

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7831 OF 2016

1. Prof. Dr. Yeshwant Kondji Khillare,
Aged 60 years, Occ.: Service-Professor
in Dr. Babasaheb Ambedkar Marathwada
University, R/o.: Plot No. 68, Pethe
Nagar, Bhausingpura, Aurangabad
2. Prof. Dr. Daulat Laxman Sonawane,
Aged 60 years, Occ.: Service-Professor
in Dr. Babasaheb Ambedkar Marathwada
University, R/o.: Dault, H.No.4,
Survey No. 221/1, Honaji Nagar,
Jatwada Road, infront of Oxford School,
Aurangabad
3. Prof. Dr. Vishnudas Harikishan Bajaj,
Aged 60 years, Occ.: Service-Professor
in Dr. Babasaheb Ambedkar Marathwada
University, R/o.: H.No.5, Kalash,
Gandhi Nagar, Bansilal Nagar,
Aurangabad
4. Dr. Patel Shaikh Ganimiya Hussain,
Aged 60 years, Occ.: Service-Associate Prof.
in Chistiya College, Khultabad,
R/o.: Wahed Colony, Central Naka Road,
Roshan Gate, Aurangabad
5. Dr. Shaikh Abdul Hafiz,
Aged 60 years, Occ.: Service-Associate Prof.
in Maulana Azad College,
R/o 6, Ahbab Colony, Ravindra Nagar,
Kat-Kat Gate Road, Aurangabad
6. Dr. Gulam Rabbani Mohammed Osman,
Aged 60 years, Occ.: Service-Associate Prof.
in Maulana Azad College,
R/o 7, Bait-ul-Momin, Rahat Colony,
Kat-Kat Gate Road, Aurangabad

7. Dr. Vishwanath Narsingrao Utkar,
Aged 60 years, Occ.: Asst. Prof.
in Maulana Azad College,
R/o.: 46, Asmta Park Mahada Colony,
N-7, CIDCO, Aurangabad
8. Dr. Prakash Santoshrao Bansod,
Aged 60 years, Occ.: Service-Librarian,
in Govt. College of Education,
R/o. Plot No.19, Sankalp Building,
Vasundhra Colony, Near Nandanvan
Colony, Aurangabad
9. Dr. Raosaheb Bhujangrao Dhawale,
Aged 60 years, Occ.: Service-Associate Prof.
in Matshodari Mahavidyalaya,
R/o.: Plot No. 9, Bagya Nagar,
Mobile Tower Building,
Near Railwaylon, Old Jalna,
Jalna

PETITIONERS

VERSUS

1. State of Maharashtra,
Through : Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32
2. Director (Higher Education),
Directorate of Education,
Government of Maharashtra,
Pune – 1
3. Joint Director (Higher Education),
Aurangabad Region, Aurangabad
4. The Vice Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad
5. Principal,
Chistiya College, Khultabad,
District Aurangabad

6. Principal,
Maulana Azad College,
Aurangabad
7. Principal,
Govt. College of Education,
Near Deogiri College,
Aurangabad
8. Principal,
Matshodari Mahaavidyalaya,
Jalna, District Jalna

RESPONENTS

AND

WRIT PETITION NO. 8589 OF 2016

Prof. Dr. Sharda Atirudra Sangawar,
Age 60 years, Occu.: Service,
R/o Mayur Apt, Building B, Flat No.22,
House No. 1/17/790, Kailash Nagar,
Nanded

PETITIONER

VERSUS

1. State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai
2. The Director of Education,
Higher and Technical Education,
Central Building Pune
3. The Joint Director,
Higher Education, Nanded Region,
Nanded
4. The Vice Chancellor,
Swami Ramanand Tirth Marathwada
University, Nanded

RESPONDENTS

Mr. V.D. Salunke, Advocate for the petitioner
in W.P. No. 7831/2016
Mr. S.V. Deshmukh, Advocate for the petitioners
in W.P. No. 8589/2016
Mr. V.S. Badakh, A.G.P. for respondent Nos.1 to 3
Mr. V.S. Kadam, Advocate for respondent No.4
in W.P.No.8589/2016
Mr. S.S. Tope, Advocate for respondent No.8 in W.P.
No.7831/2016
Mr. S.G. Chapalgaonkar, Advocate for respondent No.4
in W.P. No.7831 of 2016

**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : 4th MAY, 2017
PRONOUNCED ON: 6th JUNE, 2017**

COMMON JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Rule, returnable forthwith. With the consent of the learned counsel for the petitioners and the learned A.G.P., heard finally.

