

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1654 OF 2006

Ghulam Mustaffa Khan S/o
Mohd. Umar Khan
Age : 58 years, Occ : Service,
R/o Sameer Complex, Ahbad Colony,
Katkot Gate Road, Aurangabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,
(Through its Secretary,
Revenue & Forests Department
Mantralaya, Mumbai.
2. The Chairman,
Maharashtra State Board of Wakfs,
(Through its Chairman)
Room No. 309-310 Majestic MLA Hostel,
Colaba, Mumbai.
3. The Chief Executive Officer,
Maharashtra State Board of Wakfs,
Panchakki Road, Aurangabad.

...RESPONDENTS

...

Mr.A.S. Kale holding for Mr. S.B. Talekar
Advocate for Petitioners.
Mr.V.S. Choudhari, A.G.P. for Respondent
No.1.
Mr. V.C. Patil holding for Mr. S.M. Godsay,
Advocate for Respondent Nos.2 and 3.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 24TH FEBRUARY, 2018.

DATE OF PRONOUNCING JUDGMENT : 6TH MARCH, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

This Petition is filed with the following
prayer :-

"A) To quash the impugned notice of retirement dated 13.12.2005 retiring the petitioner on superannuation with effect from 30.12.2005 issued by the Chief Executive Officer, Maharashtra State Board of Wakfs, Aurangabad by issuing a writ of certiorari or any other appropriate writ, order or direction, as the case may be."

2. Learned counsel appearing for the petitioner submits that, the petitioner is working

as Deputy Wakf Officer in the office of District Wakf Officer, Aurangabad. The petitioner is a full-time employee working on regular post and in substantive capacity since last 26 years. It is submitted that, the petitioner was initially appointed as Clerk in the year 1979. Thereafter, he came to be promoted as Deputy Wakf Officer in 1987. It is submitted that, the date of birth of the petitioner is 12th May, 1948, which is evident from the extract of first page of service book. It is submitted that, in exercise of powers conferred by Section 10 of the Wakfs Act, 1995, the Maharashtra State Board of Wakfs, Aurangabad made regulations, namely, Maharashtra Wakf Board Regulations, 2003. It is submitted that, Regulation 19 of the Maharashtra Wakf Board Regulations, 2003 (hereinafter referred to as "the said Regulations") are approved in the meeting of the Maharashtra State Board of Wakfs, Aurangabad held sometime in the year 2004. A full time employee of the Board shall be governed by the

Maharashtra Civil Services Rules, 1967. Regulations 19(1)(d) further provides that a full time employee of the Board shall not be continued to be employed after he has attained the age of 60 years, except under special resolution and recording the reasons therefor passed in the meeting of Board by 2/3rd majority of the total number of members of the Board. It is, therefore, clear from Regulation 19(1)(d) that the age of retirement on superannuation is of 60 years. However, a full-time employee of the Board can be continued in employment even after he attains the age of 60 years under a special resolution recording reasons thereof passed in the meeting of the Board by a 2/3rd majority 3rd the total number of members of the Board.

3. It is submitted that, the petitioner completed 58 years of age on 30th May, 2005. At the time of filing the petition, he would attend the age of 60 years on 12th May, 2007. He has at least

one year and six months to go before his retirement. It is submitted that, although it is possible to continue a full time employee of the Board even after attaining the age of 60 years, there is no provision to retire a full time employee of the Board on superannuation or otherwise, before he attains the age of 60 years. It is submitted that, the Chief Executive Officer, Maharashtra State Board of Wakfs, Aurangabad has issued a notice directing to relieve him on retirement with effect from 30th December, 2005 on 13th December, 2005. It is submitted that, the petitioner preferred an application on 16th December, 2005, stating that he was entitled to pension as well as medical reimbursement benefit, as prescribed in form BG-6. The petitioner had expressed his willingness to get retired pursuant to the notice dated 13th December, 2005, if he was given the benefits under the Maharashtra Civil Services Rules. It is further submitted that, as per the Wakf Regulations, the age of retirement is

60 years. It is submitted that, the petitioner has not received any reply to his representation till this date. Meanwhile, the petitioner personally met the Chief Executive Officer, Maharashtra State Board of Wakfs, Aurangabad and requested to withdraw the notice of retirement. However, the Chief Executive Officer, orally turned down his request, and on the contrary, informed the petitioner that he would stand retired on 30th December, 2005.

4. It is submitted that, the petitioner is given understanding that in the meeting of the Maharashtra State Board of Wakfs, Aurangabad held on 30.11.2005, it was resolved to fix the age of retirement as 58 years. However, the minutes of the said meeting need to be confirmed in the next meeting. No meeting of the Maharashtra State Board of Wakfs, Aurangabad is held after 30th November, 2005. As such, the minutes of the meeting held on 30th November, 2005 are yet to be confirmed. It is

submitted that, even after the Maharashtra State Board of Wakfs, Aurangabad passes a resolution fixing the age of retirement as 58, the same needs to be approved by the State Government. The Government has not yet approved the reduction in age of retirement from 60 to 58 years. It is submitted that, even under the old Service Regulations of 1964, the age of retirement was fixed as 60 years. The Board has been acting upon the Regulations framed in 2003, which is evident from the order dated 22nd November, 2005, retiring one Shri Raghunath Shivram Bansode on attaining the age of 60 years on 30th September, 2005.

