

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9118 OF 2015

Prabhakar s/o Govind Dhirde,
age 63 years, occ. Pensioner,
R/o 81/502, Civil Hudco,
Savedi Road, Ahmednagar

...Petitioner

VERSUS

1] The State of Maharashtra,
through the Secretary,
Higher Technical Education
Department, Mantralaya,
Mumbai – 32,

2] The Joint Director of
Higher Education, Pune Division,
Pune,

3] The Principal,
New Law College,
Ahmednagar,

4] Ahmednagar Zilla Maratha
Vidya Prasarak Samaj,
Ahmednagar,
through its Secretary,
Lal Taki Road, Ahmednagar

...Respondents

...

Advocate for Petitioner : Mrs. Mhase Thube for Lex
Aquila

AGP for Respondents 1 and 2 : Mr. S.G.Karlekar
Advocate for Respondents 3 and 4 : Mr. Hon Ashwin V.

CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.

DATE : SEPTEMBER 5, 2018

JUDGMENT (Per S.V.Gangapurwala, J.)

The petitioner was appointed as a Librarian with respondent no.3 with effect from 1.1.1984. The petitioner attained age of superannuation as per the relevant policy on attaining age of 60 years. The petitioner attained age of 60 years on 31.3.2012. AS per the Government Resolution, dated 22.8.2012 the age of retirement of Librarian was extended to 62 years. Thereafter, the order was issued in favour of the petitioner granting extension of age of retirement on 10.1.2013. The petitioner as per extended age of retirement attained the age of superannuation on 31.3.2014 and retired.

2. Mrs. Thube, learned counsel for the petitioner submits that though the Government Resolution, dated 22.8.2012 extending age of

retirement of the Librarian was issued and the petitioner stood retired on 31.3.2012 the petitioner all along was officiating with respondent no.3 as a Librarian and was never given break in service. The petitioner, however, for the said period was paid consolidated salary by the institution. The petitioner is paid regular salary from the date of granting extension, however, is not paid salary from 1.4.2012 till January, 2013.

3. Learned counsel submits that the Librarian is included in the definition of teacher and the same is also an academic post. Learned counsel relies on the provisions of Section 2 (34) of the Maharashtra Universities Act and Statute 411 (A) and (B) of the University. Learned counsel submits that similar Government Resolution for the benefit of Lecturer was already issued on 5.3.2011 and subsequently on 23.2.2012. The Librarian being included in the category of teacher/lecturer, the petitioner would be

covered by the Government Resolutions. Learned counsel submits that Sub-clause (6) of clause 3 of the impugned Government Resolution is illegal, discriminatory and arbitrary. The same deserves to be set aside. The similar clause restricting payment till the date the petitioner resumes duty after the order granting extension in age of retirement of Librarian does not appear in the Government Resolution issued extending age of retirement of Lecturer/Principal. The Librarian and Lecturer form the same class. In view of that, different yard stick could not have been applied to the Librarian. Sub-clause (6) of clause 3 of the Government Resolution, dated 22.8.2012 is violative of Article 14 of the Constitution of India and deserves to be set aside. Learned counsel further submits that reliance placed by the respondent on clause 4 of the Government Resolution, dated 14.1.2016 would enure to the benefit of the petitioner, in as much as the petitioner has also worked since 1.4.2012 till the

order of the Government extending age of retirement.

4. Mr. Karlekar, learned AGP submits that the respondents have disputed that the petitioner has worked for the period the petitioner stood retired on 31.3.2012 and the date of the order granting extension of age of retirement to the petitioner. Learned AGP further submits that the Government Resolution, dated 22.8.2012 was issued making applicable to those persons who have retired after 2.2.2011. The persons could not have worked as a Librarian after the date of retirement on attaining age of 60 years and till the issuance of the Government Resolution, dated 22.8.2012 as there was no policy of extending age of retirement of Librarians. The grievance raised by the petitioner regarding discrimination between Lecturers and Librarians pursuant to the Government Resolutions extending age of retirement of the Lecturers and Librarian also does not survive in view of the

Government Resolution, dated 23.6.2016. The Government Resolution, dated 23.6.2016 also prescribes that the persons who had not worked after they have attained age of superannuation and till the order is passed for extension of age of retirement shall not be paid salary. The said period is only to be calculated notionally. Learned AGP further submits that the post of Librarian does not involve academic activity. Nature of work of Librarian and Lecturer is distinct and different and both cannot be equated with each other.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The petitioner is basically assailing the Government Resolution dated 22.8.2012 on the ground that the Librarians are discriminated as against the teacher and the Principal. The Lecturers, Professors and Librarians are included in the definition of

teacher. In the impugned Government Resolution, the age of superannuation of the Librarians has been enhanced/extended, however, the period the Librarians have attained the age of superannuation and their re-appointment pursuant to the impugned Government Resolution is not considered for the purpose of payment of salary; whereas for the Lecturers and Professors, such an embargo in the Government Resolution, dated 5.3.2011 extending their age of retirement is not made.

