

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11734 OF 2022

Dr. Rajendra Dagdual Kankariya, Age :
68 years, Occ : Service, Residing at G-
2/121, Indira Park, Chinchwadgaon,
Pune-33

**..PETITIONERS
(ORIG. APPELLANTS)**

V/S.

1. The State of Maharashtra, Through
Director, Having Office at Directorate of
Higher Education, Central Building,
Pune-411 001.

2. Tale Vibhag Shikshan Prasarak Mandal,
Tala, Dist : Raigad, Through Secretary.

3. Dr. Shrinivas Vedak, Age : Adult, Occ :
Practising Doctor Chairman, Local
Management Committee of D.G. Tatkare
Arts and Commerce College, Tala, Dist.
Raigad.

4. D.G. Tatkare Arts & Commerce
College, Tala, Through Principal, Having
Office At D.G. Tatkare Arts and
Commerce College, Tala, Dist.Raigad.

5. University of Mumbai, Fort, Mumbai-
400 032, Through Registrar.

6. Maharashtra University Tribunal
Mumbai, address as Res. 4

..RESPONDENTS

Mr. Sanjay D. Paithane, for the Petitioner.

Mr. P.P. Pujari, AGP for the State.

Mr. Aniket Malu i/by. Mr. Aditya Raktade for Respondent Nos.2 to 4.

CORAM : SANDEEP V. MARNE, J.

Dated : 7 October 2023.

JUDGMENT :

1. By this petition, Petitioner challenges Judgment and Order dated 23 December 2021 passed by the Presiding Officer, Mumbai University and College Tribunal in Appeal No.13/2018. The Tribunal has held that the Management violated Petitioner's right of consideration for extension of his age of retirement from 62 years to 65 years. However, since Petitioner had already crossed the age of 65 years as on 23 December 2021 and since reinstatement was not possible, the Management is directed to pay to the Petitioner compensation equivalent to three months' salary and cost of Rs.10,000/-. Petitioner is aggrieved by non-grant of salary and allowances for a period of three years for wrongfully depriving him of an opportunity to serve till attaining the age of 65 years.

2. Petitioner, in his career spanning over 35 years, served as Professor of Chemistry as well as Principal and Registrar of two different Universities. He came to be appointed on the post of Principal in Respondent No.4-College on 1 February 2012. He attained the age of 62 years on 31 December 2015. By Government Resolution dated 5 March 2011, a decision was taken to increase the age of superannuation of Principals upto the age of 65 years subject to conduct of performance

review by a Committee. Various other conditions are laid down in the Government Resolution, subject to which such extension in the age of retirement can be granted. It appears that the Petitioner's case was not forwarded for conduct of performance review and on that count, he was made to retire on attaining the age of 62 years on 31 December 2015. He filed Appeal No.13/2018 before the Tribunal under Section 81(1) of the Maharashtra Public Universities Act, 2016. The Tribunal has partly allowed the Appeal. The Tribunal has partly allowed the Appeal by judgment and order dated 23 December 2021 holding that the Management failed to follow the mandatory directions under the Government Resolution dated 5 March 2011 with regard to the Petitioner's right of consideration for extension of age of retirement. However, since the Petitioner had already crossed the age of 65 years as on 23 December 2021 and was employed as a Professor on lesser salary during September 2019 to April 2021, the Tribunal proceeded to award compensation equal to three months' salary lastly drawn by him and costs quantified at Rs.10,000/-. Petitioner is aggrieved by the Tribunal's decision to the extent of non-award of salary and wages as well as non-revision of his pay for pension and has accordingly filed the present petition.

3. Mr. S.D. Paithane would appear on behalf of the Petitioner and submit that although the Tribunal has fully decided the Appeal in favour of the Petitioner, it has not granted any relief to him. That the Management deliberately did not follow the procedure prescribed in the Government Resolution dated 5 March 2011 with a view to deny extension of age of retirement to Petitioner. That his case was never

placed before the Performance Review Committee. That the Management did not have any eligible selected candidate for being appointed in place of Petitioner at the time of his retirement. The appointment of Dr. Landage, subsequently made on 24 February 2016, cannot be a reason for denial of extension of age of retirement to the Petitioner. He would take me through various findings recorded by the Tribunal in Petitioner's favour to demonstrate as to how the lawful right of the Petitioner was violated by the management. He would submit that after the Tribunal arrived at the conclusion that Petitioner was illegally denied the right for consideration of his case of extension of age of retirement, the Tribunal ought to have granted the relief of full salary and wages to him for three years in addition to grant of pay fixation to increase his pensionable pay. Mr. S.D. Paithane has further submitted that infact the provision for extension of age of retirement is made in pursuance of the directives issued by the University Grants Commission (UGC). That the UGC had recommended grant of extension of age of retirement without any conditions. That therefore the State Government could not have made such extension conditional by imposing various conditions in the G.R. dated 5 March 2011. In such circumstances, the Petitioner could not have been denied the relief of wages during the extended period for the reason of alleged non-fulfillment of such illegal conditions. In support of his contentions, he would rely upon the judgment of the Apex Court in **Dr. Jacob Thudipara V/s. The State of Madhya Pradesh & Ors.** [2022] 4 SCR 68 and **Gambhirdan K. Gadhvi V/s. The State of Gujarat & Ors.** [2022] 4 SCR 406.

