

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7604 OF 2018

Smt. Hemlata Shrikant Kulkarni,
Age 60 years, Occ. Service as a
Principal, R/o 166, N-3, CIDCO,
Aurangabad

... Petitioner

Versus

- 1] The State of Maharashtra,
Through the Secretary,
Social Justice & Empowerment Department,
Mantralaya, Mumbai – 400 032
- 2) The Commissioner,
Social Welfare, Pune
- 3) The Assistant Commissioner,
Social Welfare, Aurangabad
- 4) Dr. Babasaheb Ambedkar
Marathwada University through
its Registrar
Aurangabad, Tq. Dist. Aurangabad
- 5) Higher Technical Education Department,
Through its Secretary, Mantralaya,
Mumbai – 32.

... Respondents

...
Advocate for petitioner : Mr. Yashodeep P. Deshmukh
and Mr. Anand D. Kawre
AGP for the respondents 1 to 3 and 5 : Mr. S.K. Tambe
Advocate for the respondent no. 4 : Mr. K.M. Suryawanshi
...

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

**RESERVED ON : 21 JULY 2023
PRONOUNCED ON : 11 OCTOBER 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents 1 to 3 and 5. Mr. K.M. Suryawanshi waives service for respondent no. 4. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The only issue that arises for determination is as to whether the Principal of a college of Social Work conducted by the respondent no. 4 - University which is governed by the Maharashtra Public Universities Act, 2016 ("**The Act of 2016**") would superannuate at the age of 60 years or at the age of 62 years pursuant to the Government resolution dated 05.03.2011 issued by the Higher and Technical Education Department ?

3. The learned advocate for the petitioner would submit that the resolution dated 05.03.2011 would be applicable even to the petitioner and she should have been allowed to retire on completing the age of 62 years. The order of superannuation passed by the Vice Chancellor of the University dated 07.07.2018 is therefore illegal.

4. He would submit that the college receives grant-in-aid from the Social Justice Department of the Government of Maharashtra, however, so far as the staffing pattern and the recruitment is concerned, those are governed by the rules framed by the Higher and

Technical Education Department. Though her date of superannuation going by the age of 60 years was of 09.12.2017, she was allowed to work as the Principal and it is only subsequently by the order dated 07.07.2018, she was directed to be relieved.

5. Mr. Deshmukh, would further submit that the petition was filed on 06.07.2018. Soon thereafter, another Government resolution dated 23.08.2018 was issued thereby expressly declaring that the colleges run under the Maharashtra Social Justice and Special Assistant Department would not be governed by the Government resolution dated 05.03.2011 and 12.07.2016 of the Higher and Technical Education Department. He would submit that in view of such supervening event, the petition has been amended so as to put up a challenge to this Government resolution dated 23.08.2018. It is violative of Article 14 of the Constitution of India inasmuch as it seeks to make distinction between persons holding the same post of Principal in respect of the colleges being run by the Social Justice Department and the Department of Higher and Technical Education. There is no rationale and the Government resolution dated 23.08.2018 is liable to be struck down.

6. The learned AGP and the learned advocate for the respondent no. 4 - University by referring to their respective affidavits strongly oppose the petition. They would submit that the college in

which the petitioner was the Principal, is a college conducted by the University within the meaning of section 2(2) of the Act of 2016 and is not an affiliated college as defined under section 2(3) of the Act. The college being a college conducted by the university, the Government resolution dated 05.03.2011 issued by the Higher and Technical Education Department was not applicable. Even otherwise, by virtue of that very Government Resolution, it was incumbent for the person holding the post of Principal to obtain certificate from the Government Medical Committee three months before the date of superannuation about mental and physical fitness. There was requirement of the qualification of Ph.D. or equivalent degree, even the confidential reports of the last five years were relevant. Since it was continuation beyond the age of 60 years it could not have been without performance appraisal. Therefore, even if it is assumed that the Government Resolution dated 05.03.2011 was applicable, for want of such compliances, since the petitioner's date of superannuation was 09.12.2017, the petition having been filed thereafter on 06.07.2018, she is not entitled to seek any relief.

