

Pdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 29 OF 2023

Chava Swarajya Samajik Sanstha .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Dr. Uday P. Warunjikar a/w Mr. Aditya Kharkar for petitioner.
Mr. P. P. Kakade, Govt. Pleader a/w Mr. M. M. Pabale, AGP for
State.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: FEBRUARY 9, 2023

P.C.:

- 1.** The petitioner challenges the decision of respondent no.1 extending the age of retirement of respondent nos.4 and 5 by three years.
- 2.** Dr. Warunjikar, learned advocate for the petitioner submits that the petitioner is a Sanstha. The object of the Sanstha is to carry out socio-legal activities. The petitioner, who has verified the PIL petition claims to be the Vice-President of the petitioner/Sanstha and a Social and RTI Activist. The learned counsel submits that petitioner had earlier filed Writ Petition bearing No. 15500 of 2022. The Division Bench of this Court, under order dated 19th December, 2022 did not entertain the same on the ground that the petitioner cannot be said to be prejudiced and that the petitioner is not related to the University, nor is prejudicially affected because of the extension of age granted to the respondent nos.4 and 5. In view of that present PIL petition is filed.

3. The learned counsel for the petitioner submits that the extension granted to the respondent nos.4 and 5 upto the age of 65 years is without following proper procedure as enumerated in the Government Resolution dated 5th March, 2011. According to the learned counsel, before granting extension, it is incumbent upon the institution to publish an advertisement inviting applications for filling in the post. The said procedure has not been adhered to. In an application filed by the petitioner under Right to Information Act, the information has been supplied that the said procedure of issuing advertisement has to be complied with and the same is mandatory. The petitioner has no personal interest but is trying to bring on record the illegalities committed by the respondent no.1 in granting extension of service to respondent nos.4 and 5. The learned counsel for the petitioner submits that respondent nos.4 and 5 are holding responsible post of Principals of respondent nos.6 and 7 colleges respectively.

4. The learned counsel for the petitioner submits that the present PIL petition is perfectly maintainable. Reliance is placed on the decision of Division Bench of this Court in the case of **National Association of Blind vs. Bombay Municipal Corporation, Through its Commissioner & Anr.**, reported in 2020 SCC OnLine Bom 2032. The learned counsel further submits that the said decision has been relied upon by another Division Bench of this Court, to which one of us (Acting Chief Justice) was party in the case of **High Court of Bombay, Bench at Aurangabad, through Registrar (Judicial) vs. State of Maharashtra & Ors.**, reported in 2021 (6) Mh.L.J. 221.

5. We have considered the submissions canvassed by the learned counsel for the petitioner.

6. In the case of **High Court of Bombay, Bench at Aurangabad, through Registrar (Judicial)** (Supra), the Suo Moto cognizance was taken by the Division Bench of this Court at

Aurangabad about the policy framed by the MSRTC. Under the said policy, the employees who were terminated from service on the ground of proved misconduct were sought to be reinstated. The Division Bench of this Court found that the said scheme is against the public policy and public interest.

7. In the case of **National Association of Blind** (Supra), the Court was concerned with dealing with challenge to the circular issued by the General Administrative Department of the Brihan Mumbai Mahangar Palika whereby benefit extended to physically disabled employees of the Corporation were sought to be withdrawn with retrospective effect, leaving such employees high and dry. In that context, while deciding the objection regarding maintainability of the PIL, this Court had observed as under: -

“**47.** Having read all the authorities and the tests laid down therein for entertaining a PIL petition, we can safely hold as follows:

- (a) that, this PIL petition is not a camouflage to foster personal disputes;
- (b) that, behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity seeking is not lurking;
- (c) that, this PIL petition is not intended to besmirch the character of others;
- (d) that, the information given in the PIL petition is sufficient to show the gravity and seriousness involved; and
- (e) that, this PIL petition is not mischievous seeking to assail an executive action for oblique motives.

8. In the present case, the petitioner is not seeking writ of quo warranto. It is not the case of the petitioner that respondent nos.4 and 5 are ineligible and/or incompetent to hold the post of Principals. The respondent nos.4 and 5 were working as Principals and extension of age of retirement upto 65 years is permissible.

The only submission is that the procedure as laid down under the Government Resolution dated 5th March, 2011 is not adhered to.

9. The Division Bench of this Court in the case of **National Association of Blind** (Supra), relied upon by the learned counsel for the petitioner, has also observed in para 36 that the underlying idea seems to be that the mechanism of 'public interest litigation' having been conceived for the greater public good, the main relief claimed in a PIL petition must not be intended for securing any benefit for an individual holding a public office or for depriving an individual holding a public office of any benefit that has accrued to him, at the instance of the appointee's competitors or even at the instance of a stranger, since no public interest is served thereby. The Court further observed that an exception to this rule is carved out by the Apex Court. If an appointment of an ineligible candidate is made to a public office, a stranger cannot apply before the Administrative Tribunal to have such appointment set aside, but a writ for quo warranto might lie.

10. In the present case the respondent no.1 seeks to deprive an individual holding a office of the Principals on the ground that the extension of age has been irregularly granted. In such a case, at the instance of a stranger, the same cannot be entertained as it is not a case of the petitioner that the respondent nos.4 and 5 are ineligible or incompetent to officiate as Principals of the colleges. In fact, they were officiating as Principals of the colleges and were granted extension of age of retirement relying upon the Government Resolution. The extension till the age of 65 years is permissible. The only objection is that the appropriate procedure is not followed.

11. In light of that, present PIL petition is not maintainable.

12. The learned counsel for the petitioner submits that as this Court has held that the present PIL petition on behalf of a stranger, is not tenable, the Court may suo moto take cognizance of it. The

said argument deserves to be rejected in as much as there is no public cause involved in the matter and so also it is not a case of illegality committed, nor that the respondent nos.4 and 5 are incompetent to hold the post, but only irregularity is alleged.

13. The public interest litigation is dismissed.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

Digitally
signed by
PRAVIN
DASHARATH
PANDIT
Date
20.02.10
18:32:00
+05'30