

WRIT PETITION NO.3077 OF 2020

Versus

State of Maharashtra & Ors. ...Respondents

Mrs.S.S. Bhende, AGP for the Respondent Nos.1 to 3-State.

Mr.N.V. Bandiwadekar i/b Mr.Milind Deshmukh, for Respondent No.4.

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**CORAM : S.V. GANGAPURWALA &
S.G. DIGE, JJ.**

DATE : 10 NOVEMBER 2022

P.C:-

The Petitioner was appointed as an instructor by Respondent No.4 in the year 1995. The Petitioner thereafter was promoted as a Principal in the year 2001.

2. It appears that the Government conducted an inquiry and eventually found that when the Petitioner was initially appointed in the year 1995 the Petitioner was over age and as such directed cancellation of the appointment of the Petitioner as a Principal, the same is assailed in the present Writ Petition.

3. We have heard the learned counsel for the Petitioner, the learned AGP and the learned counsel for Respondent No.4.

4. It appears that when the Petitioner was appointed for the first time in the year 1995 as an Instructor, the Petitioner was over age. The said does not appear to be disputed question of fact. However, it also needs to be considered that the Petitioner continued to the function as an Instructor and subsequently in the year 2001 was promoted as a Principal. The Petitioner is discharging his duty as a Principal also.

5. It would be too late in the day to cancel the appointment of the Petitioner on the ground that at the initial date of the appointment of the Petitioner he was over age. At the most the services can be counted till the date of superannuation as per his date of birth. It would be inequitable after lapse of 24 years to cancel the appointment of the Petitioner only on the ground that at the time of initial appointment the Petitioner was over age.

6. It is not the case of the State that the Petitioner was guilty of misrepresentation or fraud at the time of appointment or had showed a different age. The facts were before the authorities in view of that, it would not be open for the Authority to contend

that the Petitioner's appointment be cancelled on the ground of the Petitioner being over age, after 24 years.

7. In light of the above, we set aside the impugned order including the order of termination passed by Respondent No.4.

8. It is submitted that the post held by the Petitioner was grand-in-aid post. The Petitioner was paid salary from the grant-in-aid upto the date of his termination. The question would be of the salary till the Petitioner attained the age of superannuation on 31 July 2022.

9. In light of that, we direct the Respondent No.4 to submit the salary bills of the Petitioner with the Respondent-Authority as an Instructor from 27 July 2019 till the Petitioner attained the age of the superannuation on 31 July 2022 within a period of six weeks from today. The authority shall process the salary bills of the Petitioner and make the payment as admissible to an Instructor. Necessary consequential benefits shall also follow.

10. The Writ Petition is accordingly allowed. No costs.

(S.G. DIGE, J.)

(S.V. GANGAPURWALA, J.)