

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

WRIT PETITION NO. 5307 OF 2018

Mr. Faheem Akhtar S/o. Akhtaruzz Aman
Age : 59 years, Occu. Retired Clerk,
R/o. House No. 2.7.91/37, Rasheedpura,
Muijnu Hill, Aurangabad.

... Petitioner

Versus

1. The State of Maharashtra

2. The Maharashtra State Wakf Board
of Wakf Mandal, through its CEO,
Panchakki, Aurangabad.

... Respondents

..
Shri. U. R. Awate, Advocate for the petitioner
Shri. S. P. Tiwari, AGP for respondent/State
..

**CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVALA, JJ.**

DATE : 18TH APRIL, 2019

ORAL JUDGMENT [PER S. V. GANGAPURWALA, J.] :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties taken up for final disposal.

2. Shri. U. R. Awate, learned counsel for the petitioner submits that the petitioner was made to retire at the age of 58 years

while other similarly situated persons were allowed to retire at the age of 60 years. According to the learned counsel, the petitioner was appointed on 01.08.1999 as a Jr. Clerk at the office of Marathwada Wakf Board, Panchakki, Aurangabad. On 22.12.2016, the petitioner was issued the superannuation and relieving order by respondent No.2. The petitioner filed representations on 12.03.2018 and 26.03.2018 saying that the the orders superannuating the petitioner at the age of 58 years is illegal. The learned counsel relies on the judgment of this Court in Writ Petition No. 4157 of 2013 dt.29.11.2013.

3. Shri. Pathan, learned counsel for respondent No. 2 submits that, the service rules have been amended and as per the service rules applicable to the Wakf Board, the age of retirement is 58 years. The said rules have received sanction of the Government in June-2018 and prior to that, the draft rules have been already forwarded to the Government.

4. We have considered the submissions.

5. It is trite that the service conditions cannot be altered to the detriment of an employee. At the time the petitioner entered the

service with respondent No. 2, the Marathwada Wakf Board Regulations, 1964 were in force. Clause 19 of the said Regulations provided the age of superannuation as 60 years. The said fact has been considered in the judgment delivered by the Division Bench of this Court at Nagpur in Writ Petition No. 4157 of 2013 (Mr. Shaikh Zafar S/o. Shaikh Irbrahim vs. Maharashtra State Wakf Board of Wakf Mandal & Anr.) decided on 29.11.2013.

6. In light of the above, the service conditions that would govern the petitioner are the service conditions on the date the petitioner was appointed. The service rules of 2018 relied by the learned counsel would not apply. The said service rules would not have retrospective application. Moreover, the petitioner is made to retire even when the rules of 2018 had not received the sanction of the Government.

7. The learned counsel for the petitioner submits that, the petitioner is entitled for the salary from 28.12.2016 to 28.12.2018 and all the retiral benefits accordingly.

8. We would have considered the case of the petitioner for payment of salary from 28.12.2016, had the petitioner approached

this Court in time. For the first time the petitioner made representation to the respondent No. 2 in March 2018 and filed the petition on 24.04.2018.

9. Considering the above, we pass the following order.

ORDER

The petitioner shall be deemed to have retired on 31.12.2018. Though we have observed that the petitioner shall be deemed to have retired on 31.12.2018, however, we would not grant him wages for the period from 01.01.2017 to 30.04.2018 as during the said period the petitioner had not taken any steps. The respondent shall pay salary of seven months to the petitioner from 01.05.2018 till 31.12.2018. However, the period upto 31.12.2018 shall be counted as period of continuous service for the purpose of retiral benefits. The payment shall be made to the petitioner within a period of four months.

10. Rule made absolute in the above terms with no order as to costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde