

Amberkar / Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12761 OF 2019

University of Mumbai,
By & Through its Registrar,
Dr. Ajay Deshmukh,
Having address at – University of Mumbai,
M.G. Road, Fort, Mumbai – 400 032.

.. Petitioner
(Orig. Respondent)

Versus

Satish V. Ratnaparkhi,
Residing at - A-502 Crystal Palace,
Opp. Powai Police Station,
Rambaug, Mumbai – 400 076.

.. Respondent
(Orig. Appellant)

WITH
INTERIM APPLICATION NO. 3093 OF 2022
IN
WRIT PETITION NO. 12761 OF 2019

Satish V. Ratnaparkhi,
Aged about 61 years, Occ: Service,
Residing at A-502 Crystal Palace,
Opp. Powai Police Station,
Ram Baugh, Mumbai – 400 076.

.. Applicant
(Orig. Respondent)

In the Matter Between

University of Mumbai,
Through its Registrar,
Fort, Mumbai.

.. Petitioner

Versus

Satish V. Ratnaparkhi,
Aged about 61 years, Occ: Service,
Residing at A-502 Crystal Palace,
Opp. Powai Police Station,
Ram Baugh, Mumbai – 400 076.

.. Respondent

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- Mr. Gaurav Sharma a/w. Mr. Siddharth Shitole i/by Mr. Ashutosh Kulkarni, Advocate for Petitioner – University.
 - Mr. Satish V. Ratnaparkhi, Respondent in person.

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CORAM : MILIND N. JADHAV, J.
RESERVED ON : JANUARY 05, 2023.
PRONOUNCED ON : FEBRUARY 28, 2023.

JUDGMENT:

1. By consent of parties present Writ Petition No. 12761 of 2019 is taken up for final hearing and disposal. Petitioner has prayed for the following relief:-

“b) To quash and set aside the impugned Judgment & Order dated 20.09.2019 passed by the Mumbai University and College Tribunal in Appeal No. 4 of 2019 along with Misc. Application No. 3 of 2019 (Exh. G) and to dismiss the said Appeal (Exh. A) and Misc. Application (Exh. B) entirely”

2. Impugned order dated 20.09.2019 has been passed in Appeal No.4 of 2019 alongwith Misc. Appeal No.3 of 2019 by the learned Mumbai University and College Tribunal at Mumbai (for short “**the Tribunal**”).

3. Brief facts are set out hereunder:-

3.1. On 08.02.2012, Respondent was appointed as Professor–Cum–Director (Open) in Alkesh Dinesh Mody Institute for Financial and Management Studies, University of Mumbai (for short “**Institute**”), as per the recommendation of the Selection Committee constituted under Section 78 of the Maharashtra Universities Act, 1994 (for short “**Universities Act**”) after following the prescribed selection process by

the Petitioner - University.

3.2. By order dated 21.02.2019, issued by the Registrar of the Petitioner - University, Respondent was retired from the said post on two grounds viz; (i) that he had completed 60 years; and (ii) that the Management Council of the University had passed a resolution fixing the date of retirement of Director at 60 years.

3.3. Respondent filed statutory Appeal before the Tribunal being Appeal No.4 of 2019 challenging the Order dated 21.02.2019 of the Registrar.

3.4. Tribunal initially while admitting the Appeal, passed status quo order. However, according to Respondent, pursuant to the said 'status quo' order, he was given charge of the Director only on paper.

3.5. At the time of hearing of Appeal, Respondent relied on Government Resolution (for short "GR") dated 05.03.2011, as per which the tenure of Principal / Director in any government college affiliated to Non-Agricultural Universities can be extended upto 65 years, with a rider that on completion of 62 years, there shall be a performance review / appraisal of the incumbent.

3.6. Tribunal by a detailed and reasoned judgment and Order dated 20.09.2019, allowed the Appeal of Respondent and set aside the Order dated 21.02.2019 issued by the Registrar.

3.7. Hence, University filed the present Writ Petition in this Court impugning the order of the Tribunal dated 20.09.2019.

3.8. Petitioner - University argued before this Court that GR dated 05.03.2011 is not applicable to the post of appointment of Director of an Institute under Mumbai University. Petitioner admitted before this Court that though there was a status quo order passed by Tribunal at the time of admission of Appeal, Petitioner - University had given charge of the post of the Director of the Institute to Respondent only on paper. However, Respondent submitted before this Court that he was forcibly not allowed to function as Director of the Institute.

3.9. By interim order dated 16.12.2019, High Court declined to stay the order of the Tribunal and made it clear that Petitioner - University shall allow Respondent to continue as Director of the Institute and he shall be paid his salary, etc. The relevant paragraphs of the order dated 16.12.2019 read thus:

“8. Issue involved in the Writ Petition may require further deliberation but at the same time, court is mindful of the fact that Tribunal after the deliberation had clearly taken the view that service of the Respondent should continue till the age of 65 years and that order/letter dated 21.05.2019 which had prematurely retired the Petitioner, is illegal and unsustainable.

9. In the circumstances and balance the interest, it is made clear that Respondent shall be allowed to continue as Director of the Institute and paid his salary etc.. Functioning of the Respondent as Director of the Institute shall, however, be subject to outcome of the Writ Petition.”

3.10. It is Respondent's case that Petitioner - University has also not paid salary to him since 20.09.2019 i.e. the date on which the order was passed in his favour by the Tribunal. That Petitioner - University has also flagrantly breached order of this Court dated 16.12.2019, *inter alia*, directing it to pay his salary. Therefore, Contempt Petition No.37 of 2021 is filed by Respondent separately which is pending.

3.11. Interim Application No. 3093 of 2022 is filed by Respondent in Writ Petition No. 12761 of 2019 for seeking direction to the Petitioner – University to continue him on the post of Director until he attains the age of 65 years and to pay him his salary.

3.12. Writ Petition No. 12761 of 2019 is however taken up for hearing, the outcome and decision of which will determine all pending Applications / Petitions.

4. Before I advert to adjudicate the matter, it would be apposite to note the submissions made by parties.

5. Mr. Sharma, learned Advocate for Petitioner - University has made the following submissions:-

5.1. That GR dated 05.03.2011 relied upon by Respondent is not helpful for his appointment on account of several reasons. That this GR was issued at the relevant time under specific circumstances. At

that time, there was a serious scarcity of eligible and experienced Professors / Principals, therefore, there were large scale vacancies of around 17,000 posts. Hence, to diffuse that situation, Central Government, UGC and AICTE devised the scheme to extend the original age of superannuation from 60 years to 62 years and from 62 to 65 years, subject to the concerned Professor / Principal having to undergo performance review by a Special Committee appointed by the said GR. That GR is applicable to non-governmental (aided/un-aided) posts which are affiliated to Non-Agricultural Universities and posts of Principal of such colleges only. That in the present case, post of 'Director' cannot be equated with the post of Principal. Further, the Institute in the present case is not a "college" as defined under the Universities Act. That the Institute is also not affiliated as such to the Petitioner – University, rather the institute is run by Mumbai University. Thus in other words, according to him GR dated 05.03.2011 would be applicable to only such colleges which have an independent management but affiliation to Non-Agricultural University and in the present case, the Institute is affiliated to the Mumbai University. That GR dated 05.03.2011 now stands superseded by a subsequent GR dated 12.07.2016. Thus, when Respondent filed the instant appeal, subsequent GR of 2016 was well in place, however it could not be pointed out or brought to the notice of the Tribunal at the time of hearing of appeal and the same

was noticed only recently. Hence, Respondent is not entitled to any benefit under GR dated 05.03.2011.

5.2. That considering the provisions of Sections 5(11) read with Sections 26 and 30 of the Universities Act, the Management Council of the University is held to be a statutory policy making authority. In pursuance of these provisions, Management Council passed a resolution dated 20.01.2019 thereby reducing the age of superannuation of all Directors of Institutes / Colleges of Mumbai University at 60 years. That statutory provisions empower the Management Council to take such policy decisions. That admittedly, this resolution dated 20.01.2019 is not challenged by Respondent. Thus, without challenging this resolution, Respondent is not entitled to challenge his termination / retirement letter dated 21.02.2019 which is issued, based on the aforesaid Management Council resolution. This Management Council resolution is rejected by the Tribunal by holding that it has not received the assent of the Senate and Chancellor of the University and therefore, the same is not a valid statute under Section 72(5).

5.3. That cumulative and conjoint reading of the definition of Director, College and Principal under Sections 2(25), 2(34) and 2(44) would make GR dated 05.03.2011 not applicable to Respondent's case.

5.4. Hence, according to him the present Petition deserves to be allowed and salary etc. paid to Respondent since 01.10.2018 is required to be recovered from him since his reinstatement and payment of salary was subject to the decision in the Petition.

