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

WRIT PETITION NO.10516 OF 2019
WITH CA/14258/2019 IN WP/10516/2019

Mohammad Abdul Majid Khan,
S/o Mohammed Abdul Hameed Khan,
Age: 58 years, Occu: Retired
R/o.: H. No.: 2-8-210, Trivani Nagar,
Times Colony Road, Aurangabad

....PETITIONER

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Minority Development Department,
Mantralaya, Mumbai-32

2. The Maharashtra State Board of Waqf,
Through its Chief Executive Officer,
Having its Office at Panchakki,
Aurangabad

....RESPONDENTS

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Mr U. D. Dalvi, Advocate for Petitioner;
Mr V. M. Kagne, A.G.P. for Respondent No.1
Mr Y. B. Pathan, Advocate for Respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 7th September, 2023

JUDGMENT (PER : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard
finally by the consent of the parties.

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2. The Petitioner has put forth prayer clauses (B) and (C), which read as under :-

“B] By issuing appropriate writ, order or directions, in the like nature, the impugned notice dated 25.07.2019 and retirement order dated 31.07.2019, retiring the Petitioner on superannuation may kindly be quashed and set aside, and the respondents be directed to continue the Petitioner in services and be permitted to work till the completion of 60 years.

C] Pending hearing and final disposal of this writ petition, the execution, implementation and operation of the impugned notice dated 25.07.2019 and retirement order dated 31.07.2019, retiring the Petitioner on superannuation may kindly be stayed and respondent be directed to allow the Petitioner to work till work till the completion of 60 years and for that purpose issue necessary orders.”

3. The Petitioner admittedly was appointed as a ‘Junior Clerk’ on 12/09/1997 in the office of the Marathwada Waqf Board. During employment, he completed his Graduation (B.A.) and also acquired the qualification of LL.B. He was promoted as an 'Enquiry Officer' and finally, at the time of his retirement on 31/07/2019, at the age of 58 years, he was working as a ‘Regional Waqf Officer’, Maharashtra State Board of Waqfs, Aurangabad.

4. It is undisputed that, when the Petitioner was appointed, the Marathwada Waqf Board Regulations, 1964 were

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in force. Regulation 19(1)(d) prescribed the retirement of an employee as 60 years and there was prohibition to be continued after 60 years. The Waqf Act, 1995 came into force on 01/01/1996. On 16/08/2003, the Government of Maharashtra issued a Notification, introducing draft Maharashtra State Board Waqf Rules, 2003. The draft Rules did not alter the retirement age of Class-III and Class-IV employees. In 2018, the Maharashtra State Board of Waqf (Recruitment and Regulations) Rules, 2017 were introduced and Rule 46 of the said Rules prescribed the age of retirement as 58 years, thereby bringing down the service age by 2 years.

5. In Writ Petition No.1654/2006 (**Ghulam Mustaffa Khan Vs. the State of Maharashtra and others**), decided by the Division Bench at Aurangabad on 06/03/2018, a view was taken that the draft Rules could permit reducing the service age from 60 years to 58 years. Considering contradictory judgments, the matter was referred to the Full Bench of this Court. By a judgment dated 26/09/2022, delivered at Aurangabad in Writ Petition No.5855/2019, filed by **Iftekharullah Baig s/o Saidullah Baig Vs. the State of Maharashtra and another**, and a group of petitions, **2022 (6) Mh.L.J. 223**, this Court concluded that the

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retirement age of an employee, who has joined services in the face of the Waqf Board Rules, 1964, cannot be altered to his detriment, only because the draft Rules were proposed. It was concluded that, unless the draft Rules are sanctioned and are introduced to replace the earlier Rules, the same would not come in force. It was also held by the Full Bench that, such Rules, which are prejudicial to the interest of the employee who is already in employment on the basis of the earlier Rules, prior to the introduction of the 2018 Rules, would applied prospectively.

6. Considering the answers to the issues referred to the Full Bench, the Division Bench of this Court delivered the order dated 22/06/2023 in Writ Petition No.5855/2019 [**Iftekhharullah Baig s/o Saidullah Baig** (supra)] and a group of cases, and allowed the petitions, concluding that the Petitioners had a right to work till the age of 60 years.

7. In view of the above, **this Writ Petition is allowed** in terms of prayer clause (B). However, as the Petitioner has already attained the age of 60 years, there is no reason to pass an order of reinstatement in service. Consequentially, the Petitioner would be entitled for the salary benefits including increments and

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allowances for two years, till his deemed date of retirement at the age of 60 years. These amounts shall be calculated and paid to the Petitioner within a period of 60 days from today, with interest at the nominal rate of 6% p.a. until they are paid. If gratuity amount is yet not paid to the Petitioner, the same would be recalculated by considering the deemed last drawn pay by the Petitioner at the age of 60 years and interest @ 10% which is prescribed under the Payment of Gratuity Act, shall be paid to the Petitioner on the gratuity amount.

8. Pending **Civil Application** does not survive and the same **stands disposed off**.

9. Rule is made partly absolute in above terms.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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