

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO. 3485/2020

Dr. Dyaneashwar Shamrao Kadhao
Aged about: 61 years, Occ: Principal,
Late Nirdhan Patil Waghaye Arts,
Commerce & Science College;
R/o 43, Shankar Nagar,
Bhandara – 441904.

.... Petitioner

// VERSUS //

1. The President, Laxmi Shikshan Sanstha
And Krida Mandal Kesalwada (Wagh),
Tah. Lakhani, Dist Bhandara – 441804
2. The Director of Higher Education,
State of Maharashtra, Pune-41101.
3. The Joint Director of Higher
Education, Nagpur Division, Nagpur
4. The Vice-Chancellor,
Rashtrasant Tukadoji Maharaj, Nagpur
University, Amravati Road, Nagpur
5. The Secretary, Higher and Technical
Education, Mantralaya, Mumbai.

... Respondents

Mr. S.P. Bhandarkar, Advocate for the Petitioner

Mr. M.V. Samarth, Senior Advocate a/w Mr. V.P. Ingale, Mr. C.M.
Samarth, Advocates for Respondent No. 1

Mr. A.S. Fulzele, Additional Government Pleader for the Respondent
Nos. 2, 3 and 5

Mr. J.J. Chandurkar, Advocate for the Respondent No. 4

**CORAM: NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATED: 27 APRIL 2022

JUDGMENT : (PER:- NITIN JAMDAR, J.)

Heard. Rule. Rule made returnable forthwith. Respondents waive service of notice. Taken up for disposal in view of the earlier order.

2. The Respondent – Management submitted a proposal regarding the Petitioner's appointment on 06 June 2018. The Respondent – University granted approval to the Petitioner by order dated 19 June 2018. The copy of the approval order was addressed to the Respondent – Management with a copy to the Petitioner.

3. Thereafter, the Petitioner was appointed as a Principal in Respondent No. 1's College named "Late Nirdhan Patil Waghaye Arts, Commerce & Science College" on 21 June 2018. Though the location of the College is a matter of dispute, for the purpose of narration, the College is situated at Lakhani, District Bhandara.

4. By an order dated 21 June 2018, the Petitioner came to be appointed to the post of Principal in the College at Lakhani. The appointment order issued by Respondent No. 1 – Management referred to the report of the Selection Committee of Respondent No. 4, letters of the University dated 02 June 2018, 19 June 2018, and Government Resolution dated 12 July 2016. The appointment order

stated that with reference to these documents, the Petitioner was appointed as full-time regular Principal in Open category in the College at Lakhani and the appointment was of permanent basis till the age of retirement at 65 years as per Government Resolution dated 12 July 2016 and the approval granted by the University dated 19 June 2018.

5. The State of Maharashtra has issued a Government Resolution on 12 July 2016 in respect of the age of retirement of the non-agricultural Colleges in Aided and Unaided Technical Colleges. The Government Resolution states that in the light of the shortage of Principals in rural, hilly and tribal areas of the State, incentives need to be provided, and in respect of those colleges situated in rural, hilly and tribal areas, the age of retirement of the Principal would be 65 years instead of 62 years.

6. On 29 December 2018, the Respondent – Management wrote to the Joint Director of Higher Education. It referred to the approval in favour of the Petitioner. The appointment order of the Petitioner was issued by the Respondent – Management, and Certificate issued by the Tahasildar Lakhani that the College at Lakhani is in a rural area. With these documents, the Respondent – Management requested the Joint Director of Higher Education that since the College is in a rural area and in this circumstance as per Government Resolution dated 12 July 2016, the approval be granted to the Petitioner's appointment as a Principal till the age of 65 years.

Upon this proposal of the Respondent – Management dated 29 December 2018, the Joint Director of Higher Education wrote to the Director of Higher Education that the College at Lakhani is within a rural area and as per Government Resolution dated 12 July 2016, the Petitioner's superannuation will be at the age of 65 years. Accordingly, the Joint Director of Higher Education sought approval from the Director of Higher Education for the retirement of the Petitioner as 10 July 2023. The Director of Higher Education wrote to the State Government upon the proposal of the Joint Director of Higher Education dated 29 January 2019 regarding approval to the proposal of the age of retirement of the Petitioner as 65 years and recommended that it should be 09 July 2023. Accordingly, the date of retirement of the Petitioner was treated as 09 July 2023.

7. Then, on 06 July 2020, the Respondent – Management wrote to the Joint Director of Higher Education that by mistake, it was mentioned that the College at Lakhani is in a rural area and the age of retirement of the Petitioner should be 62 years. Upon this letter, the Joint Director of Higher Education submitted a proposal to the Director of Higher Education stating that the age of retirement of the Petitioner should be changed from 65 years to 62 years, and he should retire on superannuation on 17 December 2020. The Director of Higher Education further forwarded a proposal to the State Government and the State Government by order dated 06 January 2021 changed the dated of retirement of the Petitioner from 31 December 2023 to 31 December 2020.

