

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****WRIT PETITION NO. 3367 OF 2020**

(Dr. Mir Sadique Ali vs. Vidarbha Youth Welfare Society and others)

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Akshay Sudame, Advocate for petitioner.
Mr. R.D. Bhuibhar, Advocate for respondent No.1
Mr. N.P. Lambat, Advocate for respondent No.2.
Ms. N.P. Mehta, AGP for respondent Nos.3 and 4.
Mr. J. B. Kasat, Advocate for respondent No.5.

**CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR JJ.**

DATED : 08/09/2021

Heard Mr.A.A.Sudame, learned counsel for the petitioner, Mr.R.D.Bhuibhar, learned counsel for the respondent No.1, Mr.N.P. Lambat, learned counsel for the respondent No.2, Ms.N.P.Mehta, learned AGP for respondent Nos.3 and 4, and Mr.J.B.Kasat, learned counsel for respondent No.5.

2. All the respondents have taken strong preliminary objection regarding maintainability of this petition. They placed reliance upon the provision of Section 81 of the Maharashtra Public Universities Act, 2016 and the elucidation of the effect of retirement, whether prematurely or on attaining the age of superannuation as per the governing regulations given by the learned Single Judge of this Court in the case of

Meena d/o Laxman Kapashikar vs. Vice Chancellor, Rasthrasant Tukdoji Maharaj Nagpur University and others, 2012(5) Mh.L.J. 951.

3. According to Mr. Sudame, learned counsel for the petitioner that this petition is maintainable for the reason that this Court will have to decide the question of primacy of AICTE Regulations vis-a-vis the State Regulations governing the age of superannuation of the teaching faculty holding the post of Principal. He submits that it is the contention of the petitioner that he being the Principal, he has a right to continue in service till he attains the age of 65 years in terms of Regulations 2.12 published in the Notification dated 01/03/2019 by the respondent No.2. He further submits that it would be only upon deciding this question that any issue of premature retirement of the petitioner could be appropriately decided by the College Tribunal.

4. Mr. Bhuibhar, learned counsel for respondent No.1 submits that this petition only questions the legality or otherwise of the impugned communication dated 27/11/2020, which declares that the petitioner shall stand retired from the post of Principal w.e.f. 31/12/2020, by virtue of the petitioner attaining the age of superannuation, which is the age of 62 years as per the State Regulations and therefore, this petition would not be maintainable before this Court and the petitioner would have to take recourse to the alternate remedy

available under the provisions of the Maharashtra Universities Act, 2016. confine meaning

5. The controversy relating to maintainability of this petition will have to be decided by careful examination of that which is sought by the petitioner in the present case. The prayers made in this petition would throw sufficient light on this aspect of the matter and therefore, it would be necessary to consider the relevant prayer clauses, which read as under :-

(ii) Quash and set aside impugned notice dated 27/11/2020 issued by Respondent No.1 ;

(iv) Direct the Respondent No.2 Council to enquire into the conduct of the Respondent No.1 Trust regarding adherence to the norms and regulations pertaining to the extension of approval to the College.

(v) Direct the Respondent No.5 University to enquire into the conduct of the Respondent No.1 Trust regarding adherence to the provisions of the Acts, Statutes and ordinances pertaining to the conditions of affiliation at the College.

6. The other prayer clauses being of consequential in nature and pertaining to interim reliefs, are not reproduced here. The above stated prayer clauses would show that the petitioner has not sought

any declaration regarding the primacy between AICTE Regulations and State Regulations. They further show that the petitioner has not sought any declaration that the petitioner is entitled to have the benefit of AICTE Regulations, which laid down the age of retirement for Principal as 65 years of age. These prayer clauses only indicate that the petitioner has questioned the legality and correctness of the communication dated 27/11/2020, only on the assumption that he is governed by AICTE Regulations which is controverted to by the respondent Nos.1, 3, 4 and 5.

7. In these circumstances, the petitioner would have to confine himself to the effect of communication dated 27/11/2020 and therefore, the aforesaid remedy for the same would be to take recourse to the remedy of appeal provided under Section 81 of the Maharashtra Universities Act, 2016. This remedy would be available for the petitioner, as the alleged premature retirement of the petitioner having the effect of snapping of the employer – employee relationship, would fall in the category of otherwise termination of service of the petitioner. The view taken in this regard by the learned Single Judge of this Court in the case of ***Meena Kapashikar vs. Vice Chancellor*** (supra) commends to us.

8. In view of the above, we find that this petition is not maintainable before this Court and accordingly the petition stands dismissed with liberty to

the petitioner to take recourse to the alternate remedy available under the law. All questions are kept open.

9. The Interim relief granted to the petitioner on 21/12/2020, is continued for a further period of two weeks.

JUDGE

JUDGE

KOLHE/PA.