

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 3831 OF 2021

|                                 |     |                    |
|---------------------------------|-----|--------------------|
| Kiran Achuat Deshpande          | ... | <b>Petitioner</b>  |
| Versus                          |     |                    |
| The State of Maharashtra & Ors. | ... | <b>Respondents</b> |

Mr. Vishwanath S. Talkute, Advocate for the Petitioner.

Mr. N. C. Walimbe, AGP for the Respondents/State.

Mr. Rajendra Anbhule, Advocate for Respondent No.3.

**CORAM: S.V. GANGAPURWALA &  
MADHAV J. JAMDAR, JJ.**

**DATED : AUGUST 22, 2022**

P.C..

1. The petitioner herein was appointed on temporary basis as a "Refregirator and Air-conditioning Mechanic" by respondent No.3 on or about 1<sup>st</sup> December 1983. At the time, the petitioner was appointed on temporary basis, the petitioner was 18 years of age. It is the case of the petitioner that he has served with respondent No.3 till the petitioner was regularly appointed on 28<sup>th</sup> February 1996. On date the petitioner was appointed on 28<sup>th</sup> February 1996, the petitioner was 32 years of age. At the relevant time, the same was over age.

2. It is the contention of the learned Counsel for the petitioner that the petitioner was getting salary from grant-in-aid since 2011 to 2016. Subsequently, it was stopped on

the ground that the initial appointment of the petitioner was irregular as the petitioner was over age. The learned Counsel submits that 23 such employees employed by the respondent No.3 were over age. In respect of other employees, this Court has condoned the objection that they were over age and the benefits are accorded to them. The reference is made to the writ petition bearing Writ Petition No. 6168 of 2012 filed by them which this Court has decided on December 17, 2013 and other writ petitions.

3. The learned AGP submits that the petitioner on the relevant date was over age. The respondent no.3 ought not to have appointed the petitioner in view of the fact that the petitioner was over age.

4. The learned Counsel for respondent No.3 submits that the petitioner was appointed on sanctioned post. The petitioner was continuously working since 1983. The petitioner was appointed by following regular selection process on 28<sup>th</sup> February 1996.

5. The University under the impugned communication has observed that the proposal has been forwarded by them to the Government for condoning the over age from time to time. However, the Government till date has not sanctioned the said proposal. The grant-in-aid is not being released by the Government for the petitioner's post, as such, the pay fixation cannot be done and salary cannot be paid to the petitioner.

6. In fact, as the proposal was pending with the Government for such a long period, the Government ought to have taken decision upon it.

7. It appears that some of the similarly situated employees, who were over age and employed by respondent No.3, had approached this Court. This Court had passed an order, wherein the Court has observed that the respondent would not raise an objection at the fag end of their service career. The Court also observed that there was specific Government Resolution, which empowers condoning the overage of the employees, who have put in the meritorious and blemish-less service.

8. In the present matter, it would appear that the petitioner was working with respondent No.3 University since 1<sup>st</sup> December 1983. The petitioner was 18 years of age at that time. Since the petitioner was working on temporary basis since 1983, the University considered to take up regular selection process and the petitioner was selected by the Constituted Committee by following due procedure.

9. The learned AGP submits that now the upper age limit for appointment of the General category candidate is 33 years. Be that as it may, though the petitioner was over age on the date the petitioner was appointed, considering the fact that the petitioner was working since 1<sup>st</sup> December 1983 and that there was no averment of respondent that the petitioner had suppressed the age or otherwise, nor there is any averment of the respondent that the petitioner has misrepresented, we are inclined to step in and direct the Government to condone the over age of the petitioner. It would also be improper on the part of respondent No.2 to raise an issue of over age after a long slumber of 18 to 20 years.

10. The impugned communication is quashed and set aside. The respondent Authority shall condone the factum of the petitioner being over age at the time of regular appointment and further steps shall be taken by the parties with regard to the payment of salary and other aspects.

11. The writ petition is disposed of. No costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)

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