2. Common questions of law and fact are involved in these petitions. Hence, they are being decided by this common judgment.

3. The petitioners comprise of Associate Professors and Librarian, who were serving in the respondent-Colleges, have sought quashment of the Government Resolution dated 12.07.2016, whereby their

age of retirement has been brought down from 62 years to 60 years and further sought a direction against the respondent Authorities to extend their age of retirement upto 62 years.

4. The learned counsel for the petitioners, in both petitions, have raised common grounds of objections for quashment of the Government Resolution dated 12.07.2016. They submit that as per the Government Resolutions dated 25.02.2011, 05.03.2011, 23.11.2011 and 28.03.2012, the age of retirement of the Associate Professors/Teachers was enhanced by the Government from 58 years to 62 years and vide Government Resolution dated 22.08.2012, the age of retirement of Librarian was enhanced from 60 years to 62 years. Accordingly, as per the terms of the said Government Resolutions, performance of the petitioners was evaluated by the Performance Review Committee and after finding them fit to be continued till attaining the age of 62 years, the said Committee recommended to the Government accordingly. Some of the Associate Professors, who were recommended by the Committee for extension of the benefit of enhanced retirement age,

alongwith petitioners, have been given the said benefit. However, the proposals of the petitioners were intentionally and deliberately kept pending by the respondents-Authority until passing of Government Resolution dated 12.07.2016. As per Government Resolution dated 12.07.2016, the Government reconsidered its earlier resolutions enhancing the age of retirement upto 62 years and resolved to bring down the age of retirement to 60 years from 62 years. In view of this Government Resolution, the proposals of the petitioners, which were already under consideration of the Government, were rejected and they were ordered to be retired on attaining the age of 60 years.

5. The learned counsel for the petitioners submit that the Government Resolution dated 12.07.2016 is discriminatory and arbitrary. The petitioners were not given an opportunity of hearing before passing of the said Government Resolution. They submit that some of the Associate Professors, who were similarly situated with the petitioners, were given the benefit of extension of the retirement age upto 62 years. Some of the Associate Professors, who had already got retired,

also were given the said benefit. However, the petitioners only came to be treated differently by denying the said benefit in view of the impugned Government Resolution dated 12.07.2016. They submit that the impugned Government Resolution is arbitrary and unconstitutional since it is against the provisions of Article 14 of the Constitution of India.

6. The learned A.G.P. filed reply on behalf of respondent Nos.1 to 3 and opposed the petitions. The learned A.G.P. submits that considering the scarcity of the persons for being appointed to the posts of Associate Professor/Librarian, the Government had passed the Resolutions dated 25.02.2011, 05.03.2011, 23.11.2011, 28.03.2012 and 22.08.2012 thereby increasing their age of retirement from 58 years or 60 years, as the case may be, to 62 years, subject to evaluation of their performance and fitness for continuation. However, subsequently, it was noticed that there were a number of eligible persons available for being appointed to the said posts. Moreover, by continuing the existing Associate Professors/Librarians upto their attaining the age of 62 years, it

was noticed that the Government was required to shoulder more financial burden. In the circumstances, to avoid such financial burden and to extend opportunities for newly qualified persons of getting employment, the Government decided to reconsider its earlier decisions of enhancing the age of retirement upto 62 years and resolved to bring it down to 60 years, as per the impugned Government Resolution. He submits that as per the judgment in the case of ***Jagdish Prasad Sharma Vs. State of Bihar 2013 (8) SCC 633***, the State Government is entitled to enact any laws pertaining to service conditions of Associate Professors and other staff of State Universities and the right to alter terms and service conditions of the employees of State Universities or college is within domain of the policy making power of the State Government. Accordingly, the Government decided to reduce the age of retirement from 62 years to 60 years. He submits that this decision of the State Government has been supported by letter dated 14.08.2012 issued by the Ministry of Human Resources Department and the Department of Higher Education of Government of India, New Delhi.