6. *PER-CONTRA*, Mr. Ratnaparkhi appearing as Party-in-Person in person has vehemently objected to the submissions of Petitioner - University and in support of the impugned order made the following submissions:-

6.1. That on 13.09.2018, Petitioner - University issued the first letter of forced superannuation to him presuming that his age of retirement is 60 years and his date of retirement would be 30.09.2018. Hence, Misc. Application No.27 of 2018 was filed by him in Appeal No.11 of 2018 and stay was granted by the Tribunal on 28.09.2018. That the stay of order dated 28.09.2018 merged with the final order of Tribunal dated 06.12.2018 allowing Appeal No. 11 of 2018 which is neither challenged by the University in this Court or the Supreme Court till date and hence in force. Hence, it is only the issue of his retirement age which is now in question and required to be determined since Appeal is filed by University against the order of Tribunal.

6.2. That by order dated 06.12.2018, Petitioner – University was directed to issue letter for handing over the charge of ‘Director’ within

two months. However, Petitioner – University defaulted in issuing the letter and instead handed over charge to him only on 20.02.2020 to avoid contempt and show compliance of the order. However in the meanwhile on 21.02.2019, Petitioner – University issued a second letter of superannuation and directed him to handover charge to the another In-Charge Director. Respondent challenged this letter before the Tribunal and it was quashed and set aside vide order dated 20.09.2019. University challenged the order dated 20.09.2019 before this Court on 22.11.2019 by filing the present Writ Petition. On 16.12.2019, this Court directed the Petitioner – University to allow Respondent to function as Director and pay his dues / remuneration. On 15.05.2020, this Court directed the Petitioner – University to release his outstanding salary amount and pay it to him on or before the 5th day of each month.

6.3. Further on 05.09.2020, Petitioner – University issued a third letter of superannuation to Respondent and he was superannuated once again on 30.09.2020 violating all previous orders passed by this Court and the Tribunal. Hence Contempt Petition No.37 of 2021 is filed in this Court.

6.4. That salary for a period between 21.02.2019 to 20.09.2019 i.e. seven months and for a period between 20.09.2019 to 16.12.2019 i.e. three months is outstanding. That altogether, salary for 26 months

from 01.10.2020 to 31.12.2020 is outstanding and yet to be paid to him.

6.5. That appointment of Respondent being under Section 78 of the Universities Act is an admitted position and therefore the age of superannuation would be 65 years and not 60 years as alleged by the University. In fact now it would be 70 years subject to the prescribed conditions of performance review / appraisal. This is so in view of the applicable provisions of the AICTE Act and Regulations for service conditions applicable thereunder.

6.6. That the only submission of the University raised in the present Petition is about non-applicability of GR dated 05.03.2011, however considering that the answering Respondent is a Director of the Institute, the age of superannuation would be governed by the provisions of AICTE Act and regulations dated 01.03.2019 which cover pay scales, service conditions and minimum qualifications for appointment of teachers and others. That Clause 2.12 dealing with the age of superannuation of all faculty members including Principal / Director of Institutions now prescribe superannuation of 65 years with a further extension of 5 years subject to the faculty member being physically fit, having written technical books and having published papers and having an average 360 degree feedback of more than 8 out of 10 indicating they being active during the last three preceding years

of service.

6.7. Hence, he submitted that the impugned order being a reasoned order deserves to be upheld.

7. I have heard Mr. Sharma, learned Advocate appearing for the Petitioner – University and Mr. Ratnaparkhi, party Respondent – in-person and with their able assistance perused the entire record and pleadings of the present case. Submissions made by them have received due consideration of the Court.

8. In the present case, it is seen that challenge to the impugned Judgment and Order dated 20.09.2019 passed by Tribunal is maintained by the Petitioner - University on three specific grounds originally as under:-

- (i) First ground of challenge is that the Tribunal erred in holding the Institute as a Institute when in fact it is a college according to Petitioner as defined under the provisions of the said Act. That College is defined under Section 2(12) of the said Act and means a college affiliated to the University, situated in the University area or jurisdiction and hence there is a difference between a college and the Institute. It is argued that Institute is defined separately under Section 2(34) of the MPU Act which means an

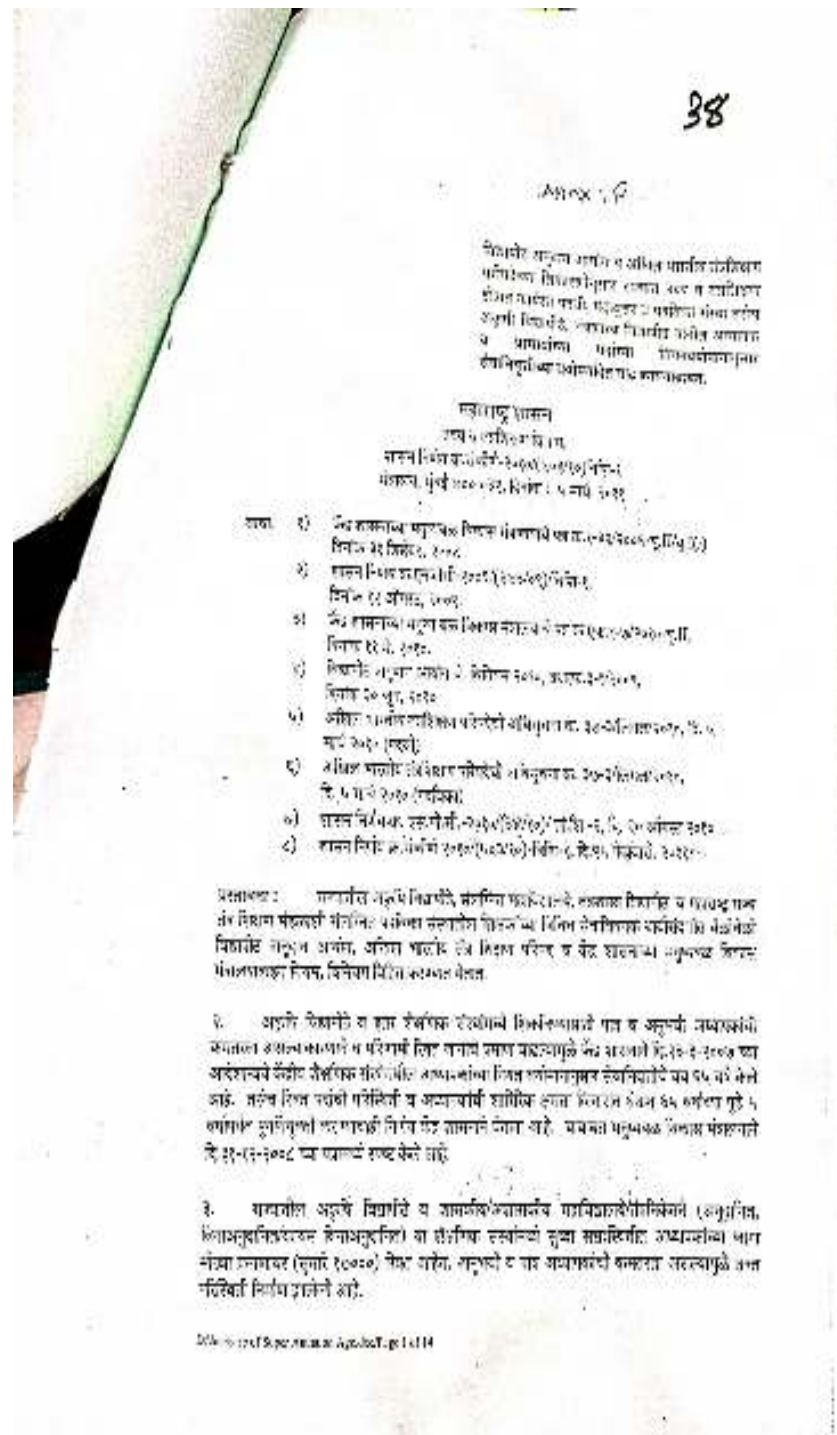
academic institution of higher learning, not being a college, associated with and admitted to the privileges of the University;

(ii) Second ground of challenge is that the Tribunal has held the Management Council Resolution dated 29.01.2019 as invalid and having no statutory force in law for want of approval by the Senate in accordance with Section 72(9) of the Act as also having not received the assent from the Chancellor of the University. It is argued that the Management Council Resolution dated 29.01.2019 would have an overriding effect on the GR dated 05.03.2011 in the present case; and

(iii) Thirdly that GR dated 05.03.2011 applies only in the case of Principal of a College / Institute and is not applicable to the post of 'Director' of the Institute.

9. At the heart of the controversy in the present case is the GR dated 05.03.2011 which according to the Petitioner now stands superseded by a subsequent GR dated 12.07.2016. It is the Petitioner's case that the case of Respondent ought to have been governed under the subsequent GR and that Petitioner failed to place the same before the Tribunal while deciding Appeal No.4 of 2019. Both the GRs are

scanned and reproduced below for convenience:-



39

४. सध्या, राज्यात उच्च शिक्षण क्षेत्रात कार्यरत अकुल विद्यापीठे व संलग्नित अशासकीय महाविद्यालयातील अध्यापकांच्या सेवानिवृत्तीचे वय ६० वर्षे आणि शासकीय महाविद्यालयातील अध्यापकांचे सेवानिवृत्तीचे वय ५८ वर्षे निर्धारित केले आहे.

