

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.238 OF 2022
IN
WRIT PETITION NO.12761 OF 2019

University of Mumbai Through]
Deputy Registrar.] ... Applicant

Vs.

Satish V. Ratnaparkhi] ... Respondent

...

Mr. Ashutosh M. Kulkarni with Mr. Gaurav Sharma for the
applicant.

Mr. C.R. Sadasivan for the respondent.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 19TH JANUARY, 2022.

P.C. :-

1. I have considered the submissions of the learned counsel for the University and the learned counsel, appearing on behalf of the employee, who was the appellant before the University.

2. There is no dispute that, the issue pertains to the applicability of the Government Resolution dated 05/03/2011, by which, the employee would be entitled to work, at least, upto the age of 62 years and, depending upon his performance appraisal/review, after completion of 62 years, he could continue, till the age of 65. By virtue of the said Government Resolution, the employee, who claims to be the Professor cum Director of Alkesh Dinesh Modi Institute of Financial & Management Studies, University of Mumbai, had succeeded before the learned University and College Tribunal (**“the University Tribunal”**, for short,) vide judgment dated 06/12/2018, delivered in Appeal (St.) No.11 of 2018, vide which, the learned University Tribunal concluded that, the Government Resolution dated 05/03/2011 would be applicable to the case of the original appellant.

3. By this petition, the University of Mumbai has contended that the Government Resolution dated 05/03/2011 would not be applicable to the case of the respondent-appellant and, the learned University Tribunal had erred in delivering the impugned judgment.

4. It is equally undisputed that after the respondent-appellant completed 62 years of age, he was relieved from the service. His contention is that there should have been an appraisal of his performance and, based on the same, he could have been continued till the age of 65. The Government Resolution, dated

05/03/2011 also contemplates an appraisal at the age of 62 and, thereafter, if the appraisal report indicates that the appellant can be continued for a further period of three years, he could be entitled for the same. As he was relieved from service, he approached the learned University Tribunal by preferring Appeal No.6 of 2020. An application for seeking interim relief bearing M.A. No.6 of 2020 filed by him was rejected by the learned University Tribunal, vide order dated 06/11/2020.

5. By this interim application, the University contends that the second appeal, that has been filed by the appellant, bearing No.6 of 2020, is on the basis of the same Government Resolution, dated 05/03/2011, which is already held to be applicable to the appellant by the learned University Tribunal, vide the earlier judgment, which is impugned in the writ petition. If that appeal is finally heard by the learned University Tribunal, the issue as to whether the appellant would be entitled to continue upto the age of 65 would be adjudicated upon.

6. Per contra, this court would be deciding the writ petition filed by the University, as to whether the view taken by the learned University Tribunal earlier that, the Government Resolution dated 05/03/2011 is applicable to the appellant, would be adjudicated upon, and the possibility cannot be ruled out that, this court may conclude that the Government Resolution dated 05/03/2011 would not apply to the respondent-appellant. As such, the said appeal

being Appeal No.6 of 2020 filed before the learned University Tribunal would result in multiplicity of litigation as well as a possibility that, a divergent view may be taken by the learned University Tribunal.

7. Considering the peculiar facts as above, I am of the view that it would be advantageous to hear the writ petition filed by the University of Mumbai, finally, since it goes to the root of the matter viz. 'whether the Government Resolution dated 05/03/2011 would apply to the case of the respondent-appellant'. The learned advocate for the respective sides are agreeable for a final hearing, at the admission stage.

8. Considering the above, list this petition on 07/02/2022, to be called out, after the urgent admission board is over, for a final hearing, at the admission stage.

9. In the meanwhile, the learned University Tribunal would adjourn Appeal No.6 of 2020.

10. Considering the above, the interim application shall stand disposed off.

[RAVINDRA V. GHUGE, J.]