

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.585 OF 2017

Dr. Goraksha V. Pargaonkar
Principal, having his office at Bombay Physical
Culture Association's College of Physical
Education, Bharatiya Krida Mandir,
Naigaon Cross Road, Wadala,
Mumbai 400 031Petitioner

Versus
1 The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department; Mantralaya,
Mumbai- 400 032Respondent

2 The Director of Higher Education,
Maharashtra State,
Central Building, Pune-411001

3 The Joint Director of Higher Education,
Mumbai Region, 3, Mahapalika Marg,
Mumbai 400 001

4 The School Education and Sports
Department, Mantralaya,
Mumbai 400032.

5 The Secretary, Bombay Physical
Culture Association, Bharatiya Krida
Mandir, Naigaon Cross Road,
Wadala, Mumbai-31

6 University of Mumbai,
Through its Registrar,
M.G.Road, Fort, Mumbai.

Mr. Rajiv Chavan , Senior Advocate along with Ms. Priyanka
Chavan and Mr. Swaraj Jadhav, Advocates for Petitioner.

Ms. Uma Palsuledesai, Asst. Government Pleader for the State

for Respondent Nos.1 to 4.

Mr. Rui A. Rodrigues , Advocate for Respondent No.6- Mumbai University.

**CORAM : B.R. GAVAI &
SANDEEP K. SHINDE, JJ.**

DATE : November 6 , 2017.

JUDGMENT : [Per Shri Sandeep K. Shinde, J.]

The Petitioner who is qualified teacher of physical education and being an experienced education administrator is seeking a writ of mandamus directing the Respondent Nos.1 to 3 to apply provisions of the Government Resolutions dated 5.3.2011 and 12.7.2016 issued by the Respondent No.2 herein to Principals and Teachers working in Physical Education Colleges and as such fix age of the Petitioner's superannuation at 62 years; extendable to 65 years in terms of aforesaid Government Resolutions. Petitioner's representation to the Respondent No.1 to make the aforesaid resolutions applicable to him was turned down vide order dated 14.12.2016 and being aggrieved by the same, this Petition is preferred.

2 The Petitioner was appointed as lecturer on 23.8.1982 and as a principal of Bombay Physical Culture Education College of Physical Education ('BPCE' for short) run

by the Respondent No.5 on 7.10.1995. His appointment as Principal was approved and confirmed by the Mumbai University on 14.2.1997. It was also approved by the Director, Sports and Youth Services of the State on 19.3.1997. It is the Petitioner's case that the said College of Physical Education is affiliated to the University of Mumbai which is non-agricultural University. That, the State had issued Government Resolution on 7.6.1984 and revised the pay-scales of the teaching staff in physical education colleges as laid down by the University Grants Commission. That on 22nd May, the State further revised pay-scales as well as terms and conditions including the recruitment qualifications, work-load, etc. of teaching staff of colleges of physical education as per UGC Notifications dated 24.12.1998. That UGC in October, 1994 included the Bombay Physical Culture Association College of Physical Education, Wadala, i.e., Respondent No.5 in the list under the Non-Government Colleges and was held eligible to receive central assistance in terms of the Rules framed under Section 12(B) of the UGC Act, 1956. That the Respondent No.4 had issued Government Resolution dated 24.11.2011 and recommended to apply the Sixth Pay Commission to the teaching employees of eight non-

government physical education colleges in the State from 1.1.2006. This recommendation was made at the instance of University Grants Commission. That as such, it is Petitioner's case that, BPCE College was/ is eligible to receive the assistance from the UGC being in the list of colleges prepared under Section 2(f) of the UGC Act, 1956.

3 It is the Petitioner's case that Council of Ministers of the State took a decision in the meeting held on 22.5.2013 to bring the colleges of physical education under the purview of Respondent No.1, i.e., Higher and Technical Education Department from the Department of School Education and Sports. That this decision was taken for the reason that these colleges of physical education are affiliated to various universities of the State and subject to regulations of UGC.

4 It is the Petitioner's case that on 5.3.2011, State in its Higher and Technical Education Department resolved to revise retirement age of the principals of Government/non-Government Colleges, aided or unaided affiliated to non-agricultural universities from 60 to 65 with a proviso that extension beyond 62 years would be subject to performance review by the committee and subject to approval by the State. It was also resolved to extend age of retirement of teachers in

such colleges from 60 to 62 years.

