

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

WRIT PETITION NO.1201 OF 2016

[State of Maharashtra and others .vs. Dr. Vinay s/o Shri Krishnarao Hazarey]

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

Court's or Judge's orders

Mrs. K.R. Deshpande, Assistant Government Pleader for the petitioners-State.

CORAM : B.R. GAVAI AND
P.N. DESHMUKH, JJ.

DATED : FEBRUARY 18, 2016.

Heard.

This is one more example as to how the officers of the State Government, who are not required to pay for the litigation from their own pocket, decide to file unwarranted and unnecessary petitions.

The respondent herein was initially appointed as a Lecturer in Government Dental College and Hospital, Nagpur on 16.12.1980. Thereafter, from time to time, he received promotions as a Reader, Professor and finally, he was promoted as a Dean of the Government Dental College and Hospital, Nagpur, vide Government Resolution dated 11.9.2000.

The respondent received a communication that since his date of birth was of 20.1.1953, he would attain the age of superannuation i.e. 62 years on 20.1.2015 and as such, he shall stand retired on 31.1.2015. The petitioner no.3-Director, Medical Education and Research, Mumbai addressed the communication dated 19.1.2015 to the

petitioner no.2, who is Additional Chief Secretary, Medical Education and Drugs Department, Mumbai, thereby including the name of the respondent in the list of the person, who were to retire on 31.1.2015.

In the meantime, an original application came to be filed by the respondent being Original Application No.32/2015, contending therein that in view of Government Resolution dated 28.7.2014, his age of retirement would be 63 years and as such the proposal to retire him on 31.1.2015 was not in accordance with law. It appears that the learned Tribunal passed an interim order thereby staying the communication dated 19.1.2015, vide its order dated 28.1.2015. In the meantime, the State of Maharashtra issued another Government Resolution dated 5.3.2015 thereby providing that the retirement age of Director of Directorate of Medical Education and Research, Director and Joint Director of Directorate of Ayurveda and all Deans of the Dental and Ayurved Colleges was decided to be extended from 62 years to 64 years.

The learned Tribunal, noticing that Government Resolution dated 5.3.2015 was issued to overcome the anomalies in the earlier Government Resolution dated 28.7.2014, has allowed the original application and held that the petitioner would be entitled to continue in service till he attains the age of 64 years. Being aggrieved thereby, the present petition.

Mrs. Kalyani Deshpande, the learned Assistant Government Pleader appearing on behalf of the petitioners-State, submits that on the date on which the respondent

was to superannuate i.e. 31.1.2015, the Government Resolution dated 28.7.2014 was holding the field and in the said Government Resolution, only the post of Lecturers, Readers and Professors were included. The learned Assistant Government Pleader submits that merely because subsequently the Government has corrected its mistake and issued a Government Resolution thereby including the post of Dean, would not make the said Government Resolution retrospective in operation. It is, therefore, submitted that the learned Tribunal has wrongly given the benefit of Government Resolution dated 15.3.2015 to the respondent.

Firstly, we find that there was no logic in providing a higher age of retirement for Lecturer, Reader and Professor and a lesser age of retirement for Dean. Admittedly, the Dean of the Colleges come from the feeding cadre of the professors. Admittedly, the Dean of the colleges, apart from discharging their administrative duties, are also required to discharge their teaching duties. As such, we find that there was no logic in Government Resolution dated 28.7.2014 in excluding the post of Dean from the applicability of the said Government Resolution. However, realizing the said mistake, the Government itself had issued a Government Resolution dated 15.3.2015 thereby providing a higher age of retirement for the post of Dean, taking into consideration that the position of Dean is superior to that of Professor.

In that view of the matter, we find that since the Government itself had rectified its error, no error could be found with the judgment and order of the learned Tribunal

in holding that the original respondent was entitled to continue in service till the age of 64 years.

We, therefore, find that the petition is without substance and is dismissed.

We direct the copy of this order to be forwarded to the Chief Secretary and request him to instruct all the departments to avoid filing such unwarranted and unnecessary litigations. Apart from unnecessarily spending an amount from the public exchequer, it unnecessarily increases the burden on the Court. We further direct the Chief Secretary to enquire as to who were the officers responsible for advising such unwarranted litigations and take suitable action against such officers.

The matter be kept after the period of six weeks so as to enable the Chief Secretary to report the compliance of the aforesaid direction.

JUDGE

JUDGE