

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 76 OF 2017

Maharashtra Cosmopolitan Education Society's MCES College of Education and Research. ...Petitioner

Versus

The Presiding Officer Mumbai University and College Tribunal University of Mumbai and others. ...Respondents

C.K.Thomas i/b C.K.Thomas & Associates for Petitioner.
Mr.Sunil Dighe for Respondent No.2
Md.Asadullah Shaikh i/b Rui Rodrigues for Respondent No.3
Mr.A.R.Metkari A.G.P for State Respondent No.4.

CORAM: G.S.KULKARNI,J
DATED: 15th February, 2017

JUDGMENT:-

1. Heard Mr.C.K. Thomas, learned counsel for the Petitioner and Mr. Dighe, learned Counsel for Respondent No.2. This Writ Petition is directed against the judgement and

order dated 25th November 2016, passed by the Learned Presiding Officer of the Mumbai University and College Tribunal. The Appeal filed by the 2nd Respondent, challenging his termination has been allowed in the following terms:

"(a) In the circumstances, having regard to the facts and circumstances, and considering the legal position, present appeal deserves to be allowed partly, and it is allowed partly, and it is held that action of oral otherwise termination by Respondent No.1 for not allowing the Appellant to sign the muster roll w.e.f.15.06.2015 prior to his age of superannuation upto age of 65 years subject to report of Performance Review Committee on completion of 62 years, is illegal and same is quashed and set aside, with direction to Respondent Nos.1 and 2 to reinstate the Appellant on the post of Principal in the Respondent No.2 Degree College w.e.f.15.06.2015, with continuity of his service, backwages and consequential benefits, within the period of three months, and appeal stands disposed off with no order as to costs".

2. The case of the 2nd Respondent before the Tribunal was that the 2nd Respondent was appointed as a full time Principal in the Appellants Degree College with effect from 1st July 2005, initially on a probation for two years. He possessed the necessary qualifications, namely, a Ph.D, teaching experience

etc. The University of Mumbai also granted approval to the appointment of the 2nd Respondent as a Principal on probation. Thereafter, the 2nd Respondent was appointed as a regular Principal on completing the probationary period.

3. The State of Maharashtra had issued Government Resolutions dated 25th February 2011, 5th March, 2011 and 23rd November 2011, accepting various recommendations of the University and the other concerned authorities, whereby it was directed that the provisions of the said Government Resolutions be implemented by all the aided/unaided colleges affiliated to the University. By these Government Resolutions, age of retirement of the Principals of aided colleges was extended from the age of 60 years to 65 years, subject to their '*performance review*', on completion of the age of 62 years.

4. The case of the 2nd Respondent before the Tribunal was that he had completed 60 years on 13th February 2015, he was permitted to discharge the duties on the post of Principal up to 13th June 2015, which is for a period of 4 months after he attained the age of 60 years. It was his contention that

attaining the age of 60 years was not the age of superannuation, as the age of superannuation was 65 years. Though he was continued in service after he attained 60 years of age, however, he was orally asked not to sign the muster from 15th June 2015. The 2nd Respondent contended that this action of the Petitioner / Management, amounted to oral termination. The 2nd Respondent also contended that in the staff profile maintained by the Petitioner Management, the date of his retirement was shown as 28-02-2020, which was in consonance with the Government Resolutions issued by the State Government enhancing age of the retirement for the post of Principal to 65 years. Being aggrieved by this action of the Petitioner which according to the 2nd Respondent amounted to an arbitrary termination, the 2nd Respondent approached the University Tribunal seeking reinstatement of services.

5. Before the Tribunal the Petitioner/Management, contended that the 2nd Respondent was not entitled to be continued in services once he attains the age of 60 years, as

according to the Petitioner, the 2nd Respondent superannuated having completed 60 years of age, and if at all he was to be continued in services then his performance was required to be reviewed by the 'performance review committee' as per the said Government Resolution and to be approved by the Directorate of Higher and Technical Education. According to the Petitioners all these steps of setting a performance review ought to have been undertaken by the 2nd Respondent, to seek extension of service beyond 60 years and till he attains the age of 65 years as a Principal.

6. The Tribunal, after considering the rival pleas has partly allowed the Appeal as noted above.

7. Learned counsel for the petitioner, in assailing the impugned orders passed by the Tribunal, contended that the 2nd Respondent has no legal right to seek continuation of service beyond the age of 60 years. It is submitted that, in fact, it was not a case of oral termination as alleged by the 2nd Respondent, but it was a case of superannuation of the 2nd Respondent on attaining the age of 60 years. It is submitted

that the Government Resolutions which are pressed into service on behalf of the 2nd Respondent are misinterpreted by the Tribunal and that the obligation to undertake review of the performance was on the 2nd Respondent and therefore the 2nd Respondent could not have claimed any legal right for continuation of services.