5. It is submitted that, meanwhile, one Shri Nuruddin, who is working as Peon in the office of District Wakf Officer, Jalna is allowed to continue in service even after 60 years of age by granting an extension of service by six months, by passing the Resolution in the meeting of the Maharashtra State Board of Wakfs, Aurangabad. It

is submitted that, the regulations do not provide for appeal against either compulsory retirement or premature retirement from service. Therefore, the learned counsel appearing for the petitioners submits that, the Petition may kindly be allowed.

6. Pursuant to the notices issued to the Respondents, Respondent No.3 has filed the affidavit in reply. It is stated in the said reply that, the petitioner was serving with the Wakf Board. The petitioner was initially appointed as clerk and later on was given promotional post as Deputy Wakf Officer, which is certainly not a class IV post. It is submitted that, formally the Board has resolved to make the age of retirement for all the employees of the board as 60 years. The same has thus been reflected in the regulations of 2003. However, when the regulations were sent to Government of Maharashtra for its approval, an objection was taken, as age of 60 years was not in accordance with M.C.S.R.

Regulations. Accordingly in August, 2005, the Board has passed a resolution, thereby the age of retirement for all the employees except the class IV employees has been brought back to 58 years. It is submitted that, as per date of birth of the petitioner, he was to retire in May, 2005, but since earlier resolution was in force, he was continued after May, 2005, and when the subsequent resolution was passed, he was given notice and made to retire on 30th December, 2005 by notice dated 13th December, 2005. Regulations are still pending for approval before the State Government.

7. It is submitted that, the Board does not reserve any service grants from the State Government and it works on the own generated funds, as such so far all the employees, who have retired from the service, have been given only gratuity and no other benefits. The petitioner will also be paid the amount of gratuity as admissible. It is submitted that, the contentions

of the petitioner raised in the Petition are ill-founded and deserves no consideration and therefore, he submits that, the Petition deserves to be rejected.

8. The petitioner has also filed the short affidavit, stating therein that, he was initially appointed as clerk in 1979 and at the time of initial appointment, the Marathwada Wakf Regulations, 1964 were applicable and the age of retirement of class-III employees prescribed under Marathwada Wakf Regulations was 60 years. Therefore, the petitioner has filed two representations, requesting to sanction pensionary benefits and Medical reimbursement etc., which found favour with accounts Superintendent, who recommended his case accordingly, as per Wakfs Rules, 2003.

9. We have carefully considered the submissions advanced by learned counsel appearing

for the petitioner, learned counsel appearing for Respondent No.1 and learned counsel appearing for Respondent Nos.2 and 3. We have perused the averments in the Petition, grounds taken therein, annexures thereto, Reply filed by Respondent No.3 and the short affidavit filed by the petitioner.

10. The petitioner has placed reliance upon Regulation 19 of the Maharashtra Wakf Regulations, 2003 (Draft for Approval). The draft Regulation No.19(1)(d) reads thus :-

"19(1)(d) :- Not be continued for employed after he has attained the age of 60 years except under a special resolution-recording the reasons therefore passed at a meeting of the Board by a majority of 2/3rd of the total number of the members of Board."

11. It is clear from the reply filed by Respondent Nos.2 and 3 that, the said 2003 Regulations were sent to the Government of Maharashtra for its approval, and an objection was taken to the said Regulations that, the age of 60 years, as prescribed under the said Draft Regulations, was not in accordance with the Maharashtra Civil Services Rules, and therefore, the said Regulations have not been approved by the State Government, and as a result, their status remained as draft Regulations. Therefore, the Wakf Board has passed the resolution in the month of August, 2005 and the age of retirement for all the employees, except the class-IV employees has been prescribed 58 years instead of 60 years, which was shown in the draft Regulations. Keeping in view the resolution in the month of August, 2005, the notice was given to the petitioner to retire on 30th December, 2005. In that view of the matter, we do not find any force in the arguments of learned counsel appearing for the petitioner that, the

petitioner ought to have been continued upto attaining the age of 60 years in the employment on the basis of Draft Regulations, which were not approved by the State Government.

12. By way of filing the affidavit, the petitioner has stated that, the petitioner did file the representation to the Chairman, Maharashtra State Wakf Board on 15th February, 2006, requesting therein to grant pensionary and monitory benefits to the petitioner in the manner stated in the representation. If such representation is yet pending, we direct Respondent Nos.2 and 3 to take appropriate decision on the said representation, if already not taken, in accordance with the relevant rules/procedures, as expeditiously as possible, and preferably within three months from today, and if the petitioner is not already extended the monetary benefits, to release the said monetary benefits to him, depending upon the entitlement of

the petitioner, as expeditiously as possible, and preferably within four months from today.

13. In the light of discussion hereinabove, we are unable to persuade ourselves to grant relief in terms of prayer clauses "A" and "B" of the Petition in favour of the petitioner. Hence the Petition stands rejected. Rule stands discharged accordingly.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

sga/