7. The learned A.G.P. further submits that the proposals received by the Government for enhancement of age of retirement of the Associate Professors were considered by the Government from time to time and decision thereon was taken as per the existing policy. The proposals which were considered prior to issuance of the impugned Government Resolution dated 12.07.2016, were given the benefit of extension of the age of retirement. The proposals of the petitioners were not considered prior to issuance of the said Government Resolution. Consequently, they were governed by the Government Resolution dated 12.07.2016. As such, they were not given the benefit of extension of the age of retirement upto 62 years. He submits that after issuance of the said Government Resolution, nobody has been given the benefit of extension of the age limit. Therefore, according to him, there is absolutely no discrimination on the part of the Government. He submits that all the Associate Professors/Librarians were being treated equally as per the existing policy in respect of age of retirement. Only because of the proposals of some of the incumbents, which were sent

along with proposals of the petitioners, were considered prior to issuance of the Government Resolution dated 12.07.2016 granting them benefit of enhancement of age of the retirement, the petitioners cannot say that they have been subjected to discrimination. The learned A.G.P. submits that the petitioners have no vested right of claiming enhanced age of retirement. In support of this contention he relied on the judgments in the cases of **Deepak Agrawal Vs. State of U.P. (2011) 6 SCC 725**, **State of Tripura Vs. Nikhil Chakraborty (2017) 3 SCC 646** and **P. Suseela and others Vs. University Grants Commission and others (2015) 8 SCC 129**.

8. The learned counsel for the petitioners pointed out to certain individual cases of the Associate Professors, who were considered fit for getting benefit of the enhanced age of retirement upto 62 years and given the said benefit even after they got retired. However, one thing is clear that their cases were considered prior to issuance of impugned Government Resolution dated 12.07.2016. The said Assistant Professors are not parties to these

petitions. The orders extending them the benefit of enhanced age are not challenged in these petitions. Their cases seem to have been considered by the Government keeping in view the exigency of their services in the concerned colleges. Even if it is assumed that they were wrongly extended the benefit of enhancement in the age of retirement, the petitioners cannot claim parity for getting done illegal things again, since two wrongs cannot make one right. In the circumstances, we are not inclined to consider the legality and correctness of the decision taken by the Government to enhance the age of retirement in respect of the individual cases referred to by the petitioners. The petitioners cannot be given the benefit that has been given to those individuals.

9. Here, a reference may be made to paragraph 5 of the letter dated 14.08.2012, issued by the Ministry of Human Resource Development, Department of Higher Education, Government of India, New Delhi, copy of which is produced by respondent Nos. 1 to 3, which reads as under:-

"Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of age of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mentioned in the Ministry's letter dated 31.12.2008 may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and College teachers. However, the other conditions as mentioned in the letters cited above shall continue to apply."

10. In the case of **Jagdish Prasad Sharma** (supra), cited by the learned A.G.P., it has been held that the right to alter the terms and service conditions of the State universities and colleges is within the domain of the State Government and until it decides to adopt the U.G.C. scheme, it would have no application to the teaching staff of the Universities/Colleges.

11. The cases of **Deepak Agrawal** (supra), **State of Tripura Vs. Nikhil Chakraborty** (supra) and **P. Suseela and others** (supra), cited by the learned A.G.P., may

not be directly on the question of enhancement in the retirement age of the Assistant Professors, Lecturers, etc., but from these judgments, it can be culled out that when there is no vested right with the incumbent in the matter of getting any benefit attached to his service, the rule/law which is prevalent at the time when consideration takes place for such service benefit, would be applicable. In the present case, there is no vested right with the petitioners to get enhanced the age of retirement. Even as per the Government Resolutions dated 25.02.2011, 05.03.2011, 23.11.2011, 28.03.2012 and 22.08.2012, the enhancement in the age of retirement was subject to fitness and evaluation of performance of the incumbent concerned. In case an incumbent was found to be unfit or whose performance was not satisfactory, he was not entitled to claim enhancement in the age of retirement as of right. There is nothing in these Government Resolutions to show that the recommendations of the Performance Review Committee would be binding on the Government. In the absence of approval of the Government to the said recommendations, the retirement age of the incumbent concerned was not liable to be

enhanced upto 62 years. In the circumstances, the proposal for enhancement in the age of retirement would be governed by the rules/laws, which would be in force when such proposal was considered.