8. On the other hand Mr.Dighe appearing for the 2nd Respondent supporting the impugned orders would submit that the age of retirement, admittedly, was enhanced from 60 to 65 years as a matter of policy decision of the State Government. He contends that the observations of the Tribunal are clear, of the Petitioner Management, not adhering to the requirements of the said Government Resolutions of undertaking a performance review and without doing so the 2nd Respondent was continued beyond the age of 60 years. This according to him indicates that the Petitioner management was satisfied with the performance of the 2nd Respondent and therefore his services were continued after he attained 60 years of age. He submits that once the

age of superannuation is 65 years, an oral termination of such a nature cannot be justified unless a proper procedure is followed to terminate the services for an acceptable reason or at the appropriate time, it is held that the performance of the 2nd Respondent was not satisfactory, so as not to continue his services up to the age of 65 years. He therefore submits that the Writ Petition does not deserve any interference.

9. On hearing the learned counsel for the parties and also on a perusal of the impugned judgment and the documents as placed on record, it is seen that there is no dispute that the 2nd Respondent was discharging duties as a Principal at the relevant time. It is also not in dispute that by virtue of a policy decision taken by the State Government, as reflected in the said Government Resolutions and more particularly Government Resolution dated 25th February 2011, the age of retirement in regard to the post of Principal was enhanced from the age of 60 to 65 years, which means that the incumbent would attain superannuation at the age of 65

years. Clause 2 of the Government Resolution is relevant and reads thus:

“Within the State of Maharashtra in relation to various non-Government aided colleges affiliated to non-agricultural Universities, the age of retirement of Principals is increased from 60 years to 65 years. However, on attaining the age of 62 years for grant of extension, the performance of the concerned Principals shall be examined by a Committee constituted for that purpose (Performance Review). On the basis of the recommendation of the said committee, the concerned Principals shall be granted extension upto 65 years subject to the approval of the State Government. (emphasis supplied)

10. It is, thus, provided that if the services are to be extended beyond the age of 62 years and up to the age of 65 years, then on the Principal attaining the age of 62 years, a performance review would be required to be undertaken by the appropriate committee and on a procedure to be followed by the performance review committee. The recommendations of the committee are thereafter required to be forwarded to the Government (Directorate of Higher and Technical Education), and a final decision, as to whether the incumbent

should be granted extension from the age of 62 years to 65 years, is required to be taken. All these steps are required to be taken by the management. It is thus clear from the said Government Resolution, that the performance review is required to be undertaken at the time the incumbent is attaining age of 62 years, which assumes that the concerned incumbent in any case would be continued up to 62 years.

11. The contentions as urged on behalf of the petitioner, thus, cannot be accepted. Admittedly, the petitioner had not undertaken such a performance review of the 2nd Respondent, which would be required to be undertaken when the 2nd Respondent is attaining the age of 62 years. The 2nd Respondent was continued in service after he attained the age of 60 years. This would also show that the petitioner was aware that he does not retire at 60 years of age. On 15th June, 2015 which is after about four months after he completed 60 years and about twenty months before he could complete 62 years, he was orally informed not to report for service.

12. It was obligatory on the part of the Management to undertake a performance review, by referring the case of the 2nd Respondent to the Performance Review Committee, on the 2nd Respondent attaining the age of 62 years and only after undertaking such a procedure, depending on the report of the performance committee and its consideration by the State Government, the petitioner Management could come to a relevant conclusion whether the 2nd Respondent should be continued in service till superannuation of 65 years of age or not. However, before all these requirements as prescribed could be undertaken at the relevant time, the petitioner, on a premise that the services of the 2nd Respondent would come to an end on completion of age of 60 years, as if attaining the age of 60 years is attaining the age of superannuation, orally directed the 2nd Respondent not to sign the muster and report for duties. This was completely contrary to the requirement of the said rules and thus illegal. The action on the part of the Petitioner Management, thus, certainly amounted to resorting to illegally terminate the services of the 2nd Respondent, under

the guise of wrong understanding of the rules pertaining to the age of retirement, which according to the Petitioner was 60 years. This appears to be obviously ostensible.

13. Considering the above factual matrix and the legal position, the Tribunal, in my opinion appreciating the consequences which flow from the said Government Resolutions and the lawful procedure which was required to be adopted by the Petitioner/Management, has correctly recorded its findings that the action on the part of the Petitioner not to permit 2nd Respondent to sign the muster on 15th June 2015 was unlawful, being contrary to the rules and regulations amounting to an illegal termination. I see no perversity in the findings as recorded by the Tribunal. No interference in the impugned order is warranted.

14. Writ Petition is summarily rejected. No costs.

15. The appellant is directed to comply with the order passed by Tribunal within a period of eight weeks from today.

(G.S.Kulkarni,J)