7. The State has clarified that the Government decided to increase age of retirement of college Lecturers/Principals as there was scarcity of teachers and for that purpose, the Government Resolution, dated 25.2.2011 was issued to increase the age of retirement of college Lecturers from 60 to 62 years subject to certain conditions. By subsequent Government Resolution, dated 5.3.2011 the earlier Government Resolution, dated 25.2.2011 was superseded

and last condition concerning the two advertisements was deleted retaining the other conditions. The same was further modified. In the said Government Resolution the posts of Librarian, Deputy Librarian and Assistant Librarian were not included. It was only upon the representation made by the Maharashtra Federation of College/University Librarians Association, the Government considered the request, though there was no scarcity of Librarians. The liberal view was taken by the Government deciding to extend age of retirement of Librarians by two years from the age of 60 to 62 years and, as such, Government Resolution, dated 22.2.2012 was issued.

8. The impugned Government Resolution, dated 22.2.2012 is an executive action of the State. The executive power can be exercised by issuing administrative orders, Circular or Resolution, so long as the Legislature does not make any law on that subject.

9. Framing a policy is within the competence of State in its executive authority. The policy decision is in the domain of the executive authority of the State. The efficacy or otherwise may not be questioned so long the same does not offend any provision of the Statute or the Constitution of India. It is not for the Courts to consider the relative merit of the different policies. The Court can not sit in judgment of the policy of the Legislature or the Executive. The Court can not strike down a policy decision taken by the Government, merely, because it feels that another decision would have been more logical or wiser. It is not the domain of the Courts to embark upon an inquiry as to whether a particular policy is acceptable or whether a better policy could be evolved. The Court can only interfere if the policy framed is irrational, arbitrary, unreasonable and thereby offend Article 14 of the Constitution of India.

10. The Librarians along with Professors and Associate Professors are included in the definition of teachers as defined under Section 2 (34) of the Maharashtra Universities Act. The working conditions of Professors and Librarians are different. The marked distinction needs to be considered. The age of superannuation of Lecturers was extended initially pursuant to the Government Resolution, dated 25.2.2011. The same was made applicable to those who were working as on 25.2.2011. Subsequently under the Government Resolution, dated 5.3.2011 modification was made and it was made applicable since 25.2.2011, meaning thereby that those who were working as on the date of implementation of Government Resolution, dated 25.2.2011, were entitled to benefit of the extended age of retirement. The said Government Resolution was not made applicable with retrospective effect; whereas Government Resolution, dated 22.8.2012 extending the age of retirement for Librarians/Assistant Librarians was made applicable

to those who have retired on and after 2011, meaning thereby that even those who retired prior to 1½ year of issuance of Government Resolution, dated 22.8.2012 would be entitled to the benefit of extended age of retirement. Naturally, for the period the Librarians retired and thereafter considered for re-appointment on account of extended age of retirement under Government Resolution, dated 22.8.2012 would not be entitled for the emoluments for the period when the scheme of extended age of retirement was not in force. This is the marked distinction between the Government Resolutions extending the age of retirement of Lecturers and that of Librarians.

11. In the light of above, it cannot be said that the Librarians are discriminated as against the Lecturers. The respondents have denied that the petitioner after attaining the age of superannuation on crossing 60 years age has worked till the order was given to the petitioner of re-appointment. The

petitioner claims to have worked after he attained 60 years of age and till he received the order of extension of age of retirement in January, 2013 on consolidated salary. It would be a fresh appointment by the College on its own volition under agreement between the parties.

12. We would not be entering into the debate whether the petitioner has really worked for the period, as on the date the petitioner acquired 60 years of age, the Government Resolution, dated 22.8.2012 was not in force.

13. In the light of above, Writ Petition is dismissed. No costs.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]

dbm