5 It is the Petitioner's case that provisions of the Government Resolution dated 5.3.2011 were squarely applicable to him and principals working in physical education colleges. It is the Petitioner's case that he was about to complete the age of 60 years on 31.12.2016 and as such made a representation to the Respondent No.2 with a request to extend the age of his retirement in view of the Government Resolution dated 5.3.2011. It is his case that Director of Higher Education who is controlling authority of the Petitioner's College vide letter dated 18.8.2016 requested the Respondent No.1 to apply the provisions of Government Resolution dated 5.3.2011 and 12.7.2016 to the unaided/aided physical education colleges affiliated to non-agricultural university. It was pointed out in the said letter that as around 100 unaided and 8 aided physical education colleges were in shortage of suitable, eligible principals. That since his representation was not decided, Petitioner had filed Writ Petition No.2552 of 2016 which was disposed of on 24.11.2016 whereby Respondents were directed to take decision on or before 19.12.2016 on representation of the Petitioner and that of the Respondent No.5.

6 It is Petitioner's case that vide order dated 14.12.2016, the Respondent No.1 was pleased to reject the representation of the Petitioner and was pleased to hold that provisions of the Government Resolution dated 5.3.2011 and 12.7.2016 were not applicable to the Principals and Teachers of colleges in physical education for the following reasons:

- (1) That UGC pay-scales are not applicable to non-Government aided physical education colleges.
- (2) For want of quantifiable details/research report from authorised Central/State authorities regarding the scarcity of qualified/eligible teachers in the stream of physical education colleges, the provisions of the G.R. dated 5.3.2011 cannot be extended to the principals and teachers attached to the non-government colleges of physical education;
- (3) If the benefit under the G.R. is extended to the employees of such colleges that would burden the exchequer.
- (4) Teachers and the principals of the non-government aided physical education colleges are not falling within the purview of UGC and its Regulations.
- (5) That there is no report or authenticate data to indicate and suggest there is paucity of qualified teachers and the principals in physical education colleges.
- (6) That the Central Government does not provide any salary grant to the physical education colleges affiliated to the university.

7 Aggrieved by the order dated 14.12.2016, this
Petition is preferred.

8 That on notice, Respondent-State filed
affidavit of one Dr. Rohidas Kale, in-charge Joint Director,
Higher Education and supported the reasons given in the
impugned order.

9 Heard Mr. Chavan the learned Senior
Counsel for the Petitioner and Ms. Uma Palsuledesai for the
Respondent-State. Perused the pleadings of the parties.

10 The principal questions which arises for
consideration is, “whether the State was justified in excluding
the teachers and principals of aided/unaided physical
education colleges affiliated to non-agricultural universities.,
from the purview of the Government Resolution dated
5.3.2011 by not extending the age of retirement of the
principals from 62 to 65 and other professors from 60 to
62 ?”. AND “As to whether the reasons for such exclusion
narrated in the impugned order dated 14.12.16 were valid
and defensible ?”

11 Indisputedly, Bombay Physical Culture Education
Colleges of Physical Education is affiliated to Mumbai
University, a non-agricultural university. A plain reading of

the G.R. of 5.3.2011 and Clause 8(2) thereof, clarifies that functional non-government colleges in the State (Aided/Unaided) attached to non-agricultural universities are covered under the said G.R., whereby the retirement age of the principal of such colleges is extended from 60 to 65 with a proviso that extension after age of 62 would be subject to performance review by the Committee constituted under the said G.R. In the case in hand, the BPCE college run by the Respondent No.5 is affiliated to the Mumbai University which is non-agricultural university; in our view, the principals and teachers working in the physical education colleges cannot be excluded from the purview of the Government Resolution dated 5.3.2011. In fact Clause 8(2) and 8(6) squarely applies to teachers of BPCE College and colleges similarly situated. In our view excluding Principals and teachers from the purview of G.R. dated 5.3.2011, would result into discrimination meted out to similarly circumstanced without any rational basis.

The next question that falls for consideration is, “Whether the reasons given in the impugned order passed on representation of the Petitioner were defensible ?.”

Mr. Chavan the learned Senior Counsel for the Petitioner has taken us through the various documents to

substantiate his contention that the subject BPCE college being enlisted on the list of the colleges prepared by the University Grants Commission under Section 2(f) of the UGC Act, it is within the purview of UGC Act and Regulations. On this count, he has invited our attention to a letter of October, 1994, addressed by the UGC to the Registrar, Mumbai University. It shows that Mumbai Physical Culture Education College of Physical Education was held eligible to receive central assistance in terms of Rules framed under Section 12(b) of the UGC Act, 1956. He has further invited our attention to the communication dated 8.10.2015 whereby the UGC had extended/sanctioned financial assistance for major research project to the Petitioner as principal of BPCE college of Physical Education, Wadala, Mumbai. Mr. Chavan has further invited our attention to the communications dated 25.6.2008 and 1.10.2010 and also 27.3.2014 addressed by the UGC to the Principal of the Bombay Physical College of Culture of Physical Education conveying the approval of grant-in-aid, under the general development assistance for development of undergraduate and post-graduate education. The communication dated 10.10.2010 shows that UGC had extended financial assistance to BPCE College to hold the

