

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5855 OF 2019

WITH WP/1669/2021 WITH WP/1592/2021 WITH CA/7557/2023 IN
WP/7933/2019 WITH CA/1673/2018 IN WP/8799/2012 WITH WP/2526/2020
WITH WP/4768/2022 WITH WP/4767/2022 WITH WP/7096/2021 WITH
WP/7858/2019 WITH WP/7960/2019 WITH WP/7933/2019 WITH
WP/8162/2019 WITH WP/9208/2019 WITH WP/8799/2012 WITH
CA/10565/2019 IN WP/8162/2019 WITH CA/11354/2019 IN WP/7858/2019

IFTEKHARULLAH BAIG SAIDULLAH BAIG
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Kazi S.S.
AGP for Respondent No.1/State : Mr. P. S. Patil
Advocate for Respondent No.2 : Mr. Y. B. Pathan

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 22 JUNE 2023.

PER COURT :

Heard the learned Advocate for the petitioners, learned AGP and
the learned Advocate for respondent no.2/Wakf Board.

1. The petitioners in all these petitions are employees of the Waft Board and are before us with the common grievance that though they

have been appointed under the Wakf Act, 1954 and the Marathwada Wakf Board Regulations, 1964, which prescribed their age of superannuation as 60 years, but are now being treated as governed by the successor Act, 2005 and the Maharashtra State Board of Wakfs (Recruitment Regulations) Rules 2017, which prescribe the age of the superannuation for the employee of the Wakf Board as 58 years.

2. The following issues were referred to the Full Bench.
 - (a) Whether, the draft regulations, without being approved by the competent authority/Government, could be enforced though the existing regulations are in operation?
 - (b) Whether, the age of retirement applicable to the employees at the time of joining duties, can be altered to their prejudice at any time during their service tenure?

3. After considering the arguments and the law, the issues have been answered in concluding the paragraph nos. 31 and 45 as under :

31. As such, until new regulations were approved by the competent authority/Government so as to replace the earlier regulations, the draft regulations could not have the force of law. They would assume the effect of law only after they are approved. These proposed regulations, in fact recommended the retirement

age of 60 years. Subsequently, by resolution dated 30.11.2005, this proposal was altered and the age of superannuation was reduced to 58 years. These draft regulations remained on the file of the Government without any approval until 2018. Hence, we conclude that the draft regulations without being transformed into a law, would not amount to the repealing of the earlier 1964 regulations. It is, therefore, our considered view that the draft regulations would have no effect as they are purely in the form of a draft and cannot assume the character of law. We answer issue No. accordingly.

45. In view of the above, we are of the view that the service conditions applicable to the employees under the Rules and Regulations existing on the date of appointment, cannot be altered to their prejudice. Issue No.2 is answered accordingly.

4. In view of the decision of the Full Bench, nothing survives for this Court to decide in these petitions.

5. The petitions are allowed. It is declared that the age of superannuation for the petitioners is 60 years. Those petitioners, who are still to complete to reach age of 60 years, are entitled to resume the duties and the respondent/Wakf Board shall permit them to continue till they attained the age of 60 years. The period of their absence from the date they were superannuated till the date they reached 60 years,

shall be treated as continuous service and they shall be granted consequential all the benefits.

6. The petitioners who have already reached the age of 60 years shall be treated to have continued in the service till they attained the age of 60 years and would be entitled to all the consequential benefits.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]