५. तंत्र शिक्षण संचालनालयाच्या अधिपत्याखाली कार्यरत शासकीय व अशासकीय अनुदानित पदवी व पदविका संस्थांतील अध्यापकांना शासनाच्या अनुक्रमे दि. १८.११.१९९९ व दि. २७.१.२००३ रोजीच्या शासन निर्णयांनुसार अखिल भारतीय तंत्र शिक्षण परिषदेच्या शिफारशीनुसार पाचव्या वेतन आयोगाच्या सुधारित वेतन शिफारशीनुसार लागू करण्यात आल्या आहेत. सदर शासन निर्णयांतील तरतुदी नुसार पदवी अध्यापकांचे राबविण्याच्या करणात आले आहे. मात्र पदवी अध्यापकांचे राबविण्याच्या अशासकीय अनुदानित संस्थांतील अध्यापकांचे सेवा निवृत्तीचे वय ५८ वर्षे निर्धारित केले आहे. मात्र पदवी अध्यापकांचे राबविण्याच्या अशासकीय अनुदानित संस्थांतील अध्यापकांचे अनुदानित पदवी संस्थासह पदविका संस्थांतील अध्यापकांचे सेवा निवृत्तीचे वय ६० वर्षे होते, परंतु सर्व शासकीय संस्थात अध्यापकांचे सेवा निवृत्तीचे वय सुरुवाती पासूनच ५८ वर्षे आहे.

६. उपरोक्त विवरणावरून हे स्पष्ट होते की, राज्यात कार्यरत विविध शैक्षणिक संस्थांतील शिक्षकीय पदांचे सेवे निवृत्तीचे वय एकसमान नसून काही शिक्षकांनी ते ६० वर्षे व काही शिक्षकांनी ५८ वर्षे असले आहे. देशातगत उच्च शिक्षण व तंत्रशिक्षणात कार्यरत पदवी व पदविका संस्थांतील शिक्षकीय पदांच्या सेवारती व वेतनश्रेण्या विद्यापीठ अनुदान आयोग तथा अखिल भारतीय तंत्रशिक्षण परिषदेद्वारे निर्धारित केल्या जाताना व या सेवांसाठी तथा वेतनश्रेण्या नशाच्या तशा लागू करणे बांधकाम असूनही राज्यात तशी कार्यवाही झाली नसल्याने वेतन खर्चापोटी केंद्र शासनाकडून विलंबाने अनुदानासाठी अपात्र होणे, विविध शैक्षणिक संस्थात शिक्षकीय पदे रिक्त राहणे व यामुळे शैक्षणिक संस्थांच्या प्रवेश क्षमतेत केंद्र शासनाद्वारा घट करणे तथा शैक्षणिक संस्थेच्या कार्यक्षमतेवर विपरीत परिणाम होणे इत्यादी बाबी उद्भवत आहेत. सदरस्थिती विचारात घेऊन उच्च शिक्षण व तंत्र शिक्षणाच्या क्षेत्रात कार्यरत विविध अकुल विद्यापीठे, संलग्नित महाविद्यालये, तंत्रशास्त्र विद्यापीठ तथा पदवी व पदविका संस्थांतील शिक्षकीय पदांच्या सेवानिवृत्तीच्या वयात वाढ करण्याची याच शासनाच्या विचाराधीन होती.

७. केंद्र शासनाचे मनुष्यबळ विकास मंत्रालय, विद्यापीठ अनुदान आयोग, अखिल भारतीय तंत्रशिक्षण परिषद यांच्याकडून सहाय्य वेतन आयोगाच्या सुधारित वेतन शिफारशा लागू करण्या संबंधित प्राप्त झालेल्या शिफारशी, तथा विद्यापीठ अनुदान आयोग व अखिल भारतीय तंत्र शिक्षण परिषदेच्या कार्यक्षमतेतील अध्यापकांचे राबविणारी अकुल विद्यापीठे, तंत्रशास्त्र विद्यापीठ, अकुल विद्यापीठांशी संलग्नित महाविद्यालये व महाराष्ट्र राज्य तंत्र शिक्षण मंडळाशी संलग्नित तंत्र शिक्षणातील अध्यापकांचे नियतवस्येमानानुसार सेवानिवृत्तीचे वय निर्धारित केल्याचे निष्पत्ती व अनुसंगिक बाबींचा साकल्याने विचार करून संदर्भातील क.८ येथील दिनांक २५ फेब्रुवारी, २०१९ चा शासन निर्णय अधिष्ठापित करून यासंबंधी खालीलप्रमाणे शासन निर्णय निर्गमित करण्यात येत आहे :-

शासन निर्णय

८. १) राज्यातगत कार्यरत अकुल विद्यापीठांशी संलग्नित शासकीय महाविद्यालये व महाराष्ट्र राज्य तंत्र शिक्षण मंडळाशी संलग्नित शासकीय तंत्र शिक्षणातील प्राध्यापकांचे नियतवस्येमानानुसार सेवानिवृत्तीचे वय ५८ वर्षांपर्यंत ६५ वर्षे करण्यात येत आहे.
- परंतु, वयाच्या ६२ वर्षांनंतर सेवानिवृत्तीसाठी मुदतवाढ देण्यापूर्वी प्राध्यापकांच्या कामकाजाचा वित्तीय समीक्षात्मक आढावा (Performance Review) घेण्यात येईल. सदर समीक्षा अहवालातील शिफारशीनुसार संबंधित प्राध्यापकांचा कमाल ६५ वर्षांपर्यंत सेवानिवृत्तीसाठी मुदतवाढ देण्याची फारव्याही शासनाच्या मान्यतेने करण्यात येईल.

- 15 of 45

१०. वार नमुद केल्पाग्रामाले अध्यापक बांध्या निष्ठावयोगानुसार सेवानिवृत्तीची पदोमर्यादा ६० वादन ६२ पर्यंत वा प्रत्येक बांध्या निष्ठावयोगानुसार सेवानिवृत्तीची पदोमर्यादा ६२ वादन ६५ वर्षे कालपावकित आहया घेवपासो निम्न निर्दिश्ट केल्पाग्रामाले आसया समिती (Performance Review Committee) करुन कलपावत येत आत.

- | | |
|--|------------|
| १) सचिव / प्रधान सचिव, उच्च व तंत्र शिक्षण | अध्यक्ष |
| २) संचालक, उच्च शिक्षण/ तंत्र शिक्षण | उपाध्यक्ष |
| ३) संस्थागत अनुसंधान विभागीय/केंद्र कूलसचिव (पदवी) /अध्यक्ष (संस्थागत) | सदस्य |
| ४) संचालक, म.रा. तंत्र शिक्षण परिषद चेडल (पदवीय संस्था) | सदस्य |
| ५) संस्थागत विभागीय सहायक संचालक, उच्च शिक्षण/ तंत्र शिक्षण | सदस्य |
| ६) संस्थागत सहायक / उपसचिव, विभागीय शिक्षण/ तंत्र शिक्षण | सहायक सचिव |

११. घटोत सर्व संस्थांशीत अध्यापक तथा प्राध्यापीया सोशलिजुतीसाठी मुदतवाहत देखील संकेतसांगी निम्न बाबीची पूर्तता करणे अनिवार्य राशील. -
- १) सदर संस्थांशीत अध्यापक / प्राध्याप यांच्या प्रथम नियुक्तीचा विज्ञापित अनुसर आदेश व राज्य शासनाचे विहित केलेल्या खाता, अटी व शर्ती प्रमाणे शासनाक अर्जास आवाश्यक आहे.
 - २) संस्थांशीत अध्यापक / प्राध्याप यांची शारिरिक व मानसिक क्षमता सुदृढ असणे आवश्यक असून स्वास्थ्यात तसा वैद्यकीय समितीचे (Govt. Medical Committee) प्रमाणपत्र संकेतित ज्येष्ठतेने सोबतिलुकीतूनी तीन महिना अगोदर संस्थांशीत संस्थेकडे खदर करणे आवश्यक राशील.
 - ३) संस्थांशीत अध्यापक / प्राध्यापीते Ph.D अथवा विज्ञपीत अनुदान आयोग तथा अधिलक्ष घरातील संश्रिक्षण परिषदेच्या नियमानुसार Ph.D री समपत्र असो शैक्षणिक अर्हा घाला करणे आवश्यक राशील.
 - ४) संस्थांशीत अध्यापक / प्राध्याप यांच्या मुदतवादीया दिनांकातूनीये मागील पाच वर्षांतील पत्रिका गोपनीय अस्थाल विधारात पेडन, सदर सोपनीय अस्थालाये खर्चसाधारन मुन्यमापकवी प्रतघारी विमान तीन वर्षे उत्कृष्ट (A) आणि दोन वर्षे निशिया चालला (B+) असा अक्षरपक आहे.
 - ५) शासकीय संस्था ज्यतिरोक्त उर्ध्वरीत संस्थांशीत कार्यरत असलेल्या प्राध्यापीया ६२ वर्षांनंतर सोशलजुतीसाठी मुदतवाहत देखलपूनी संस्थेने खदर रिखा पद भरल्यसाठी युक्तपत्रात किमान दोन

१२. या संदर्भात प्रीलत मतं गणद संस्थापनेल अध्यापन / प्राध्यापक वर्यो सेत मुने सगु तैय्यतल दुरुले परित्ते-११ मशीत निरूप विचारत वेजत निरु गणद उपमनितेचो विचारतलेत संवेधित विचारत सहसंचालकांनी संचालक, उच्च शिक्षण तंत्र शिक्षण यांचो प्रगुत गोचर प्रताप मेळ विचारीत देण्याचो नितावतपुर्वी किमत १ महिना अतोर संशोधित संचालनालवामनक शक्यत सदर मर्यादो जबाबदारी संशोधित जवणी विस्थापित व संशोधित रातीत.