12. Indisputely, the proposals of the petitioners remained to be considered until issuance of the impugned Government Resolution on 12.07.2016. If this factual position is considered, the proposals of the petitioners certainly would be governed by the Government Resolution dated 12.07.2016. Consequently, the earlier Government Resolutions, which were reconsidered in the impugned Government Resolution, would be of no help to the petitioners to claim enhanced age of retirement upto 62 years.

13. As stated above, it was within the domain of the policy making power of the State Government to fix the age of retirement of the Associate Professors/Librarians. In exercise of that power, the State Government decided to bring down the age of retirement of the Associate Professors/Librarians from 62 years to 60 years. The reasons given by the State Government for changing the policy decision in respect of the age

of the retirement appear to be reasonable and acceptable. The continuation of the petitioners and the persons similarly situated, would have increased the financial burden on the Government. Moreover, it is stated that there were many qualified persons available for being appointed as Associate Professors/Lecturers/Librarians. It was necessary to change the policy decision in order to extend an opportunity of employment to such persons. In view of these reasons, we hold that the decision taken by the Government to bring down the age of retirement from 62 years to 60 years cannot be said to be arbitrary, irrational or unreasonable.

14. It is true that some of the incumbents, whose proposals were recommended simultaneously with that of the petitioners, have got the benefit of the earlier Government Resolutions and they have been ordered to be continued till they attain the age of 62 years. However, their cases were considered prior to issuance of the impugned Government Resolution. There is not a single case pointed out by the petitioners to indicate that after issuance of the impugned resolution, an

incumbent similarly situated to the petitioners has been given benefit of the enhanced age of retirement upto 62 years. Had such benefit been given to somebody, the petitioners would have been justified in saying that there was discrimination on the part of the State Government. The petitioners cannot equate themselves with the incumbents whose cases were considered prior to 12.07.2016 as per the policy that was then prevailing. The incumbents, whose cases were considered as per the earlier Government Resolutions, when they were in force, would form a different class and could not be treated at par with the petitioners. The cases of the petitioners have been considered as per the policy that was prevailing i.e. the policy contained in Government Resolution dated 12.07.2016. Consequently, the petitioners cannot be heard to say that they were discriminated.

15. The learned counsel Mr. V.D. Salunke cited the judgment in the case of ***D.S. Nakara and others Vs. Union of India (1983) 1 SCC 305***, wherein it was held that pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an

ex gratia payment. It is a payment for the past service rendered. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. It creates a vested right and is governed by the statutory rules. In the circumstances, criterion of the date of enforcement of the revised scheme entitling benefits of the revision to those retiring after that date while depriving the benefits to those retiring prior to that date, was held to be violative of Article 14. As stated above, the enhancement in the age of retirement is not a vested right of the petitioners. Therefore, they cannot get the benefit of this judgment which protects the vested right of an employee to get pension.

16. The learned counsel Mr. V.D. Salunke then relied on the judgment in the case of **John Vallamattom and another Vs. Union of India (2003) 6 SCC 611**, wherein the constitutionality of the provisions of Section 118 of the Indian Succession Act, 1925 was challenged. Since discriminatory treatment was meted out to the members of Christian community under the Act by which they were practically prevented from

bequeathing the property for religious and charitable purposes, the Hon'ble the Apex Court held that Section 118 of the Act is unconstitutional and is liable to be struck down as unconstitutional. It was held that there should be no discrimination between one person and another if as regards subject matter of the Legislation, their position is the same and all persons in similar circumstances shall be treated alike, both in privileges and liabilities imposed. It was further held that the classification should not be arbitrary. It should be reasonable and must be based on qualities and characteristics and not any other who are left out and those qualities or characteristics must have reasonable relations to the object of the Legislation. In the case at hand, as stated above, there is change in the policy of the Government in the matter of age limit for retirement of Associate Professors/Librarians. The cases of the individual incumbents were considered by the Government as per the policy that was prevailing at the time of such consideration. Only because the cases of the petitioners could not be considered, when the earlier policy was in force and could be considered only after there was change in the

policy, the petitioners cannot claim parity with those incumbents whose cases were considered when the earlier policy was in force and as such, cannot blame the Government for causing discrimination. In view of these distinguishing facts of the present case, the judgment in the case of **John Vallamattom and another** (supra) , would not be helpful to the petitioners.

