

Amk

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9818 OF 2016

Shrirang Laxman Shinde .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Abhishek Deshpande a/w. Mr. Mahesh K. Chandanshiv for the
Petitioner.

Mr. Rajendra Anbhule for the Respondent No.4.

Mr. B. V. Samant, AGP for the State.

**CORAM : R. M. SAVANT &
K. K. SONAWANE, JJ.**
DATE : 6th SEPTEMBER, 2018.

P. C.

1. At the outset, learned Counsel for the Petitioner seeks leave to
amend the Petition so as to correct the number of the prayer clauses.

2. Leave granted.

3. Amendment to be carried out forthwith.

4. The above Writ Petition has been filed seeking a direction that
the Petitioner abovenamed be granted pension.

5. There is no dispute about the fact that the Petitioner was in the

employment of University of Pune in a non-teaching post till the date of retirement and as such has put in more than 20 years of service. Hence, there can be no dispute about the fact that the Petitioner has the qualifying service to entitle him to the grant of pension.

6. On behalf of the Respondents, Affidavit has been filed by one Dr. Vijay Pandurang Narkhede and the grant of pension to the Petitioner is opposed on the ground that the Petitioner was over-aged at the time of his initial appointment and therefore the appointment falls foul of the Government Resolution dated 28.01.1986 which fixed the upper age limit insofar as the non-teaching posts are concerned. The issue as to whether the fact of the Petitioner being over-aged at the time of his initial appointment so as to disentitle him to pension after putting in long years of service in University is concerned, the same is no more res-integra and is covered by various Judgments/orders passed by the Division Benches of this Court. The same can be gainfully summarized hereinbelow:

(i) Order dated 10th January, 2012 in Writ Petition No. 6523 of 2011 in the matter of Madhukar Shankarrao Pawar & Ors. Vs. State of Maharashtra & Ors.

(ii) Order dated 17th December, 2013 in Writ Petition No. 6168 of 2012 in the matter of Dilip Krushna Tadakhe & Ors. Vs. State of Maharashtra & Ors.

(iii) Order dated 2nd May, 2017 in Writ Petition No. 8830 of 2015 in the matter of Ashok Haribhau Sawant Vs. State of Maharashtra & Ors.

(iv) Order dated 4th September, 2018 passed in Writ Petition No. 5068 of 2018 in the matter of Sulbha Shankar Kurne Vs. The State of Maharashtra & Ors. and companion Writ Petition Nos. 5322 of 2018 and 5323 of 2018.

7. Hence, the objection as regards the Petitioner being over aged at the time of recruitment has been rejected by the Division Benches of this Court, therefore, the said issue has been put to rest. The orders passed by the Division Benches in the above Writ Petitions are in respect of employees who are similarly situated as the Petitioner abovenamed as can be seen from the proposal sent by the University to the Director of Higher Education wherein the names of all the Petitioners are appearing along with Petitioner in Writ Petition No. 8830 of 2015 i.e. Ashok Haribhau Sawant.

8. In that view of the matter, the above Writ Petition is required to be allowed and is accordingly allowed in terms of prayer clause (b). Since the Petitioner has been wrongly denied the benefit of pension, he would be entitled to the arrears of pension with interest @ 6% per annum from the date of his retirement till payment. We direct that

the payment to be made on or before 31.12.2018, failing which the rate of interest would increase to 12% per annum.

9. The Petition is allowed to the aforesaid extent and to accordingly stand disposed of.

[K. K. SONAWANE, J.]

[R. M. SAVANT, J.]

Arjun
Machhindra
Kadam

Digitally signed
by Arjun
Machhindra
Kadam
Date:
2018.09.11
17:42:50 +0530