4. *Per-contra*, Mr. Mali, the learned counsel appearing for Respondent Nos.2 to 4 would oppose the petition and submit the management has fully followed the procedure laid down in the Government Resolution dated 5 March 2011. He would submit that Petitioner does not have any inherent right of extending the age of retirement. That age of retirement can be extended only in appropriate cases where the conditions specified in the G.R. are satisfied. That in the present case, the Management was able to find another eligible candidate for being appointed as Principal in pursuance of second advertisement issued prior to Petitioner's retirement. That therefore there was no occasion for the Management to send Petitioner's proposal for being placed before the Performance Review Committee. He would submit that the findings recorded by the Tribunal about violation of Petitioner's right for consideration for extension of age of retirement are infact erroneous and that the management is in the process of considering setting up a challenge to those findings. In any event, he would submit that Petitioner cannot be granted salary and allowances for a period of three years as there was no occasion for the Performance Review Committee to consider his performance. That right to serve during the extended period of retirement was never vested in the Petitioner and therefore the Tribunal's order need not be disturbed.

5. I have considered the submissions canvassed by the learned counsel appearing for the parties.

6. The Tribunal has already held that the Petitioner has been wrongfully denied opportunity of consideration of his case for extension

of his age of retirement from 62 years to 65 years. The order of the Tribunal has not been challenged by the management. Hearing of the present petition can also not be deferred indefinitely to enable the management to take a decision for filing its own petition to challenge those findings of the Tribunal. I therefore need not go into the issue of validity of that finding recorded by the Tribunal. It is therefore not necessary to consider various conditions imposed in the G.R. dated 5 March 2011 and to examine whether the said conditions were fulfilled in the present case. The Tribunal has already held that non-consideration of case of Petitioner for extension of age of retirement as per the G.R. dated 5 March 2011 is illegal.

6. The short issue that therefore arises for consideration is what is the relief that the Tribunal could have granted to Petitioner in the facts and circumstances of the case. Violation of right of consideration for extension of age of retirement is not disputed. Petitioner crossed the age of 65 years by the time the Tribunal decided the Appeal on 22 March 2021. If he was to be granted extension, he could have continued in service upto 31 December 2018. The Tribunal decided the Appeal on 23 December 2021. Therefore, there was no question of granting the relief of reinstatement to Petitioner. Petitioner has admittedly not worked during the said period of three years. The provisions of the G.R. dated 5 March 2011 would indicate that grant of extension of age of retirement is not automatic and subject to fulfillment of various conditions, particularly the recommendations of the Performance Review Committee. In the present case, it is an admitted position that Petitioner's case has not been considered by the

Performance Review Committee. Thus, no right was crystallized in favour of the Petitioner for getting the age of retirement extended upto 65 years. At the same time, the management has illegally denied him the right of consideration of his case.

7. There is thus commission of wrong on the part of the management. The question is how the wrong can be remedied in the present case. The Tribunal has awarded compensation equivalent to three months' wages to the Petitioner and costs of Rs.10,000/-. Since the Petitioner did not actually work during the concerned period, there is no question of granting him full salary and wages, especially when he did not have right to continue till the age of 65 years. In these circumstances, in my view, it would have been appropriate for the Tribunal to direct that the Petitioner deemed to have continued in service till 31 December 2018 for the limited purpose of grant of pay fixation. This would ensure that though Petitioner is not granted salary and allowances for three years, but his pensionable pay atleast increases so that there is corresponding increase in his retirement benefits. This, in my view, would provide some solace to Petitioner for violation of his right of consideration. Considering the facts of the present case, this is a limited relief which could be granted to remedy the wrong committed by the management in violating the right of consideration of his case for extension of the age of retirement.

8. I accordingly proceed to pass the following order :

(i) Judgment and Order dated 23 December 2021 is upheld with a modification that in addition to the relief of compensation and costs already granted by the Tribunal, the Respondents shall treat the Petitioner as having retired from service on 31 December 2018 for the limited purpose of granting him notional pay fixation.

(ii) Accordingly, Petitioner be granted notional pay fixation by granting him annual increments upto 31 December 2018. The proposal for his pension shall accordingly be sent by the management to the Government Authorities by treating him as having retired on 31 December 2018 and by determining his pensionable pay as on 31 December 2018. Respondent No.1 shall act on such proposal and revise his pension and pensionary benefits payable to Petitioner.

(iii) The arrears of pension and other pensionary benefits arising on account of revision in pensionable pay shall be paid to the Petitioner within a period of four months from today.

9. With the above directions, the Writ Petition is disposed of.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.10.23
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Note : Corrections are carried out in cause-title and para-3 only pursuant to speaking to minutes order dated 17 October 2023.