conferences, work-shops. Mr. Chavan, Learned Senior Counsel, would therefore contend that, correspondence as aforesaid, in clear terms indicate and concludes that the authorities of the UGC were time and again extending the financial assistance to the BPCE college and therefore State's contention while declining benefits of subject G.R. to the teachers and principals of non-government aided Physical Education Colleges that employees of subject college were not within the purview of UGC Act its regulation was incorrect.

We have perused the correspondence between the authorities of the UGC and the subject college. We have also perused the G.R.dated 6.6.1984 whereby scales of the teaching staff in the physical education colleges were revised by the State. That again vide G.R. dated 22nd May, there was further revision in the pay-scales of the teachers working in the colleges of physical education. Both the revisions were as per the Notifications issued by the UGC. We have also perused another G.R.dated 24.11.2011 whereby recommendations of the Sixty Pay Commission were made applicable to eight Government physical education colleges in the State at the instance of the University Grants Commission. Indisputedly, BPCE College was held eligible to receive assistance from the

UGC as could be seen from the letter of October, 1994. Thus, cumulative effect of such correspondence is that the college run by the Respondent No.5, i.e., BPCE College and the teaching staff and principals working in the said college were/are receiving grants/assistance from the UGC and as such, contention of the State while declining to apply the provisions of the G.R. dated 5.3.2011 is incorrect and as such, cannot be accepted.

12 Mr. Chavan, the learned Senior Counsel for the Petitioner has taken us through the letter dated 18.8.2016 addressed by the Director of Higher Education to the Respondent No.1 wherein the Director had brought to the notice of the Respondent No.1 that in 100 unaided and 8 aided physical education colleges there was shortage of suitable, eligible principals. The State neither in its affidavit nor in the order dealt with this data, however, simply contended that in absence of authenticate quantifiable data about paucity of qualified teachers and principals in physical education colleges, it was not possible to extend the benefit of the subject G.R. to the Petitioner and teachers working in the colleges of physical education. The State has not taken any pains to place on record data on this issue to persuade this Court that there

is no paucity of eligible, qualified teachers in physical education colleges. We cannot ignore the contents of the letter of Director of Technical Education, who is the controlling authority and having supervisory powers over all the institutes across the State. In view of this fact, we are convinced that rejection of Petitioner's contention by the Respondent-State vide its order dated 14.12.2016 on the very ground of non-availability of quantifiable details/search reports is incorrect and cannot be accepted.

13 That after perusing the pleadings and the documents placed on record alongwith the Petition, we hold that there was no justification on part of the State to exclude the principals and teachers working in the aided/unaided physical education colleges affiliated to Mumbai University from purview of G.R. dated 5.3.2011. At the first place, on plain reading of the G.R. dated 5.3.2011, principals and teachers of the colleges in physical education are beneficiaries of the said G.R. That even assuming the State intended not to extend the benefit of the subject G.R. to the Petitioner, it ought to have substantiated such a exclusion on dependable evidence and for cogent reasons. The reasons for not extending benefit as reproduced in paragraph 6 hereinabove

are found incorrect in view of the documents placed on record by the Petitioner. In view of this fact, we are of the considered opinion that the impugned order dated 14.12.2016 is not sustainable. In the circumstances, for the reasons stated hereinabove, exclusion of the Petitioner from the purview of G.R. dated 5.3.2011 by the Respondent No.1 is arbitrary and contrary to their own G.R. Resultantly, we hold and declare that provisions of the G.R. dated 5.3.2011 are squarely applicable to the Petitioner and teachers working in the Bombay Physical Culture Education College of Physical Education run by the Respondent No.5. Hence, the Petition is allowed in following terms :-

I) It is held and declared that the Government Resolution dated 5th March 2011 is also applicable to the Physical Education Colleges receiving grant-in-aid from the State of Maharashtra and which are affiliated to Non-Agricultural Universities.

II) The Respondent - State is directed to refer the case of the Petitioner for continuation till he attains the age of 65 to the Scrutiny

Committee as appointed under the Government Resolution dated 5th March 2011 and if the Scrutiny Committee finds that the Petitioner is entitled to continue till the age of 65 years, he is directed to continue as Principal till he attains the age of 65 years.

14 Rule is made absolute in the aforesaid terms.

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)