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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6546 OF 2023

Dr Sudhakar Rao Udhav Rao Jadhav ...Petitioner

Versus

CYDP Shikshan & Krida Mandal Through Its ...Respondents
President & Ors

**Mr Tejas Dande, with Bharat Gadhave, i/b Tejas Dande & Asso, for
the Petitioner.**

Mr S Deshmukh, for Respondent Nos. 1 to 3.

Mr NC Walimbe, AGP, for the State/Respondent No.4.

Mr Rajendra Anbhule, for Respondent No.5.

**CORAM G.S. Patel &
 Neela Gokhale, JJ.**

DATED: 5th June 2023

PC:-

1. Heard.

2. On 1st June 2023, the Petitioner moved the Vacation Court. This was on the basis that the urgency was that the Petitioner is due to retire or superannuate tomorrow on his 62nd birthday and therefore today would be his last day in service as the principal of the 3rd Respondent, the Shiv Chatrapati Arts and Commerce College. The college is affiliated to the 5th Respondent, the Savitribai Phule Pune University at Ganeshkhind. The entire basis

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of the argument is a Government Resolution of 12th July 2016, a copy of which is at Exhibit “F” from pages 48 to 50.

3. Mr Dande, learned Counsel for the Petitioner relies on the GR and especially clauses (1) and 2(a), (b) and (c) to contend that for colleges in what are described as “hilly areas” the retirement date for principals is without qualification raised from 60 to 65 years. He submits that the whole of Taluka Haveli in Pune must be held to be a hilly area because the hilly areas as such are separately noted in another GR of 18th January 2020. The entry at page 59 against Sr. No. 10 has nine separate regions. Haveli is the last of these and the entry says that the entire Haveli region is thus a hilly area.

4. Mr Dande submits that the 2016 Circular on which he relies in clause 3 makes reference to a previous GR of 5th March 2011. A copy of that GR is also annexed at page 42. Clause 3 of the GR specifically speaks of performance reviews being mandatory. The conditions for a performance review committee are also set out.

5. Read together, Mr Dande submits, since there is an unqualified expansion of the retirement age from 60 to 65 years for principals in designated, identified and specified hilly areas, and since the 3rd Respondent college falls precisely in one of those areas, there is no question of a performance review or the application of 2011 GR. Clause 3 of the 2016 GR continues the 2011 GR but only to those colleges that are in urban areas and to no others.

6. It is his case therefore, that the Respondents have unlawfully and without regard to these GRs denied the Petitioner the benefit of extending retirement age to 65. Hence prayer clauses (b), (c) and (d) of the Petition which reads thus:

“(b) That this Hon’ble Court be pleased to issue writ of Mandamus or any other appropriate writ, order or direction to Respondents no. 1,2 and 3 directing them to give effect to the Government Resolution dated 12/07/2016 and the Government Corrigendum dated 20/10/2016 by passing a resolution of continuity in service of petitioner as a Principal in respondent no. 3 College thereby extending his age till the completion of 65 years.

(c) That the Hon’ble Court by appropriate writ or order or direction be pleased to hold and declare that petitioner is entitled to seek exemption/benefit as per Government Resolution dated 12/07/2016 and the Government Corrigendum dated 20/10/2016 and the respondent no. 1 is bound to extend the age of petitioners retirement upto the age of 65 in view of the Government Resolution dated 12/07/2016 and the Government Corrigendum dated 20/10/2016.

(d) That the Hon’ble Court by appropriate writ or order or direction may direct respondents no. 1, 2 and 3 to implement immediately the Government Resolution dated 12/07/2016 and the Government Corrigendum dated 20/10/2016, in favour of the petitioner.”

7. Mr Deshmukh on behalf of Respondents Nos. 1 to 3 has filed an Affidavit in Reply. It is admittedly an Affidavit to oppose admission, and hence limited, but that should make no difference to us. The Reply says that the Petitioner has not made any representation to the State authorities, and that neither the college

nor the university can continue the Petitioner until the age of 65 until there is a decision of the performance review committee with the approval of the State Government. The Affidavit maintains that the performance review is mandatory and that this condition is not done away with by the 2016 GR.

8. We believe this is correct. The 2011 GR mandates the performance of the principal is to be subjected to a periodic performance review by performance review committee.

9. On merits, and these contentions today remain untraversed on the record before us, the Affidavit in Reply says in paragraph 7:

“7. I say that various complaints regarding the performance of the Petitioner are received and the Petitioner is running other Institutions and busy with other activities than the work of Principal. I crave leave of this Honourable Court to file the detail affidavit in respect of the performance of the Petitioner and other grievances, if necessary. I say that the Petitioner has suppressed the material facts and has not come with clean hands before this Hon’ble Court.”

10. This is serious. We note once again that the entire attempt by the Petitioner is to say that there should be no performance review at all. On the other hand, the Affidavit, undenied as matters stand today, is that the Petitioner is in fact running other institutions and has busied himself with the activities other than those related to the 3rd Respondent college.

11. As regards the geographical location, the Affidavit says that the 3rd Respondent college being in Wadgaon is in an urban area and it is not in a village or a rural area. The GR cannot, Mr Deshmukh submits, alter geography and certainly not in a manner that would suit a self-serving Petitioner who, according to the Respondents, has been far from diligent in the discharge of his duties.

12. It is difficult to accept Mr Dande's submissions. To begin with, they appear to us to be over broad and susceptible to all kinds of possible mischief. We find it difficult to accept the contention that because the Government has difficulty in finding principals in what are generally described as "hilly areas" therefore there was no need to subject them to a periodic performance review, thus justifying continuing their services to the age of 65. This would mean that between the ages of 60 or 62 and 65 persons could continue as principals completely unchecked and doing whatever they wanted. This is the necessary consequence of accepting Mr Dande's argument and we are reluctant to accept any submission that tends to a patent or facial absurdity of this kind. It is too late in the day — almost literally — for Mr Dande to say that he is willing to subject himself to a performance review. Apart from anything else, it would be unreasonable to expect that any such a performance review would be completed before midnight tonight.

13. We see no substance in the Petition. It is dismissed. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)