

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2275/2021

(RAMESH NIMBAJI KALWE **VERSUS** STATE OF MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Smt. R.D. Raskar, counsel for the petitioner.
 Shri N.R. Patil, Assistant Government Pleader for the R-1.
 Shri A.R. Patil, counsel for the R-2 & 3.
 Shri U.J. Deshpande, counsel for the R-4.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : APRIL 13, 2022.

The challenge raised in this writ petition is to the communication dated 29.12.2020 issued by the Registrar of Maharashtra Animal and Fishery Sciences University, Nagpur thereby informing the petitioner that he would be retiring on 30.06.2021 on completion of age of fifty eight years. According to the petitioner, as he was holding the post of Laboratory Attendant he was entitled to continue in service till the age of sixty years and that by the impugned communication he was sought to be retired prior to that date.

It is the case of the petitioner that he was appointed as a Laboratory Attendant on compassionate basis on 16.03.1998. The said post was a Group-D/ Class-IV post. At that point of time, the order of appointment was issued by Dr. Panjabrao Deshmukh Agriculture University, Akola. With the enactment of the Maharashtra Animal Fishery Sciences Universities Act, 1998 (for short, 'the Act of 1998') the service conditions of the petitioner were governed by the Act of 1998. The petitioner contends that since his initial appointment was in a Class-IV cadre he was entitled to be continued in service till the age of sixty years. His appointment initially was in the pay-scale of Rs.950-1400 which was admissible to a Group-D post. It is thus the case of the petitioner that the Registrar was not justified in invoking the provisions of Rule 10(1) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, 'the Rules of 1982'). On the contrary the provisions of Rule 10(2) thereof were applicable.

Smt.R.D. Raskar, learned counsel for the petitioner submitted that as the initial appointment of the petitioner was on the post of Laboratory Attendant in the pay-scale of Rs.950-1400 the petitioner was entitled to continue in service till the age of sixty years. Placing reliance on the provisions of Rule 10(2) of the Rules of 1982 it was submitted that mere revision in pay-scales subsequent to the petitioner's appointment would not affect the service conditions of the petitioner especially as regards the age of superannuation. By placing reliance on the decisions in *Samadhan Rajaram Umak Versus Dr.Punjabrao Deshmukh Krishi Vidyapeeth & Another* [2011(5) ALL MR 267] and *Rambhau Shaymrao Bhusari Versus Dr.Punjabrao Deshmukh Krishi Vidyapeeth & Another* [2012(3) ALL MR 820] and **Writ Petition No.3503 of 2011** [*Madhukar Shriram Sawle Versus Dr.Punjabrao Deshmukh Krishi Vidyapeeth Akola & Another*] decided on 28.07.2011, it was submitted that this question has been considered in the aforesaid decisions and it has been held that the post of Laboratory Attendant which falls in Group-D would be a Class-IV post and therefore the age of retirement would be sixty years. Inviting attention to the judgment in **Writ Petition 1231 of 2021** [*Prabhavati Govindrao Yegaonkar Versus Maharashtra Animal and Fishery Sciences University & Another*] decided on 23.12.2021 at the Aurangabad Bench it was submitted that the earlier decisions referred to above had not been considered in this decision and hence it was rendered *per incuriam*. On these grounds, it was submitted that the impugned communication dated 29.12.2020 be set aside and the petitioner be granted all reliefs by treating him to be in service till the age of sixty years.

Shri A.R.Patil, learned counsel for the respondent nos.2 and 3 opposed the aforesaid submissions. According to him, though the petitioner was appointed as Laboratory Attendant on 16.03.1998 in the pay-scale of Rs.950-1400 the said post has been categorized as falling in Group-C/Class-III cadre. Therefore the age of retirement of the petitioner was fifty eight years. Inviting attention to the fact that the respondent no.2-University had on 17.01.2008 itself resolved to treat the post in question as a Group-C/Class-III cadre post and the said resolution not being under challenge, it was submitted that it was not open for the petitioner to contend that he was entitled to continue in service till the

age of sixty years. The post of Laboratory Attendant had been placed in the pay-scale of Rs.3050-4590 and hence the impugned communication was rightly issued to the petitioner. The learned counsel placed reliance on the decision in *Prabhavati Govindrao Yegaonkar* (supra) to substantiate his contentions. He invited attention to the fact that in the decisions relied upon by the learned counsel for the petitioner, the services of those employees fell under Dr.Panjabrao Deshmukh Agriculture University while in the present case the services of the petitioner were rendered in the College affiliated to the Maharashtra Animal and Fishery Sciences University. On these counts, it was submitted that there was no illegality committed in issuing the impugned communication and the writ petition was liable to be dismissed.