7. The learned AGP would further point out that even Government resolution dated 05.03.2011 was subsequently rescinded by the Department of High and Technical Education Department by issuing another Government resolution dated 12.07.2016. Therefore,

even for this reason, the petitioner was not entitled to any relief on the date of the petition.

8. By filing rejoinder the petitioner had made an attempt to salvage some ground by pointing out that similarly placed individuals, namely, Dr. S.M. Thaturwar who was Principal of Matoshree Anjanabai Mundaphale College of Social Work, Narkhed, District - Nagpur and Dr. B.M. Kurhade, Principal of Aniket Shikshan Sanstha's College of Social Work, Wardha were both allowed to continue to hold the post till they reached the age of 62 years, by the order of the Director of Social Welfare, Pune and Rashtrasant Tukdoji Maharaj Nagpur University, respectively.

9. We have considered the rival submissions and perused the papers.

10. At the outset, it is necessary to emphasize the fact that a college in which the petitioner was the Principal, is a college conducted by the respondent no. 4 - University as defined under section 2(22), as distinguished from an affiliated college as defined under section 2(3) of the Act of 2016. There is a marked distinction between the two and the fact has not been denied in the rejoinder also. It was, therefore, imperative for the petitioner to demonstrate that the Government Resolution dated 05.03.2011 issued by the Department of Higher and

Technical Education was applicable even to the Principal of the colleges conducted by the respondent no. 4 - University. There is absolutely no response from the petitioner to this stand.

11. Besides, the very same Government resolution dated 05.03.2011 was subsequently revoked or rescinded in the year 2016 even before the petitioner superannuated and obviously, even before filing of this petition. If such is the state-of-affairs when the petitioner was appointed to the post of Principal even prior to the Government Resolution dated 05.03.2011 and it was in force only for period of five years, independent of anything else, the petitioner's right to continue on the post of Principal would not be governed by the 2011 Government Resolution. At least it would not lie in her mouth to say that the service conditions were being sought to be adversely altered post such appointment.

12. Again, except the bald statements and equally bald arguments, there is nothing to demonstrate that the Government Resolution issued by the Department of Higher and Technical Education was applicable to the colleges being conducted and regulated under the aegis of the Social Justice Department. Besides, as is mentioned herein-above, even the Government Resolution dated 05.03.2011 having been subsequently rescinded, the discussion would only be academic.

13. Even the discussion as to whether there was any discrimination under Article 14 of the Constitution of India, would now become academic, for, the very policy has been subsequently rescinded within a period of five years.

14. It does appear that in couple of cases, in respect of Dr. S.M. Thaturwar and Dr. B.M. Kurhade, Social Justice Department of the State and the Rashtrasant Tukdoji Maharaj University which is also governed by the Act of 2016, had allowed the incumbents to continue up to the age of 62 years. It is apparent that one was granted approval on 01.07.2015 and the other on 09.08.2016. However, once we have concluded that the Government Resolution dated 05.03.2011 issued by the Department of Higher and Technical Education was not applicable to the colleges run under the Department of Social Justice and further that the college in which the petitioner was working as a Principal was a college conducted by the respondent no. 4 - university to which the Government Resolution issued by the Higher and Technical Education Department will not be applicable, merely because couple of individuals could derive some benefits for whatever reason, the petitioner is not entitled to seek any relief on the ground of parity.

15. Besides, even otherwise, even if the Government Resolution dated 05.03.2011 was applicable to the petitioner, still, as

per the terms and conditions and the stipulations in the Government Resolution, such continuation was not axiomatic. It had to be preceded by the performance review. The petitioner completed 60 years of age as on 09.12.2017. There is no whisper about any insistence by her to undergo such performance appraisal prior to her superannuation. Therefore, even for this reason, when the petition has been filed on 06.07.2018 post her superannuation, the petitioner cannot be granted any relief.

16. The petition is dismissed.

17. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/