- १) विभागीय सहसंचालक, उच्च/तंत्र शिक्षण
- २) अकृषी विभाग/कलेक्ट्रेट

- च. पदविष्ठा संस्थांसाठी ज्ञाननो समिती-

१३. जे अभ्यासक सार शारत निर्णय विभागांत होण्यामुळे त्या तिकिया मुलत जे. २८ फेब्रुवारी २०११ रोजी संघानेवृत्त होणार असतील त्यांच्याबद्दल जका परिच्छेद ज.१२ मध्ये नमुद छाननी समितीने अभ्यास संघांत संघालातल्यामागील शासनास प्रदील आचरणक कायदांमधीली संघीयतांआ संघांतूनोच्या वितांकामुली सारत लक्षणाची थयाव्पारी संघीत विभागीय सलसचलकूक, ठावुनी विद्यापीठी व संघाची असेल.

१५. हा शासन निर्णय वित्त विभागाच्या जाने.सं.सं.क्र. १४/१४/१४-४, दिनांक १४.१.२०११ अन्वये त्या विभागाचे दिलेल्या सहभागीते निर्णय निर्गमित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

ब्रणि.

१. ना.राज्यपाल तथा कुलपती कांछे साँबय, मलथाई हील, मुंयई

43

१. मा.मु.प्र.तंत्री यांचे प्रधान सचिव, मंत्रालय, मुंबई
२. मा.उ.प्र.संयोजक यांचे सचिव, मंत्रालय, मुंबई
३. सर्व अदालती विभागातील कुलसूत्र
४. सर्व अदालती विभागातील कुलसूत्र
५. संचालक, उच्च शिक्षण, महाराष्ट्र राज्य, मुंबई
६. संचालक, उच्च शिक्षण, महाराष्ट्र राज्य, मुंबई
७. महालेखापाल (लेखा व अनुसंधान) - १, महाराष्ट्र, मुंबई (५ प्रती)
८. महालेखापाल (लेखापरीक्षा) - १, महाराष्ट्र, मुंबई (५ प्रती)
९. महालेखापाल (लेखा व अनुसंधान) - २, महाराष्ट्र, नागूर (५ प्रती)
१०. महालेखापाल (लेखापरीक्षा) - २, महाराष्ट्र, नागूर (५ प्रती)
११. संचालक, व लेखा व कोषागार, (५ प्रती)
१२. अतिरिक्त व लेखा अधिकारी, मुंबई
१३. सर्व लिखा कोषागार अधिकारी
१४. संचालक, राज्य अभिलेख देणुपाल अभिलेख अधिकारी
१५. सर्व विभागीय सहसंचालक, उच्च शिक्षण/तंत्रशिक्षण
१६. मा.मंत्री, उच्च व तंत्रशिक्षण विभाग यांचे कुलसूत्री सचिव
१७. मा.राज्यमंत्री, उच्च व तंत्रशिक्षण विभाग यांचे खात्री सचिव
१८. सर्व सहसंचालक / उपसंचालक / अवर सचिव / ज्येष्ठ अधिकारी, उच्च व तंत्रशिक्षण विभाग, मुंबई
१९. सामान्य प्रशासन विभाग, मंत्रालय, मुंबई.
२०. वित्त विभाग, (सोदा-४ / सोदा-९ / कोदा-५ / व्हाय-५) मंत्रालय, मुंबई
२१. नियोजन विभाग (प्रारंभिक १४७९)
२२. सचिव (उ. व तंत्रशिक्षण) यांचे खात्री सहायक,
२३. निमड नरणी

Exh - AA-3 162

विद्यापीठ अनुदान आयोग व आरंभित भारतीय तंत्रशिक्षण परिषदेच्या शिफारशीनुसार राज्यात उच्च व तंत्रशिक्षण क्षेत्रात कार्यरत पदवी, पदव्युत्तर व पदविका संस्था तसेच अकृषि विद्यापीठे, तंत्रशास्त्र विद्यापीठ यातील अध्यापकांच्या निरत पध्दतीनुसार सेवाविपत्तीच्या परोपर्यायित वाढ करण्यात...

महाराष्ट्र शासन

उच्च व तंत्र शिक्षण विभाग

शासन निर्णय क्रमांक संकीर्ण २०१५/प्र.अ.४८४/१५/वि.शि.१.

मंत्रालय बिल्डिंग भवन, मुंबई - ४०० ०२५.

तारीख: १२ जुलै, २०१६.

इति-

- १) शासन निर्णय क्रमांक शासन निर्णय, उच्च व तंत्र शिक्षण विभाग क्र.संकीर्ण २०१५/५०३/१०/वि.शि.-१, दि.२५ फेब्रुवारी, २०१५
- २) शासन निर्णय क्रमांक शासन निर्णय, उच्च व तंत्र शिक्षण विभाग क्र.संकीर्ण २०१५/५०३/१०/वि.शि.-१, दि.०५ मार्च, २०१५
- ३) शासन निर्णय क्रमांक उच्च व तंत्र शिक्षण विभाग क्र.संकीर्ण २०१५/३९६/१०/वि.शि.-१, दि.२२ नोव्हेंबर, २०१५
- ४) शासन शुध्दीपत्रक क्रमांक उच्च व तंत्र शिक्षण विभाग क्र.संकीर्ण २०१५/३९६/१०/वि.शि.-१, दि.२३ फेब्रुवारी, २०१६
- ५) शासन निर्णय क्रमांक उच्च व तंत्र शिक्षण विभाग क्र.संकीर्ण २०१५/३९६/१०/वि.शि.-१, दि.२८ मार्च, २०१६
- ६) शासन निर्णय क्रमांक उच्च व तंत्र शिक्षण विभाग क्र.संकीर्ण २०१५/५३०/१०/वि.शि.-१, दि.२२ ऑगस्ट, २०१६
- ७) शासन निर्णय क्रमांक उच्च व तंत्र शिक्षण विभाग क्र.संकीर्ण २०१५/५३०/१०/वि.शि.-१, दि.१० ऑक्टोबर, २०१६

अस्तावना:-

राज्यातील अकृषि विद्यापीठे व शासकीय/अशासकीय अनुदानित महाविद्यालये/तंत्रनिकेतने येथील अध्यापकांच्या निरत पध्दतीनुसार सेवाविपत्तीच्या वाढ करणाऱ्या निर्णय नारानाने संदर्भातील शासन निर्णयान्वये देतला आहे.

मान्य संसाधन विकास मंत्रालय, नवी दिल्ली यांनी त्यांच्या दि.१४ ऑगस्ट, २०१२ च्या मंत्रालय निर्णयावर भारतीय अनुदानित महाविद्यालयातील अध्यापकांच्या सेवाविपत्तीच्या वाढाबाबत चापूरी ज्या अटी घालून दिलेल्या ठीक्या, त्यामध्ये सुधारणा करून अध्यापकांच्या सेवाविपत्तीच्या वाढाबाबत त्या त्या शासक शासनाने त्यांच्या संसाधन निर्णय घ्यावा, असे नमूद केले आहे. महाराष्ट्र न्यायालयाने शिफारश आतील क्र.५५३७/२०१३ मध्ये सेवाविपत्तीच्या परोपर्यायित वाढ करण्याचा निर्णय त्या त्या राज्य शासनाबाबत घेतला, असा निर्णय देतला आहे.

163

निर्णय संख्या/संकीर्ण २०१५/३.३५.४२४/०५/वि.शि.म

सद्यस्थितीत शिक्षणीय मर्यादाही वेच/वेच पात्रताधारक समेकित उपलब्ध असून ते वेचोपचार आहेत व त्यांना सेवेची संधी देणे आवश्यक आहे.

या बाबीचा विचार करून राज्यातील उच्च शिक्षण क्षेत्रातील शासकीय संस्था/महाराष्ट्र राज्य तंत्र शिक्षण मंडळाची संलग्नित शासकीय तंत्र महाविद्यालये/पदविका संस्था/शासकीय महाविद्यालयातील अध्यापकांच्या नियत वयोमानानुसार सेवानिवृत्तीचे वय ५८ वरून ६२ वर्षे तसेच अर्क वेच निवृत्तीचे, तंत्रशास्त्र विद्यापीठे व संलग्नित अशासकीय अनुदानित महाविद्यालयातील शिक्षक/प्रभपाल/उप प्रभपाल/सहायक प्रभपाल/संचालक, उपसंचालक, सहायक संचालक, शारीरिक शिक्षण यांचे नियत वयोमानानुसार सेवानिवृत्तीचे वय ६० वर्षांपरून ६२ वर्षे याद करण्यात येत असलेल्या निर्णयाचा फेरविचार करण्याची आज शासनाच्या विचाराधीन होती.

