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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3886 OF 2021

Shri Ishwar Jawhar Waghela

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. N.V. Bandiwadekar with Mr. Vinayak Kumbhar and Mr. Ajinkya Navale i/b. Mrs. Ashwini Navjyot Bandiwadekar for the Petitioner.

Mr. N.K. Rajpurohit AGP for State – Respondent Nos.1, 2 and 5.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.
DATE : 17 AUGUST, 2021

ORDER :

1. Learned Counsel for the Petitioner seeks leave to amend the Petition by deleting Respondent Nos.3 and 4. Leave to amend the Petition is granted. Amendment shall be carried out within a period of one week from today.

2. Rule. Learned AGP waives service for Respondent Nos.1, 2 and 5. Heard finally by consent of parties.

3. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner is seeking directions

against Respondent Nos.1, 2 and 5 to take decision on the proposal dated 18th July, 2016 and subsequent proposal dated 17th March, 2018 submitted by the Vidya Pratishthan's Arts, Science & Commerce College ("the College") to the Respondent No.2 - the Joint Director of Education (Higher Education), Pune for relaxation of the Petitioner's overage at the time of his initial appointment as sweeper / Peon in the college.

4. The Petitioner was appointed on 1st June, 1998 on un-aided post in the College run by the Vidya Pratishthan ("the Management"). When the post started receiving grant-in-aid from the State Government from 1st June, 2004, the Petitioner was appointed / continued in the same post on payment of salary in pay scale. The College submitted proposal of the Petitioner to the Respondent No.2 - the Joint Director on 11th March, 2013 requesting the Respondent No.2 to condone the Petitioner's overage at the time of appointment. Thereafter, the Respondent No.5 issued order dated 7th October, 2015 to stop the Petitioner's salary till the Government passes order on the proposal for age relaxation / condonation.

5. The Management of the College submitted a fresh proposal dated 17th March, 2018 for age relaxation /

condonation of the Petitioner's appointment to the Respondent No.2. It is stated in the Petition that apart from the Petitioner, there were two other non teaching employees in the College who were similarly overaged when appointed and the management had also submitted proposal for relaxation / condonation of their appointments. One Shri Mohan T. Khalate filed Writ Petition No.1866 of 2018 on 25th January, 2018 in this Court challenging the order which had stopped the payment of salary and sought directions to decide the pending proposal. This Court by order dated 30th July, 2018 directed the concerned authority to take decision on the proposal of the appointment of the Petitioner therein. As in the present case, salary grants had stopped in the year 2016. The Division Bench of this Court was of the view that the formal order requires to be passed by the concerned authority on the proposal tendered by the institution and which shall be passed expeditiously as possible within a period of six months from the date of the said order.

6. Thereafter a proposal has been sent by the Management in the case of the Petitioner, Shri Mohan T. Khalate in Writ Petition No.1866 of 2018. The proposal has

been considered by the Respondent No.1 and order passed on 22nd December, 2020 by which age relaxation had been granted to Shri Mohan T. Khalate.

7. Since the proposal which had been sent by the Management on 17th March, 2018 in respect of the present Petitioner had not been considered by the Management as in the case of Shri Mohan T. Khalate, the present Petition has been filed.

8. The learned Counsel for the Petitioner submits that the proposal dated 17th March, 2018 sent by the Management of the College to the Respondent No.2 requires to be considered and an appropriate decision taken in light of the decision having been taken by the Respondent No.1 vide order dated 22nd December, 2020 in favour of the said Mr. Mohan T. Khalate who had filed Writ Petition No.1866 of 2018. The present Petition filed by the Petitioner is almost identical to the Writ Petition No.1866 of 2018 filed by Shri Mohan T. Khalate and therefore, similar order is required to be passed.

9. In view of the above submission and particularly since no decision has been taken on proposal dated 17th March,

2018, we direct the Respondent No.2 to consider the proposal dated 17th March, 2018 sent by the Management of the College and take decision within a period of eight weeks from today. The decision taken by the Respondent No.2 shall be communicated to the Petitioner within one week from the date of the decision.

10. The Writ Petition is accordingly disposed of in the above terms. Learned Counsel for the Petitioner states on instructions that the Petitioner is not claiming other relief in the Petition in view of the above order at this stage. The further relief sought will depend upon outcome of the decision taken by the Respondent Nos.1 and 2. The statement is accepted.

11. Rule made absolute accordingly. There shall be no order as to costs.

12. Parties to act on an authenticated copy of this order.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]