Surprisingly, even before the orders of the States, the Respondent – Management issued a revised appointment order to the Petitioner on 11 July 2020, stating that the Petitioner will retire on superannuation at the age of 62 years. Challenging the order dated 11 July 2020, the Petitioner filed the present petition and, by subsequent orders issued by the State Government, challenged the same by way of amendment.

8. The learned Counsel for the parties have advanced various contentions as to where exactly is the location of the College at Lakhani. Various factual questions have arisen about the position when the affiliation and permission were granted to the Respondent – Management to open the College. Such as - whether the College was in a rural area or urban area; whether it was conducted at Lakhani or at a place at Gadegaon, which is a rural area; whether the change of place from Lakhani to Gadegaon was sanctioned or otherwise; whether only on paper the College was at Lakhani but for all purposes at Gadegaon. The parties are raising arguments on these disputed questions by submitting documents in this Court. We do not find any reference as having been dealt with in any of the impugned orders. The only reasons that we find are in the communication dated 31 August 2020 by the Joint Director of Higher Education to the Director of Higher Education.

9. The primary issue is the breach of principles of natural justice. It is fundamental that if the State Authorities had specifically

mentioned in the record that the date of retirement was 65 years, then if three years of the Petitioner's service were to be curtailed, then the Petitioner ought to have been given an opportunity. It is not that the curtailment of three years of the Petitioner's service is because the earlier retirement age was fixed on an erroneous legal position. It is not the case of the Respondent-management in the letter that it is the Petitioner who represented erroneous factual position or that the Petitioner played any fraud when the initial appointment order and approval orders were issued. The changes are sought because the earlier act was based on a wrong factual premise. On the Respondent's proposal – Management itself that in the Petitioner's service record it was specified that the Petitioner would retire at the age of 65 years by the State Government. The specific order is sought to be undone on the ground that it is the Respondent-Management made a mistake. The charge of the Petitioner, on the other hand, is that there was no such mistake, but the Respondent – Management has deliberately changed its stand *mala fide*.

10. From the arguments advanced before us, it is clear that the Petitioner could have pointed out various factual positions to the Authority had the Petitioner would been given an opportunity. The Petitioner ought to have been given an opportunity when the order passed by the Respondent – State and subsequent order of the Respondent – Management have resulted in severe civil consequence to the Petitioner. The order passed by the Respondent–State is in

complete violation of the principle of natural justice and cannot be sustained. The elementary principle ought to have been followed by the State Authority when it was reviewing its own earlier order and curtailing the service period of the Petitioner; that he should have been given an opportunity of being heard, especially when the action of reviewing the order was passed on factual premises. Therefore, the impugned orders will have to be quashed and set aside, and the State Authority should be directed to hear the Petitioner and the Respondent – Management and then decide the issue of the Petitioner's superannuation age.

11. We make it clear that our observations in this order are only to emphasize the need to give a hearing in the facts of the present case. In that context, we have referred to the rival contentions and have not concluded the merits thereof.

12. The learned Counsel for the Petitioner states that the Petitioner's salary be paid. The learned Counsel for the Respondents points out that by the *interim* order passed in this petition on 21 December 2020, under which the Petitioner was permitted to work as Principal without claiming any salary right or equity.

13. However, since the Petitioner has worked during the pendency of the petition, it cannot be that the Petitioner will get no salary at all. Either the Petitioner should not be permitted to work on the post, but if allowed and worked, the Petitioner will have to be

paid salary otherwise such arrangement will be unconscionable. Since the impugned order have to be set aside because of the Respondent-State has passed an order without giving a hearing to the Petitioner, we will have to direct the State Government to pay arrears to the Petitioner. However, the payment of the arrears can be made subject to the Petitioner filing an undertaking that if the Petitioner is not entitled to the extended period beyond the age of 62 years, then the Petitioner will return the amount or give consent for recovery from the pensionary benefits, to which the learned Counsel for the Petitioner is ready.

14. Accordingly, the orders impugned in this writ petition are quashed and set aside. The Respondent No. 3 - the Joint Director of Higher Education, will give a hearing to the Petitioner and Respondent No. 1 - Management to decide the question as to whether the Petitioner's age of retirement should be 62 years or 65 years.

15. The Petitioner and the representative of Respondent No. 1 - Management will appear before the Respondent No. 3 - Joint Director of Higher Education, Nagpur, on 05 May 2022. Thereupon, the Joint Director of Higher Education will give suitable dates for the hearing.

16. After the conclusion of the hearing, the Joint Director of Higher Education will decide within eight weeks from the date of

the hearing and forward the same to the State Government for taking further decision. All contentions on merits are kept open.

17. Upon the Petitioner submitting an undertaking to the Respondent – State that if the age of retirement of the Petitioner is ultimately determined as 62 years the Petitioner will return the arrears of salary paid by the State Government or permit the State Government to recover it from pensionary benefits admissible to the Petitioner, the Respondent -State will release the arrears of salary due and payable to the Petitioner within four weeks from the filing of the affidavit/undertaking with the Respondents and continue to pay the same till and depending on the new order is passed.

18. Rule is made absolute in the above terms. No costs

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]

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