शासन निर्णय:-

२. त्यानुसार मंडळीसहलब्ध मान्यतेनुसार शासन खालीलप्रमाणे निर्णय घेत आहे :-

१) संदर्भाधीन शासन निर्णय दि.०५ मार्च, २०११, दि.२३.११.२०११ व दि.२३.०२.२०१२, दि.२४ मार्च, २०१२ दि.२२ ऑगस्ट, २०१२ व दि.११ ऑक्टोबर, २०१२ आदीचे राज्यातील उच्च शिक्षण क्षेत्रातील शासकीय संस्था/महाराष्ट्र राज्य तंत्र शिक्षण मंडळाची संलग्नित शासकीय तंत्र महाविद्यालये/पदविका संस्था/महाविद्यालयातील अध्यापकांच्या नियत वयोमानानुसार सेवानिवृत्तीचे वय ५८ वरून ६२ वर्षे व अर्कवेच निवृत्तीचे, तंत्रशास्त्र विद्यापीठे व संलग्नित अशासकीय अनुदानित महाविद्यालयातील शिक्षक/प्रभपाल/उपप्रभपाल/सहायक प्रभपाल/संचालक, उपसंचालक व सहायक संचालक, शारीरिक शिक्षण यांचे नियत वयोमानानुसार सेवानिवृत्तीचे वय ६० वर्षांपरून ६२ वर्षे करण्यात येत येण्यात आलेल्या निर्णयाचा पुनर्विचार करून सेवानिवृत्तीचे वय ६० वर्षे करण्यात येत आहे. त्यानुळे असा प्रत्येक अध्यापकीय कर्मचारी असा ज्या महिन्यात ६० वर्षांचा होईल त्या महिन्याच्या अखेरच्या दिवशी भव्यान्वयेत्तर रोवेतून निवृत्त होईल. तथापि, ज्या अध्यापकीय कर्मचारी यांनी जन्मशारीरिक महिन्याच्या १ तारखेला असेल तो अध्यापकीय कर्मचारी ६० वर्षांचा होतच मर्याद महिन्याच्या शेवटच्या दिवशी भव्यान्वयेत्तर सेवानिवृत्त होईल.

२) संदर्भाधीन शासन निर्णय दि.०५ मार्च, २०११, दि.२३.११.२०११ व दि.२३.०२.२०१२, दि.२४ मार्च, २०१२ दि.२२ ऑगस्ट, २०१२ व दि.११ ऑक्टोबर, २०१२ येथील शासन निर्णयातील तरतुदीनुसार यापूर्वी ज्या अध्यापकीय कर्मचारी यांच्या नियत वयोमानानुसार सेवानिवृत्तीच्या वयात ६० वरून ६२ वर्षे मुदतवाढ देण्यात आलेली आहे, ते अध्यापकीय कर्मचारी त्यांना मुदतवाढ दिलेल्या शासन आदेशात विहीत केलेल्या मुदतवाढीच्या दिनांकावर सेवानिवृत्त होतील.

३) सद्यस्थितीत अध्यापकीय कर्मचारी यांच्या नियत वयोमानानुसार सेवानिवृत्तीच्या वयात वाढ करण्याबाबतच्या शासनाकडे मुदतवाढीसाठी प्रश्न झालेला या प्रश्ना होणा-या किंवा प्रलंबित असलेल्या कोणत्याही प्रकरणात यागुदे मुदतवाढ देण्यात येणार नाही, हा निर्णय लागूतपूर्वक घोषित घेत आहे.

पृष्ठ ३ पैकी २

164

निर्णय क्रमांक : संखीर्ण २०१५/५, अ.३८४/१५/वि.शि.२.

- ४। महाराष्ट्र नागरी सेवा नियमांमध्ये वरीलप्रमाणे सुधारणा करण्यात येईल.
३. सदर शासन निर्णय मंत्रिमंडळाच्या मान्यतेनुसार व विर विभागाच्या अर्जांनकारित संदर्भ क्र.४५५/सेवा-४, दि.२८.०३.२०१६ नुसार त्यांच्या तहभर्तीने निर्मित करण्यात येत आहे.

सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१४०३१२१६२६३६११०८ खरा आहे. हा आदेश विधीतल त्याक्षरीने साहजिकेने करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नाग ये.

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Rambhau
Kharat

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(सिद्धार्थ खरात)

उप सचिव, महाराष्ट्र शासन

प्रति,

- १। या.राज्यपाल यांचा कुलकर्णी यांचे सचिव, राज्यपाल, मंत्रालय, मुंबई.
- २। मा.समाजसेवा, महाराष्ट्र विधानपरिषद यांचे सचिव, विधान भवन, मुंबई.
- ३। मा.अध्यक्ष, महाराष्ट्र विधानसभा यांचे सचिव, विधान भवन, मुंबई.
- ४। कुलपति, सर्व अकृषि विद्यापीठे,
- ५। कुलसचिव, सर्व अकृषि विद्यापीठे,
- ६। मह.ले.आ.पल (लेखा व अनुज्ञेयता) न व २ महाराष्ट्र, मुंबई/नागपूर,
- ७। मह.ले.आ.पल (लेखा परीक्षा), न व २ महाराष्ट्र, मुंबई/नागपूर,
- ८। सर्व उच्च सचिव, उच्च व तंत्र शिक्षण विभाग, मंत्रालय, मुंबई.
- ९। संचालक, तंत्र शिक्षण, महाराष्ट्र राज्य, पुणे,
- १०। संचालक, उच्च शिक्षण, महाराष्ट्र राज्य, पुणे,
- ११। संचालक, राज्य अभिलेख देखाभाल अधिकरण अधिकारी,
- १२। सर्व विभागीय सहसंचालक, उच्च शिक्षण,
- १३। संचालक, व लेखा व जोगागरे, (५ प्रती),
- १४। अधिपति व लेखा अधिकारी, मुंबई,
- १५। सर्व जिल्हा जोगागरे अधिकारी,
- १६। मा. मंत्री, उच्च व तंत्र शिक्षण यांचे खाजगी सचिव, मंत्रालय, मुंबई.
- १७। मा. राज्यमंत्री, उच्च व तंत्र शिक्षण यांचे खाजगी सचिव, मंत्रालय, मुंबई.
- १८। सर्व अवर सचिव/कक्ष अधिकारी, उच्च व तंत्र शिक्षण विभाग, मंत्रालय, मुंबई.
- १९। अवर सचिव (सेवा-४), विर विभाग, मंत्रालय, मुंबई.
- २०। निवड नक्ती (वि.शि.५).

TRUE COPY

ADVOCATE

10. Petitioner has raised the challenge subsequently / belatedly for the first time in its additional Affidavit dated 20.01.2021, *inter alia*, stating that GR dated 05.03.2011 has been superseded by a subsequent GR dated 12.07.2016 passed by the State Government of Maharashtra whereby the date of retirement / superannuation has been revised to 60 years and thus for all intent and purpose a Director / Principal of an educational institute would superannuate at the age of 60 years. It is argued across the bar that the aforementioned subsequent GR dated 12.07.2016 would apply in the Respondent's case by virtue of which he would not have any legal right vested in him for continuing in the post of Director. All that is submitted in the additional Affidavit is that the Petitioner - University came to know about GR dated 12.07.2016 recently and nothing more.

11. From the record of the case and reading of the above GRs carefully it is seen that in so far as the first objection of Petitioner - University is concerned, it pertains to non-applicability of GR dated 05.03.2011. It is submitted before the Tribunal that the said GR is not applicable to the case of Respondent and it applies only in the case of appointment of Principal in Non-Government Colleges affiliated to Non-Agricultural Universities (aided/unaided) and such establishments affiliated to AICTE in the State of Maharashtra. Hence, it would not apply to Respondent's case who was appointed as

‘Director’ of the Institute and not as ‘Principal’. Petitioner has referred to and relied upon the definition of the term ‘Principal’ under Section 2(44) of the said Act which states that a Principal is a teacher duly approved by the University and in contrast relied upon the definition of ‘Director’ under Section 2(25) of the said Act which means the Head of the Institution including the Centre or a School of the University as designated by the Management Council or a Head of a recognized institution. It is submitted by Petitioner - University that the Institute in which Respondent was appointed as ‘Director’ is not affiliated to the Petitioner - University but it is run by the University and therefore the said Institute is not a College, but an Institute and therefore GR dated 05.03.2011 would not be applicable. Hence, Petitioner – University would submit that age of retirement of Principal of the Non-Government College, aided / unaided, affiliated and non-affiliated to the University in the State of Maharashtra which was extended from 60 years to 65 years with a caveat that on completion of 62 years the performance review would be taken into account before granting extension till 65 years would thus not be applicable to the case of Respondent (who was appointed as ‘Director’).

