giving interim relief as the only and the final relief to any litigant. It is not permissible for a party to file a writ

12 (2000) 8 SCC 395

petition, obtain certain orders during the pendency of the petition and withdraw the same without getting proper adjudication of the issue involved therein and insist that the benefits of the interim orders or consequential orders passed in pursuance of the interim order passed by the writ court would continue. The benefit of the interim relief automatically gets withdrawn/neutralized on withdrawal of the said petition. In such a case concept of restitution becomes applicable otherwise the party would continue to get benefit of the interim order even after losing the case in the court. The court should also pass order expressly neutralizing the effect of all consequential orders passed in pursuance of the interim order passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits. (*Vide Abhimanyoo Ram v. State of U.P.*- (2008) 17 SCC 73)).

41] Mr. Shashtry did submit since there was no fraud or misrepresentation on the part of the Petitioners and they have merely continued in service beyond the age of 62 years on the basis of interim orders made by this Court, there is no question of any recovery involved from them. We are unable to accept this submission. In so far as the *Khandge* and *Shivputra* are concerned, since the said Petitioners did not

even posses Ph.D. degree, they were ineligible to even to be considered for continuation in service beyond 62 years. As observed earlier, the manner in which the interim orders were secured by the Petitioners in these matters, leaves much to be desired. That apart, the Hon'ble Supreme Court in case of *Chand Prasad Uniyal V. State of Uttarkhand and Ors.*¹³, upon taking note of its earlier decisions in similar matters has held that the recovery of excess paid to be money cannot be the limited only to the cases of fraud and mis-representation. In paragraphs 16 and 17, the Hon'ble Supreme Court has observed thus:

16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation

13 AIR 2012 Supreme Court 2951

on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (2009 AIR SCW 1871) (supra) and in Col. B.J. Akkara (Retd.) case (2006 AIR SCW 5252) (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

42] Applying the aforesaid principles to the facts and circumstances of the present case, there is no question of either disposing of these petitions as infructuous or permitting the Petitioners to retain the financial benefits which they have reaped in pursuance of interim orders obtained by them in these petitions. In fact, the cases of *Khandge* and *Shivputra*, are quite gross. Apart from the general challenge to the validity of Clause 11(5) of the GR dated 5 March 2011 lacking any merit, these petitioners, did not even possess Ph.D. degree, which is an essential qualification for seeking extension beyond the age of 62 years. It is, therefore, appropriate to direct all the Petitioners- Principals to refund to the State Government all the financial benefits, which they may have received by way of salary etc. in respect of their continuance in service beyond the age of 62 years, within three months from today. In case, the State Government or the Institutions in which such Petitioners-Principals have served, are liable to pay any amounts by way of terminal benefits etc., to

the said Petitioners-Principals, the State Government or the Institutions as the case may be, shall be entitled to make appropriate deduction/adjustment in this regard, so that the excess amounts obtained by such Petitioners-Principals, in respect of their illegal and unauthorised continuance in service beyond the age of 62 years, stand recovered by the State Government.

43] In the result, these petitions are disposed of with the following order:

(A) Rule is made absolute in writ petition no. 3481 of 2015 in terms of prayer clauses (B) and (BB). The decision of the Performance Review Committee dated 14 June 2013 and the order of the State Government dated 29 November 2013, are hereby set aside;

(B) The civil application no. 3395 of 2015 in writ petition no. 3481 of 2015 is disposed of in the aforesaid terms;

(C) Rule is discharged in writ petition nos. 986 of 2013, 5677 of 2013, 5678 of 2013, 5679 of 2013, 6164 of 2013, 9820 of 2013, 9821 of 2013, 12051 of 2012, 12052 of 2012 and 12056 of 2012

and civil application no. 693 of 2015 in writ petition no. 5677 of 2013 and civil application no. 2762 of 2013 in writ petition no. 9820 of 2013 are also disposed of in the aforesaid terms. The interim orders granted in these petitions stand vacated;

(D) The Petitioners-Principals, in the petitions referred in clause (C) above, are directed to refund to the State Government all the financial benefits like salary etc. obtained by them in respect of their continuance in service beyond the age of 62 years within a period of three months from today. In case, the State Government or the Institutions in which the Petitioners-Principals have served are due and payable any amounts towards terminal benefits etc., then the State Government and/or the Institutions shall be entitled to make appropriate deduction/adjustment, so that excess amounts received by the Petitioners-Principals are recovered by the State Government. It is made clear that the excess amounts must ultimately be refunded to the State Government within a period of three months from today;

(E) All the Petitioners-Principals, shall not be entitled to count their services beyond the age of 62 years either for the purposes of

retiral benefits or for any purposes whatsoever, since it is declared that their continuance beyond the age of 62 years was illegal.

(F) All the Petitioners, except the Petitioner in Writ Petition No. 3481 of 2015, shall pay cost quantified at Rs.10,000/- each in favour of the State of Maharashtra.

(G) All the writ petitions stand disposed of finally in the aforesaid terms.

(M. S. SONAK, J.)

(NARESH H. PATIL, J.)