IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 165 OF 2016

1. The State of Maharashtra,
   Through its Principal Secretary
   Medical Education & Drugs Department,
   Mantralaya, Mumbai- 400 032.

2. The Director of Ayurved,
   Maharashtra State,
   Saint George Hospital, 4th floor,
   Fort, Mumbai- 400 001.

3. The Dean,
   Government Ayurvedic College,
   Vazirabad, Nanded 431 602. … Petitioners.

V/s.

Dr.Shreekant S/o Shankarrao Deshpande,
Samhita Sidhhant, Govt. Ayurvedic College,
Nanded R/o “Aabha”, Abhijit Nagar,
H.No.1-1-805/1, Near Mayur Vihar Colony,
Vithal Temple, Nanded 431 605. … Respondent.

Mr.N.K.Rajpurohit, AGP for the petitioners.

Mr.Subhash P. Nalavade for the respondent.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 16th October 2018.

ORAL JUDGMENT : (Per A.S. Oka, J.)

By this writ petition under Article 226 of the Constitution of India, the petitioners (State of Maharashtra and others) have challenged the order dated 17th August 2015 passed by the Maharashtra Administrative Tribunal (for short "Tribunal") by which Original Application Nos.142/2015, 143/2015 and 144/2015 filed by the respondent were disposed of in his favour.

2. Original Application No.142/2015 was filed by the respondent for setting aside the decision of the Departmental Promotion Committee (for short "DPC") and for seeking deemed promotion. He also sought deemed promotion to the posts of Reader and Professor. Original Application No.143/2015 was filed by the respondent seeking higher pay scale in the post of Lecturer in Sanskrit from 8th December 1993 as his request for grant of said pay scale was rejected by letter dated 23rd February 2012. In Original Application No.144/2015, the contention of the respondent was that he is entitled to get benefit of the Government Resolution dated 17th June 2010 to continue in service till the age of 62 years. In the impugned order, the Tribunal noted that the DPC did not find the respondent fit for promotion to the post of Reader in 1998 and to

the post of Professor in 1997 when his juniors were promoted. We may note here that the controversy arose as the respondent is a teacher in Sanskrit in Ayurvedic College. It appears that DPC was of the view that the Recruitment Rules of 1988 were not applicable in view of clarification issued by the Central Council of Indian Medicine that a Sanskrit Teacher cannot be appointed and promoted as Professor or Reader in Aurved College. Thereafter, the Tribunal has referred to the minutes of the meeting of DPC held on 5th January 2006 in which it was noted that the case of the respondent was not covered by the Recruitment Rules of 1988, but he was eligible to be given higher pay scale after 10 years of satisfactory service as per the guidelines of the Central Council of Indian Medicine. It appears that notwithstanding the said recommendation of DPC and the proposal submitted by the Director of Aurved for considering the case of the respondent to place him in higher pay scale, by a letter dated 23rd February 2012, the State Government refused to grant higher pay scale. Reliance was placed by the State Government on the recommendation of DPC that the respondent was not fit for promotion to the post of Reader till 1998 and to the post of Professor till 1997. The State Government relied upon the clarification issued by the Central Council of Indian Medicine that a Sanskrit Teacher cannot be appointed/ promoted to the post of Professor or Reader in Aurved Cadre. The Tribunal criticized the stand taken by the State Government that the respondent was ineligible for grant of higher pay scale after 10 years of satisfactory service. The Tribunal noted that, in fact, the eligibility was claimed in terms of guidelines of the Central Council of Indian Medicine.

The Tribunal observed that there was no reason to deny the benefit of higher pay scale as laid down by the Central Council of Indian Medicine. The Tribunal considered the reply of the State Government to Original Application No.143/2015 by observing that the respondent has to be granted either Senior Scale/Selection Grade or the benefit of Time Bound Promotion/ Assured Career Progression Scheme.

3. As far as Original Application No.144/2015 is concerned, the DPC in its meeting dated 5th January 2006 observed that the respondent was a language teacher in Sanskrit and, therefore, the Recruitment Rules of 1998 were not applicable. The Tribunal has referred to the Government Resolution dated 30th April 2010 which is applicable to 14 Government Medical Colleges, 3 Government Dental Colleges and 4 Government Ayurvedic Colleges by which retirement age of Deans and Teachers in the colleges was raised to 62 years from 58 years By Government Resolution dated 17th June 2010, it was clarified that the age of retirement was raised only for the teachers who have medical qualifications. However, by another Government Resolution dated 5th March 2011, the age of retirement of teachers in non-agricultural universities was raised from 58 years to 62 years. Another Government Resolution dated 29th April 2014 clarified that the teachers having the degrees of M.Sc. and Ph.D in certain non-medical subjects will also be eligible to get the benefit higher age of retirement. However, the subject of Sanskrit was not included in the list.

4. The respondent relied upon the judgment and order dated 25th July 2014 passed by the Tribunal in Original Application No.72/2011 in which the issue of teachers with non-medical qualifications working in medical colleges in the State fell for consideration. The Tribunal in the judgment observed that the said Original Application was filed by the applicant therein who was holding a non-medical degree and was made to retire at the age of 58 years from the Grant Medical College. In the said Original Application, by accepting the case of the said applicant, the Tribunal held that the applicant therein answered the requirement of the word teacher in the context of Government Resolution of the year 2011 and that the said Government Resolution makes no distinction between any other college and a medical college. The applicant in the said Original Application was directed to be retired at the age of 62 years. Based on the decision in Original Application No.72/2011, the respondent was granted benefit of Government Resolution dated 5th March 2011 and it was held that the respondent will be entitled to the benefit of retirement at the age of 62 years.

5. We may note here from the prayers made in this petition that the challenge to the impugned judgment and order is confined only to the Judgment and order by which Original Application No.144/2015 has been allowed by holding that the age of retirement of the respondent is 62 years.

6. On 25th September 2018, when the writ petition was heard for admission, it was not disputed that the case of the respondent is on par with the case of the applicant in Original Application No.72/2011 decided by the Tribunal on 25th July 2014. The order dated 25th September 2018 reads thus:

> "Submissions of the learned AGP are heard. We direct the learned AGP to take instructions whether the State Government has accepted the judgment and order dated 25th July 2014 in Original Application No. 72 of 2011 passed by the Maharashtra Administrative Tribunal (for short "Tribunal"). If the judgment was challenged, the learned AGP will produce the order passed by the Court.
> 2] Place the petition high upon board on 9th October 2018 for further hearing."

On 9th October 2018, time was granted to the learned AGP to take instructions as observed in the order dated 25th September 2018. However, today when the petition was called out, the learned AGP again seeks time.

7. There is nothing placed on record by the State Government to show that the judgment and order dated 25th July 2014 passed by the Tribunal in Original Application No.72/2011 was challenged by the State Government. As the case of the respondent is on par with the case of the applicant in the said Original Application, it is not possible for us to find fault with the view taken by the Tribunal by allowing Original Application

No.144/2015 thereby holding that the age of retirement of the respondent will be 62 years.

8. Therefore, there is no reason to interfere with the impugned judgment and order

9. In the event, the judgment and order dated 25th July 2011 in Original Application No.72/2011 is already set aside or is already stayed, we grant liberty to the petitioners to apply for revival of this petition.

10. Subject to what is observed above, the petition is rejected.

(M.S.SONAK, J.) (A.S.OKA, J.)