12. Now during arguments it is contended before me that the said GR of 2011 would not at all apply to the case of Respondent and the relevant GR that would apply is a subsequent GR dated

12.07.2016. Mr. Sharma would submit that GR dated 12.07.2016 had in fact superseded GR dated 05.03.2011 when the impugned order dated 20.09.2019 was passed and hence on that ground the impugned order deserves to be set aside. When asked the reason for non-consideration of the 2016 GR by Tribunal, he would submit that Petitioner - University inadvertently did not bring it to the notice of the Tribunal and hence the Tribunal proceeded on the basis of applicability of GR dated 05.03.2011 which according to him stood withdrawn. I am, however, not impressed by this argument of Mr. Sharma at all. Timeline of events in this case would clearly show several rounds of litigation between them since 2014 onwards and not even once the subsequent GR of 2016 was pointed out to the Tribunal.

13. Hence, before I decide the applicability of GR dated 05.03.2011 to Respondent's case, I would first have to determine and see whether GR dated 12.07.2016 is actually passed in supersession of GR dated 05.03.2011 and what would be its repercussions. Perusal of GR dated 12.07.2016 shows that the same has been passed with reference to 7 earlier GRs namely; GRs' dated 25.02.2011, 05.03.2011, 23.11.2011, 23.02.2012, 28.03.2012, 22.08.2012 and 11.10.2012. At the outset a bare perusal of GR dated 12.07.2016 shows that only the age of retirement has been reduced by the Government and the same has now been fixed at 60 years.

14. It is contention of Respondent that he is appointed under Section 78 of the Universities Act. He relies upon the letter of his appointment which is appended at page 184 of the Petition. Hence according to him, his retirement age would be at 65 years and not 62 years or 60 years as contemplated by Petitioner.

15. In so far as first two grounds of challenge are concerned, they are dealt with together. For the purpose of dealing with the challenge on the first two grounds, the following definitions under the Universities Act are required to be seen namely; Section 2(12) - College, Section 2(25) - Director, Section 2(34) - Institution and Section 2(44) – Principal. They read thus:-

“S. 2(12) College means a college, affiliated to the University, situated in the University area or jurisdiction”;

“S. 2(25) Director means the Head of the Institution including the centre or a school of the University as designated by the Management Council or a Head of a recognized institution”;

“S. 2(34) Institution means an academic institution of higher learning, not being a college, associated

with and admitted to the privileges of the University”; and

“S. 2(44) Principal which means a teacher who is duly approved as a Principal by the University”.

15.1. Section 5 of the Act enunciates the powers and duties of the University and more specifically for deciding the present case reference needs to be drawn to Sections 5(11), 5(57) and 31(v).

15.2. Section 5(11) empowers creation of post of Directors, Principals, etc as required from its funds and from funds received from the funding agency. Section 5(57) lays down such instructions or directions for teachers as in the opinion of the University may be necessary in academic matters and Section 31 prescribes powers and duties of the Management Council. More specifically Section 31(v) pertains to creation of post of University teachers and non-vacation academic staff from the funds of the University and from the funds received from other funding agencies, on the recommendation of the Academic Council.

15.3. It is argued on behalf of Petitioner that the Institute in question is not affiliated to the University, but it is run by the University; secondly it is argued that the institute is not a college, but an institute and therefore GR dated 05.03.2011 would not apply and it is further argued that provisions of the statute will prevail over the GR

in the present case considering that the Management Council has passed the resolution exercising its statutory powers, such power of the Council cannot be restricted or taken away by virtue of the GR.

15.4. It is a matter of the record in the present case that the University by its letter dated 20.11.2014 removed the Respondent from the post of Director of the same Institute which was challenged by him in Appeal No.11 of 2018 before the Tribunal. It is seen that by order dated 06.12.2018, the aforementioned order of removal dated 20.11.2014 was quashed and set aside by the Tribunal and reinstatement of Respondent was directed. Thereafter, the Management Council Resolution dated 29.01.2019 was passed and Respondent was therefore retired on completion of the age of 60 years.

15.5. It is pertinent to note that Respondent was appointed vide appointment letter dated 08.02.2012 to the post of Professor-cum-Director of the institute in accordance with Section 78 of the said Act which pertains to the appointment and selection of the Principal of conducted college or Director or Head of Universities institution. In that view of the matter, which is an undisputed position in fact it is clear that the 'Institute' in question is equated with the 'College' i.e. it is therefore held that the post of Principal of the conducted college and the post of Director of the Institute are equivalent to each other.

Hence, this argument on behalf of Petitioner of forging a distinction between a 'College' and 'Institute' stands squarely answered and it cannot be open to the Petitioner to contend that a distinction can be drawn between a College and Institute and the appointment of the Director of the Institute would be determined on any different parameters. In fact, there are no such different parameters at all. The post of 'Director' is the same and on pari materia with the post of 'Principal'.

15.6. Hence, there is no substance in the Petitioner's case that the Institute is not a College and under the University. This submission stands comprehensively rejected.

16. Next is the question of applicability of GR dated 05.03.2011. Though belatedly it is now contended that the said GR would not apply and now stands superseded by the subsequent GR dated 12.07.2016, I would first like to deal with the contents of the applicability of GR dated 05.03.2011 to the present case and thereafter deal with the subsequent GR. It is vehemently argued that in view of GR dated 05.03.2011 issued by the Higher and Educational Department, Government of Maharashtra, the age of retirement of the Principal of the non-government colleges (aided / unaided, affiliated and non-affiliated) to the University in the State of Maharashtra was extended to the age from 60 years to 65 years with a rider that on

completion of age of 62 years, the performance review of such Principal is to be taken before granting him the extension upto 65 years.

16.1. It is also an undisputed position that the Institute in question is covered under the AICTE Act and in view of the provisions of clause 8(4) of the GR, the same would be applicable to the case of Respondent.

16.2. In the present case, it is pertinent to note that Appeal No.11 of 2018 with respect to the removal of Respondent on 20.11.2014 has been comprehensively set aside by the Tribunal vide orders dated 28.09.2018 and 06.12.2018. It is pertinent to note that the findings returned on the aforesaid twin orders have not been challenged by the Petitioner in any proceeding whatsoever and thus those findings have attained finality.

16.3. That apart, it is now contended that the GR dated 12.07.2016 has superseded the GR dated 05.03.2011. The subsequent GR is annexed at Exhibit AA-3 at page No.162 of the Writ Petition. All that is stated offering any explanation in the pleading is that the said GR dated 12.07.2016 has superseded the earlier GR dated 05.03.2011, however there is not a single iota of pleading to show how and in what respect the supersession has taken place. Learned Advocate appearing for Petitioner has drawn my attention to the GR

dated 12.07.2016 and more specifically to the operative part contained in paragraph No.2 which reads thus:-

“२. त्यानुसार मंत्रिमंडळाच्या मान्यतेनुसार शासन खालीलप्रमाणे निर्णय घेत आहे:-

१) संदर्भाधीन शासन निर्णय दि.०५ मार्च, २०११, दि.२३.११.२०११ व दि. २३.०२.२०१२, दि. २८ मार्च, २०१२, दि.२२ ऑगस्ट, २०१२ व दि.११ ऑक्टोबर, २०१२ अन्वये राज्यातील उच्च शिक्षण क्षेत्रातील शासकीय संस्था/महाराष्ट्र राज्य तंत्र शिक्षण मंडळाशी संलग्नित शासकीय तंत्र महाविद्यालयां/पदविका संस्था/महाविद्यालयातील अध्यापकांच्या नियत वयोमानानुसार सेवानिवृत्तीचे वय ५८ वरून ६२ वर्षे व अकृषि विद्यापीठे, तंत्रशास्त्र विद्यापीठे व संलग्नित अशासकीय अनुदानित महाविद्यालयातील शिक्षक/ग्रंथपाल/उपग्रंथपाल/सहाय्यक ग्रंथपाल/संचालक, उपसंचालक व सहाय्यक संचालक, शारीरिक शिक्षण यांचे नियत वयोमानानुसार सेवानिवृत्तीचे वय ६० वर्षांवरून ६२ वर्षे करण्याबाबत घेण्यात आलेल्या निर्णयाचा पुनर्विचार करून सेवानिवृत्तीचे वय ६० वर्षे करण्यात येत आहे. त्यामुळे असा प्रत्येक अध्यापकीय कर्मचारी आता ज्या महिन्यात ६० वर्षांचा होईल त्या महिन्याच्या अखेरीच्या दिवशी मध्यानहोत्तर सेवेतून निवृत्त होईल. तथापि, ज्या अध्यापकीय कर्मचा-यांची जन्मतारीख महिन्याच्या १ तारखेला असेल तो अध्यापकीय कर्मचारी ६० वर्षांचा होताच मागील महिन्याच्या शेवटच्या दिवशी मध्यानहोत्तर सेवानिवृत्त होईल.”

16.4. Petitioner has submitted that on the basis of the aforementioned order that the State Government has reduced the date of retirement from 62 years to 60 years and in that view of the matter, Respondent deserves to be retired and claim of Respondent for further continuation of service until the age of 65 years or for that matter 70 years is untenable in law.