17. The learned counsel for the petitioners further cited the judgment in the case of **State of Uttar Pradesh Vs. Dayanand Chakrawarty and others (2013) 7 SCC 595**, wherein the U.P. Jal Nigam Employees (Retirement on Attaining Age of Superannuation) Regulations, 2005, which created two separate ages of retirement amongst the same classes of employees, was declared as discriminatory and unconstitutional. In the case at hand, as per the impugned Government Resolution dated 12.07.2016, two separate ages of retirement amongst the same classes of employees have not been prescribed. All the incumbents, whose cases would be considered after 12.07.2016 onwards, would have the same age of retirement i.e. 60 years. Thus, the above cited case would not be helpful to the

petitioners to advance their case.

18. In the case of **Devkaran s/o Tulshiram Madan Vs. The State of Maharashtra and others, Writ Petition No. 2907 of 2015**, decided by this Court on 13.03.2015, cited by the learned counsel for the petitioners, the proposal of the petitioners therein seeking enhancement in the age of retirement upto 62 years was forwarded to the Government. However, the decision was taken late. It is only on 01.09.2012, that the Government ordered extension of the age of retirement of the petitioner though the petitioner attained the age of 60 years on 31.01.2011. The petitioner was not paid salary from January, 2012 to September, 2012. It was held that the principle of "no work, no pay" would not be applicable and the Government was directed to pay the salary to the petitioner therein in respect of that period. This judgment has no bearing on the controversy involved in the present petitions.

19. The learned counsel for the petitioners lastly cited the judgment in the case of **Ramana Dayaram Shetty Vs. International Airport Authority of India and others (1979) 3 SCC 489**, wherein it has been observed in

paragraph 12 as under:-

".....It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

20. As stated above, the State Government, in exercise of its policy making power resolved to reduce the age of retirement of the Lecturers/Associate Professors/Librarians from 62 years to 60 years as per the impugned Government Resolution dated 12.07.2016. It was the prerogative of the Government to fix the age of retirement of such employees. As stated above, there is nothing on record to show that after issuance

of the said resolution, the Government granted the benefit of enhanced age of retirement upto 62 years to any of the Associate Professors/Lecturers/Librarians. All the incumbents, whose cases were pending till 12.07.2016, have been treated equally in terms of the impugned Government Resolution. Thus, no discrimination has been caused by the State Government. As stated above, the reasoning given by the State Government for change in the policy in the matter of age of retirement appears to be reasonable, proper and acceptable. The impugned Government Resolution, thus, is neither irrational nor unreasonable, nor discriminatory. In the circumstances, the above cited judgment would not be of any help to the petitioners to challenge the validity of the impugned Government Resolution.

21. In our opinion, the impugned Government Resolution is neither unreasonable nor irrational, nor arbitrary. The proposals of the individual incumbents for getting benefit of enhanced age of retirement have been considered as per the policy that was prevailing at the time of their consideration. No discrimination

has been caused by the State Government in extending or denying such benefit of any incumbent. We do not find anything unconstitutional or violative of Article 14 of the Constitution of India in the impugned Government Resolution dated 12.07.2016. The petitioners have no vested right in claiming enhancement in the age of retirement upto 62 years. If that be so, they are not entitled to get any relief as claimed in the petitions. The petitions are devoid of any substance. They are liable to be dismissed. Hence the order:-

- (i) The Writ Petitions are dismissed.
- (ii) Rule is discharged accordingly.
- (iii) The parties shall bear their own costs.

Sd/-
[SANGITRAO S. PATIL]
JUDGE

Sd/-
[S.V. GANGAPURWALA]
JUDGE