

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4424 OF 2016

State of Maharashtra through
the Secretary and others ... Petitioners.

V/s.

Dattatray Pandurang Malgundkar ... Respondent.

WITH
WRIT PETITION NO. 3147 OF 2016

State of Maharashtra through
the Secretary and others ... Petitioners.

V/s.

Shashikant Budhaji Sawant ... Respondent.

WITH
WRIT PETITION NO. 5961 OF 2016

State of Maharashtra through
the Secretary and others ... Petitioners.

V/s.

Tanaji Krushna Babar ... Respondent.

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Mr. B. V. Samant, Addl. G.P. a/w Mr. S. H. Kankal, AGP for the
Petitioners -State.

Mr. Gaurav Bandiwadekar for the Respondent in WP/5961/2016.

Ms Ranjana Todankar for the Respondent in WP/3147/2016

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**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 25 October 2023.

P.C. :

Heard the learned Counsel for the parties.

2 By these three petitions, State of Maharashtra challenges the order passed by the Maharashtra Administrative Tribunal, Mumbai, setting aside disciplinary action taken against the Respondents.

3 The main issue that was raised by the Respondents in their Original Applications questioning the imposition of punishment was that the inquiry was initiated after their retirement, without taking permission as required under Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules 1982. The Tribunal upheld this contention and set aside the inquiry conducted after the retirement in the cases of the Respondents and allowed the Original Applications.

4 Before the Tribunal, the State had relied upon the Government Resolution dated 2 June 2003 which according to the State empowered it to institute an inquiry event after retirement of the employees. This contention was not accepted by the Tribunal by its order dated 28 November 2013 in Original Application No. 305 of 2013, which is subject matter of Writ Petition No. 4424 of 2016. As regards Writ Petition Nos. 3147 of 2016 and 5961 of 2016 which

arise from Original Applications Nos. 304 of 2013 and 701 of 2008. As regards Writ Petition No. 4424 of 2016, which arises from order passed in Original Application No. 305 of 2013, the same view was taken by the Tribunal. The Tribunal while disposing of the Original Application No. 701 of 2008 in Writ Petition No. 5961 of 2016 relied upon the order passed in Original Application No. 590 of 2006 in the case of *S. M. Mahangade V/s. Director General & Inspector General of Police and Anr.* dated 4 January 2008.

5 The learned Counsel for the Respondents have placed before us the order passed by the Division Bench of this Court dated 29 June 2016 in Writ Petition No. 6359 of 2008, rejecting the petition filed by the State of Maharashtra challenging the order passed by the Tribunal in the case of *S. M. Mahangude*. The order reads thus:

“1. Heard the learned AGP appearing on behalf of the Petitioners -State.

2. The State of Maharashtra is aggrieved by an order passed by the Maharashtra Administrative Tribunal dated 4.1.2008. The Respondent was issued with a show cause notice, initiating a departmental inquiry against him for the alleged misconduct. The Respondent challenged the said initiation of departmental inquiry on the ground that such an inquiry cannot be initiated after a public servant attains age of superannuation. The Tribunal after having noted the relevant provisions of Rule 27(2)(b)(i) of the Maharashtra Civil Services (Pension) Rules, 1982, came to the conclusion that the departmental proceedings could not be initiated against a public servant after he attains age of superannuation. It is an admitted position that even a sanction of the State Government was not

taken before initiating the inquiry.

3. The State Government relied on the GR which permitted initiation of such an inquiry. The Tribunal, in our view, has rightly come to the conclusion that the Rules framed by the State are framed by exercising the power vested in it under Article 309 of the Constitution of India and as such, therefore, the said Government Resolution while exercising its executive power under Article 162 of the Constitution of India could not have issued by the State Government.

4. In our view, the Tribunal has given cogent reasons while allowing the application filed by the Respondent. The order is not perverse or patently illegal. We are, therefore, not inclined to interfere with the decision taken by the Maharashtra Administrative Tribunal. Writ petition, therefore, is dismissed. Rule is discharged.”

6 Therefore, the view taken by the Tribunal is already affirmed by the Division Bench of this Court, which view has been followed by the Tribunal while passing the impugned orders. In light thereof, no merit in these petitions, the same are accordingly rejected.

7 The learned Counsel for the Respondent in Writ Petition No. 5961 of 2016 informs us that the Respondent has retired on superannuation and he is receiving full pension as of day and as regards the other Respondents the learned Counsel states that there are no instructions.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)