16.5. I have perused the GR dated 12.07.2016. It takes into consideration seven earlier GRs / Corrigendum issued by the State of Maharashtra, one out of which is the GR dated 05.03.2011. It is incumbent upon the Petitioner to refer to and show all the seven GRs / Corrigendum which have been taken into account for the purpose of

issuing GR dated 12.07.2016. These GRs dated 25.02.2011, 05.03.2011, 23.11.2011, 23.02.2012, 28.03.2012, 22.08.2012 and 11.10.2012 are not placed before me. Contents of these six GRs / Corrigendum are not placed before the Court in order to appreciate the submission of the Petitioner. That apart, it is seen that the said GR has been issued on the basis of a subjective consideration and a singular ground which is mentioned on internal page No.2 which reads thus:-

“सद्यःस्थितीत शिक्षकीय पदांसाठी नेट/सेट पात्रताधारक उमेदवार उपलब्ध असून ते बेरोजगार आहेत व त्यांना सेवेची संधी देणे आवश्यक आहे.”

16.6. The question that therefore arises for consideration is whether the State Government by the subsequent GR of 2016 can have the power to override the statutory provisions pertaining to the age of superannuation which are applicable to the Respondent and whether the State Government can do so. This will have to be answered in the negative. The question that therefore arises for determination is whether the State Government can even issue such a GR to alter the service conditions prescribed by the AICTE Regulations and which would be contrary to such regulations. In short, can the State Government by the 2016 Resolution alter the statutory provisions of service conditions. The answer undoubtedly has to be no. It cannot do so. The 2016 GR is clearly contrary to the AICTE regulations as also the AICTE Act, which is dealt with separately hereunder later in this

judgment.

17. In the present case, it is seen that pursuant to the appointment of the Respondent within two years, Respondent came to be removed and litigation between the parties started. Record indicates that the reason for removal was due to an adverse report made by a Committee. It would be worthwhile in the present case therefore to see how the matter has travelled since then. The following dates and events are therefore crucial:-

- (i) On 1.10.1958 the Respondent was born (date of birth).
- (ii) On 08.02.2012 Respondent was appointed as Director of the institute under Section 78 of the said Act.
- (iii) On 20.11.2014 Respondent was removed from the post of Director for the first time.
- (iv) Respondent filed Writ Petition No.9844/2016, challenging the order of removal.
- (v) On 06.07.2017 Writ Petition was disposed of with direction to Respondent to file appeal before the tribunal.
- (vi) Respondent filed appeal before Tribunal along with application for condonation of delay of 540 days before Tribunal.
- (vii) Application for condonation of delay was dismissed by Tribunal.
- (viii) Respondent filed Writ Petition No.1082/2017 to challenge the order of dismissal of application for

condonation of delay.

- (ix) On 11.04.2018 this court condoned the delay, imposed cost on the Respondent and directed hearing of the appeal.
- (x) On 13.08.2018 the University issued a letter terminating services of Respondent.
- (xi) Respondent filed Miscellaneous Application No.27/2018 to challenge the said letter before the Tribunal.
- (xii) On 28.09.2018 Miscellaneous Application was allowed by Tribunal, letter dater 13.08.2018 was stayed and Respondent was directed to be in service until disposal of the Appeal.
- (xiii) On 06.12.2018 Appeal No.11/2018 was allowed by Tribunal, letter of removal dated 20.11.2014 was quashed and the Institute was directed to reinstate Respondent within two months.
- (xiv) On 20.01.2019 Management Council passed a resolution, inter alia, resolving to lower the age of retirement of Directors at 60 years.
- (xv) On 14.02.2019, in adherence of the order dated 06.12.2018, registrar issued a letter of reinstatement to Respondent.
- (xvi) On 20.02.2019, letter was issue to Respondent that formal charge was handed over to him of the Institute.
- (xvii) On 21.02.2019 a fresh letter was issued to Respondent stating that in view of the Management Council resolution, age of retirement of Directors would now be at 60 years, hence

Respondent was retired from the post of Professor cum Director with immediate effect considering that he had passed 60 years.

- (xviii) Respondent was directed to handover the charge of the Institute to Dr. Sunita Shukla.
- (xix) Being aggrieved petitioner filed Appeal 4/2019 to challenge letter dated 21.02.2019, inter alia, claiming that it was in violation of GR. dated 05.03.2011; that Respondent's appointment was under Section 78 of the said Act and not as an employee under Section 76; that provisions of Section 5(11), 5(57) and 31(5) were not applicable to Respondent's case; order dated 06.12.2018 held that GR. dated 05.03.2011 was applicable to Respondent's case; that Management Council resolution cannot override GR dated 05.03.2011 and alter any service condition of Respondent.
- (xx) Along with Appeal, Respondent filed Miscellaneous Application for seeking interim relief.
- (xxi) On 15.03.2019 Tribunal directed both parties to maintain status quo.
- (xxii) Respondent filed Miscellaneous Application No.11/2019 for amendment of Appeal No.4/2019 to challenge Management Resolution dated 21.01.2019.
- (xxiii) On 08.08.2019 Tribunal dismissed Miscellaneous Application No.11/2019.
- (xxiv) On 20.09.2019 Tribunal partly allowed Appeal

No.4/2019 and set aside letter dated 21.02.2019 of retiring the Respondent and directed his immediate reinstatement within 2 months.

(xxv) University therefore filed the Writ Petition No.12761.2019 to challenge the order dated 20.09.2019.

(xxvi) IA No.3093/2019 is filed by Respondent to challenge the office order dated 05.09.2020 to compulsory retire him and for seeking a direction to continue him as Director upto 65 years.

(xxvii) Respondent will attain the age of 65 years in September 2023.

17.1. In the present case, record clearly reveals that appointment of Respondent is under Section 78 of the said act as per his appointment letter dated 09.02.2012 on the permanent post of Professor cum Director.

17.2. It is also not in dispute that norms and standards by AICTE govern the Institute in question. From the controversy raised in the present case, the point that arises for determination is whether the Respondent is entitled to claim that his retirement age is 65 years in terms of the provision of the said Act and the Regulations of AICTE? Therefore it is necessary to consider the provisions of AICTE, the Regulations and norms and standards prescribed by the AICTE from time to time so that the present issue can be resolved.

17.3. It is seen that AICTE Act was promulgated by the Government of India for a proper planning and co-ordinated development of technical education system throughout the country and also to regulate maintenance of norms and standards in technical education and other matters connected therewith. The AICTE Act came into effect from 23.12.1987. Chapter III of the Act deals with powers and functions of the Council. Section 10(1), 10(1)(g) and 10(1)(i) of the Act which are germane read as follows:

“ 10. Functions of the Council – (1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical and management education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may -

(a)

(b)

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability.

(h)

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;"

17.4. Section 10(1) casts a duty on the Council to take all such steps for maintenance of standards for ensuring co-ordinated and integrated development of technical education. Section 10(1)(g) deals with the functions of the AICTE to evolve suitable performance appraisal systems for technical institutions and universities imparting technical education, incorporating norms and mechanisms for

enforcing accountability; Section 10(1)(i) deals with laying down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualification, quality instructions, assessment and examinations.

17.5. Section 23 of the Act empowers the Council to make Regulations and those Rules and Regulations are formulated by the AICTE from time to time. Therefore, the Act, Rules and Regulations are statutes. The AICTE from time to time has notified Regulations on pay scales, service conditions and minimum qualifications for appointment of teachers and other academic staff by its maintenance of standards in technical education - (Degree) Regulations and the one that is germane for consideration is what is notified by the AICTE on 1-03-2019 i.e., "AICTE Regulations on pay scales, service conditions and minimum qualifications for the appointment of teachers and other academic staff such as library, physical education and training & placement personnel in technical institutions and measures for the maintenance of standards in technical education - (Degree) Regulation, 2019." The AICTE notified the said Regulations in exercise of its powers under Section 23 read with Section 10(1)(g) of the AICTE Act. Regulations which are germane are extracted for the purpose of quick reference:

"Regulation 1.2 deals with institutions to whom the Regulations would apply and reads as follows:-

1.2 Categories of Institutions to whom the regulations apply:

These regulations shall apply to all degree level technical institutions and Universities including deemed to be Universities imparting technical education and such other courses/programs approved by AICTE and areas as notified by the council from time to time."