We have heard the learned counsel for the parties and we have perused the documents placed on record. The facts indicate that when the petitioner was appointed, the Nagpur Veterinary College was governed by Dr.Panjabrao Deshmukh Agriculture University. With the enactment of the Act of 1998 from November-2008 the said College was allocated to the Maharashtra Animal and Fishery Sciences University. The post in question was categorized and brought into Group-C/Class-III cadre. As per Government Resolutions dated 02.07.2002 and 27.05.2016 it was clear that the salary paid to the petitioner was that which was admissible to a Class-III post. Pay-scale of Rs.3050-4590 has been specifically placed in Group-C. Moreover by virtue of Resolution dated 17.01.2008 passed by the Executive Council the post of Laboratory Attendant was treated as Class-III post. These Government Resolutions or the Resolution dated 17.01.2008 are not under challenge by the petitioner. On a plain reading of the Resolution dated 17.01.2008 it becomes clear that the post of Laboratory Attendant falls in Group-C/Class-III cadre.

On a perusal of the decision in *Samadhan Rajaram Umak* (supra) on which the learned counsel for the petitioner has placed reliance, it is seen that the Institution where the said petitioner was serving was affiliated to Dr.Panjabrao Deshmukh Agriculture University. It was found that as per the order of appointment and the terms and conditions stated therein, the post of Laboratory Attendant was in Group-D and equivalent to the post of Attendant/

Watchman. A reference was also made to the Government Resolution dated 08.06.1995 whereby protection was granted to the employees in Group-D.

In view of such protection being extended by the State Government by Clause 5 of the Government Resolution dated 02.07.2002 it was held that the age of retirement could not be changed and the petitioner would be entitled to continue in service till the age of sixty years. The decisions in *Madhukar Shriram Sawle* (supra) and *Rambhau Shaymrao Bhusari* (supra) rely upon the earlier decision and take the same view. When the facts in *Prabhavati Govindrao Yegaonkar* (supra) are seen the same reveals that the Court has referred to the Government Resolution dated 02.07.2002 in which the posts have been categorized on the basis of the pay-scales. The post having maximum limit of Rs.4400/- but less than Rs.9000/- has been placed in Group-C while the post having pay-scale of maximum limit of Rs.4400/- is placed in Group-D. It was found that as per aforesaid pay-scale the petitioner who was in the pay-scale of Rs.3050-4590 would fall in Group-C. The subsequent Government Resolution dated 27.05.2016 issued by way of clarification also gives a similar illustration. The Court also considered a similar Resolution passed by the Executive Council on 17.01.2008 categorizing the services of the persons drawing salary in the pay-scale of Rs.3050-4590 in Group-C. It was thus held on the basis of aforesaid that the decision to superannuate the said petitioner at the age of fifty eight years was legally correct.

We find that the ratio of the decision in *Prabhavati Govindrao Yegaonkar* (supra) would squarely apply to the facts of the present case. The College as well as the University have relied on Resolution No.10 of 2008 dated 17.01.2008 placing the services of persons drawing salary in the pay-scale of Rs.3050-4590 in Group-C. Here too, the petitioner has not challenged the aforesaid resolution dated 17.01.2008 and has served on the said pay-scale till the age of fifty eight years. Though it was urged by the learned counsel for the petitioner that the earlier decisions in *Samadhan Rajaram Umale* and *Rambhau Shaymrao Bhusari* (supra) were not considered by the Division Bench in the subsequent decision in *Prabhavati Govindrao Yegaonkar* (supra) which was therefore rendered *per incuriam*, we are not in a position to accept that contention. The earlier

decisions pertained to the Institutions affiliated to Dr.Panjabrao Deshmukh Agriculture University and the Resolution dated 17.01.2008 was not the subject matter for consideration. In the present case, it is in view of said resolution dated 17.01.2008 that the post of Laboratory Attendant has been placed in Group-C on the basis of the pay-scale admissible to it. It is on that basis that the impugned communication dated 29.12.2020 has been issued by relying upon the provisions of Rule 10(1) of the Rules of 1982. The post of Laboratory Attendant being a Class-III post the petitioner has been rightly held to superannuate on 30.06.2021. By filing an additional reply it has been clarified that the petitioner falls in Class-C in view of the nature of duties discharged by him as stipulated by Statute 115. It is only the Class-IV employees who are governed by Statute 119 in which the petitioner does not find place.

Hence for all these reasons, we do not find any case made out to interfere in writ jurisdiction. The writ petition is accordingly dismissed with no order as to costs.

(SMT. M.S. JAWALKAR, J.)

(A. S. CHANDURKAR, J.)

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