"Regulation 1.3 deals with grant of revised AICTE pay scales and other allowances and reads as follows:

1.3 Date of Effect

a) Pay Scales and DA: The revised pay- scales shall be effective from 01-01-2016.

b) Other Allowances: Allowances such as Leave Travel Concession, Special Compensatory Allowances, Children's Education Allowance, Transport Allowance, House Rent Allowance, Deputation Allowance, House Building Allowance, Travelling Allowance etc. shall be applicable from the date as notified by the Central Government/respective State and UT Government from time to time"

"Regulation 1.4 deals with effective date of application of Service Conditions and reads as follows:

1.4 Effective date of application of Service Conditions

a) All other service conditions including Qualifications, Experience, Recruitment, Promotions etc. shall come into force with effect from the date of this Gazette Notification.

b) The Qualifications, Experience, Recruitment and Promotions etc. during 01- 01-2016 till the issue of this Gazette Notification shall be governed by All India Council for Technical Education Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Degree) Regulation, 2010 dated 5th March 2010 and subsequent notifications issued from time to time.

c) Those who are eligible for promotions after the date of publication of this gazette, shall have to meet the necessary conditions such as additional qualification, undergoing industrial training, pedagogical training, faculty induction program, publishing research papers etc. However, these requirements shall be permitted to be fulfilled till 31st July, 2022 so as to enable faculty members in equipping them for requisite mandatory requirements of this gazette to avail the benefit of promotion retrospectively from the date of eligibility.

d) *For incumbent faculty members, the date of eligibility up to 31st July, 2022 shall be allowed to be according to the 6th CPC Gazette notification published on 8th November, 2012. All the benefit of promotion to such candidates be permitted retrospectively on the date when he/she became eligible.*

e) *It may be noted that no further extension would be given beyond 31st July, 2022 and those who do not meet the essential criteria despite the above grace period, shall lose an opportunity for getting promotion retrospectively. However, they will be eligible for promotion from the date they meet these criteria thereafter.*

f) *In cases, wherein interviews are already conducted either for direct recruitment or for promotions but candidates did not join, such candidates may be allowed to join. Their further up-gradation will be governed by this notification.*

g) *In cases, where advertisement was published, applications invited but interviews have not been conducted till publication of this notification, the institutes/employers are required to publish corrigendum and processing of applications must be done in accordance with the provisions given in this notification."*

Regulation 2.12 deals with age of superannuation and reads as follows:-

"2.12 Age of Superannuation The age of superannuation of all faculty members and Principals/Directors of institutions shall be 65 years. An extension of 5 years (till the attainment of 70 years of age) may be given to those faculty members who are physically fit, have written technical books, published papers and has average 360 feedback of more than 8 out of 10 indicating them being active during last 3 preceding years of service."

Regulation 2.14 deals with Pension, Gratuity, Family Pension etc. and reads as follows:-

"2.11 Pension, Gratuity, Family Pension, GPF, Leave Encashment and Other Pensionary Benefits All pensionary benefits including leave encashment shall be extended to faculty members and other staff as Library, Physical Education and Training & Placement Personnel as per the revised norms recommended by the 7th CPC and implemented by the Government of India/State and UT Governments."

The afore-extracted Regulations deal with the faculty of an Institute to whom the Regulations would apply from appointment to retirement and they are all service conditions.

Approval is granted to an Institute by the AICTE in terms of the AICTE (Approval for granting new technical Institutions, introduction of courses or programs and approval of intake capacity of seats for the courses or programs) Regulations, 1994 (hereinafter referred to as the "approval Regulation" for short).

Regulation 6 deals with Conditions for Grant of Approval. Sub-Regulation (v) of Regulation 6 reads as follows:

“v) the staff shall be recruited as per the norms and standards specified by the Council from time to time;”

17.6. A conjoint reading of the Regulations would clearly indicate that recruitment of staff in an Institute is to be in terms of the norms and standards and it is a condition precedent for grant of approval. This clearly depicts the binding nature of the afore-quoted Regulations.

17.7. The mandatory nature of the Regulations notified by the AICTE applicable to degree level institutions is considered by the Apex Court in the case of **Parshvanath Charitable Trust Vs. All India Council for Technical Education**¹ which reads as follows:-

“25. It is also a settled principle that the regulations framed by the Central authorities such as AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act.”

(Emphasis supplied)

17.8. In terms of the above judgment of the Apex Court, it becomes unmistakably clear that AICTE Regulations notified by Government of India would have binding effect on the Institutes to whom the Regulations would apply.

¹ (2013) 3 SCC 385

17.9. The emphasis in the afore-extracted Regulations of the AICTE is that it regulates service conditions of faculty members of the Institutes regulated by AICTE. Regulation 1.2 mandates that it applies to all degree level Technical Institutes and Universities. Regulation 2.12 unequivocally depicts that age of superannuation of all faculty members, Principals and Directors of the Institutes which would mean degree level technical institutes shall be 65 years and discretion is vested with the Institutes to extend it up to 70 years. The mandatory nature of the direction is with regard to the age of superannuation being 65 years and the directory nature of the Regulations is an extension to 70 years from 65 years. Therefore, any Institute being regulated in terms of Regulation 1.2 would be bound by the service conditions stipulated in the Regulations.

17.10. It is not in dispute that norms and standards prescribed by the AICTE regulate the service conditions of the faculty of the Institute. It is also not in dispute and cannot be disputed that the faculty of the Institute are appointed in terms of the norms of the AICTE from time to time and are in receipt of every benefit that is regulated in terms of the Regulations (supra) with regard to pay, allowances, facilities and all other service conditions.

17.11. In the light of the emphasis being on service conditions in the Regulations, what are service conditions is also delineated by the

Supreme Court in the case of **State of Punjab Vs. Kailash Nath**² which reads as follows:

"7. In the normal course what falls within the purview of the term "conditions of service" may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings. Whether or not a Government servant should be prosecuted for an offence committed by him obviously cannot be treated to be something pertaining to conditions of service. Making a provision that a Government servant, even if he is guilty of grave misconduct or negligence which constitutes an offence punishable either under the Penal Code or Prevention of Corruption Act or an analogous law should be granted immunity from such prosecution after the lapse of a particular period so as to provide incentive for efficient work would not only be against public policy but would also be counter-productive. It is likely to be an incentive not for efficient work but for committing offences including embezzlement and misappropriation by some of them at the fag end of their tenure of service and making an effort that the offence is not detected within the period prescribed for launching prosecution or manipulating delay in the matter of launching prosecution. Further, instances are not wanting where a Government servant may escape prosecution at the initial stage for want of evidence but during the course of prosecution of some other person evidence may be led or material may be produced which establishes complicity and guilt of such Government servant. By that time period prescribed, if any, for launching prosecution may have expired and in that event on account of such period having expired the Government servant concerned would succeed in avoiding prosecution even though there may be sufficient evidence of an offence having been committed by him. Such a situation, in our opinion, cannot be created by framing a rule under Article 309 of the Constitution laying down an embargo on prosecution as a condition of service."

18. In the present case, it is seen that Petitioner has argued that age of retirement of Respondent by virtue of the Management Council Resolution would now be 60 years. Though Respondent was retired at 62 years on the basis of affirmative performance appraisal he could have continued till 65 years. Now it is contended by

2 (1989) 1 SCC 321

Petitioner that by virtue of the Management Council Resolution, Respondent stands retired at 60 years. The Management Council Resolution certainly cannot override the statutory provisions of the Universities Act as also the applicable Regulations of the AICTE Act which are in force and squarely applicable on all fours to the Respondent's case. As alluded to herein above though it is argued that the 2016 Government Resolution would override the 2011 Government Resolution, on bare perusal of the 2016 Resolution, it cannot be said that it would alter the statutory provisions of the said Act and the applicable Regulations under the AICTE Act as that course of action would not be permissible in law. The only rule or regulation where retirement is found are in the AICTE Regulations and the Government Resolution dated 05.03.2011 in the present case. It is Respondent's case that he is entitled to continue upto the age of 65 years on the strength of the Regulations of AICTE Act which bind the Institute in the present case. It therefore cannot be said that the Institute is free either to adopt the resolution passed by the Management Council contrary to the governing AICTE Regulations or the Institute would adopt any condition of service contrary to the conditions of service prescribed by the AICTE Act or the Regulations notifying service conditions applicable to all faculty of Institutes which come under this purview.

19. In the case of **Satish Kundanlal Agarwal Vs. State of Maharashtra**³, the Division Bench of this Court has considered the validity of clause 11 of the GR dated 05.03.2011. The Division Bench upheld the said clause and rejected the challenge thereto by giving directions for composition of the Performance Review Committee for considering performance assessment exercise of Principals, Lecturers and Professor who were bound to be found to continue till the age of 62 / 65 years as the case may be. Hence, for that reason also, the subsequent GR of 2016 cannot override the earlier GR of 2011 which is in consonance with the AICTE Regulations.

20. In view of the above observations, discussion and findings Writ Petition is dismissed with the following directions:-

- (i) Order dated 20.09.2019 passed by the Tribunal in Appeal No. 4 of 2019 is upheld;
- (ii) Interim order dated 15.05.2020 is confirmed.
- (iii) It is held that GR dated 12.07.2016 does not supersede GR dated 05.03.2011;
- (iv) Respondent is entitled to continue in service until the age of 65 years;
- (v) The Performance Review Committee for performance assessment of the Respondent be constituted within a period of 4 weeks from today and if Respondent is

3 2011 SCC OnLine Bom 1308

found fit for being continued till the age of 65 years, the decision of the Performance Committee be taken within two weeks thereafter and conveyed to the Respondent and the Respondent be so appointed;

(vi) Management Council Resolution dated 20.01.2019 cannot be made applicable to the Respondent No.1's case.

21. Writ Petition is disposed.

22. In view of the disposal of the Writ Petition, pending Interim Application No. 3093 of 2022 is accordingly disposed.

[MILIND N. JADHAV, J.]

23. After the Judgment is pronounced in the Court, Mr. Kulkarni, learned Advocate for Petitioner – University has requested for continuation of interim order passed by this Court on 08.02.2022. However, considering the aforementioned judgment and the reasons given therein, I am not inclined to continue the interim order in favour of the Petitioner – University. Hence, the request for continuation of the interim order stands rejected.

[MILIND N. JADHAV, J.]