Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9415 OF 2021

Dr Satish Arjun Bhosale,
Age 60 years, Occ Retired, R/at Survey No. 64, Behind Trimurti Hospital Opp Samrudhi Paradise, Vadgaon Bk, Pune 4. …Petitioner

~ versus ~

1. **The State of Maharashtra,**
Through deputy director of Higher Education, Pune, Divisional Office, Pune.
2. **Shree Shivaji Maratha Society,**
425, Shukrawar Peth, Pune 02.
3. **Appasaheb Jedhe Arts, Commerce and Science College,**
Through its Principal, Pune. …Respondents

Appearances

for the petitioner	**Dr Uday P Warunjikar.**
for respondent - State	**Mr NC Walimbe, AGP.**
for respondents nos. 2 & 3	**Mr Rushikesh C Borge**, *i/b Prathamesh B Bhargude.*

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

DATED : 27th February 2023

ORAL JUDGMENT (*Per GS Patel J*):-

1. Rule. Rule made returnable forthwith.

2. The Petitioner became a Professor on 18th March 2021. He attained the age of retirement on 30th June 2021. He has several degrees including a PhD. His career began he says, in 1986 when he was first appointed an Assistant Professor. He was conformed two years later. in 1988. In 2006, in the course of an ordinary career progression, he was promoted to the post of Associate Professor. Then on 13th July 2020, he was given charge as Principal of the 3rd Respondent a science college in Pune.

3. The Petitioner attained the age of 62 on 30th June 2021.

4. Prayers (a) and (b) of the Petition read thus:

> "(a) Be pleased to quash and set aside the Government Resolution dated 12.07.2016 by holding that it is ultra vires to the regulations and guideline issued by the University Grants Commission under the provisions of the University Grants Commission Act, 1956.
>
> (b) Be pleased to call for records and proceedings of the letter/order dated 13/10/2021 issued by the Respondent No. 1 to the Respondent No. 3 in respect of the present petitioner and after going through the same, and satisfying

> about its legality, validity and propriety, be pleased to quash and set aside the same and allow the application made in toto."

5. The complaint is that the UGC Scheme and guidelines in question prescribed a retirement age of 62. According to the Petitioner, not only are these guidelines binding on various State Governments, but they were actually accepted by the Maharashtra Government by an independent Government Resolution dated 23rd November 2011 that enhanced the retirement age to 62.

6. However, by a subsequent Government Resolution dated 12th July 2016, a copy of which is at page 90, the Government of Maharashtra reduced the age to 60 from 62 years. This is what is challenged in the Petition.

7. The Petitioner had made a representation to the Joint Director Higher Education Pune Regional Officer on 24th May 2021. There was no answer to the Petitioner filed Writ Petition No. 2820 of 2021. That was disposed of by an order 7th July 2021 directing the authorities to decide the Petitioner's representation within four weeks.

8. One thing ought to have led to another, but did not and the Petitioner issued a contempt notice. While this seems to have had the desired effect, it did not have the intended one. The representation did get decided on 13th October 2021, but it was rejected with the statement that the Petitioner was not eligible to superannuation at the age of 62.

9. As we noted, the frame of prayer clause (a) is that, according to the Petitioner, the State Government is bound by the UGC scheme and that the GR of 12th July 2016, in taking a different stand, specifically in the context of age of superannuation, is "ultra vires".

10. Prayer clause (b) is actually consequential because it assails the decision on the Petitioner's representation.

11. There is an Affidavit in Reply by the State Government starting at page 93. There is a reference in this Affidavit to the decision of the Supreme Court in the case of *Jagdish Prasad Sharma & Ors v State of Bihar & Ors.*[1] It is the same UGC scheme that was the subject matter of the *Jagdish Prasad Sharma* case. Several states were before the Supreme Court. We cannot agree with Dr Warunjikar's submission that the decision is limited to those States or to one particular facet of funding or funding sharing between the central and the state. To our mind, the concluding paragraphs of the judgment by a three-Judge Bench of Supreme Court put the matter beyond controversy. Paragraphs 64, 65, 66, 67, 68, 70 and 71 read thus:

> 64. Lastly, coming to the submissions made on behalf of the State of Rajasthan and the State of U.P., on behalf of both the States **it was sought to be urged that the UGC Regulations could not control the power of the State Governments and/or the service conditions of its employees as the same are to be exclusively decided by the Union or the State, as provided in Article 309 of the Constitution.** It was submitted that it had also been held in

1 (2013) 8 SCC 633.

Osmania University case [*B. Bharat Kumar v. Osmania University*, (2007) 11 SCC 58 : (2008) 1 SCC (L&S) 722] **that the fixation of the age of superannuation by the State Government is well within its jurisdiction and neither the Scheme of the Central Government nor the UGC Regulations have any binding effect.**

65. *Though, at first blush, the scope of the appeals seemed to be limited and confined to the question as to whether the Regulations framed by the University Grants Commission under Section 26 of the University Grants Commission Act, 1956, were binding on the States and the State-funded and other universities and colleges being run therein, but as the hearing progressed, several other ancillary issues also came to be raised.*

66. As has been indicated hereinbefore, the Central Government enacted the UGC Act in 1956 to coordinate and determine standards in universities and towards that end, to establish a University Grants Commission for taking all steps, as it thought fit, for the promotion of university education and for determination and maintenance of standards of teaching and research in universities. On 24-12-1998, the Commission issued a Notification relating to revision of pay scales and other service conditions. **Thereafter, after the expressions of a series of views regarding the enhancement of the age of superannuation from 60 to 62 and from 62 to 65 years**, the Central Government in its Department of Higher Education, wrote to the Secretary, UGC, on 31-12-2008, with regard to a scheme for revision of pay scales of teachers and other equivalent cadres in all the Central universities and colleges and deemed universities, following the revision of pay scales of the Central Government employees on the recommendation of the Sixth Central Pay Commission.

67. **One of the common submissions made on behalf of the respondents was whether the aforesaid Scheme**

would automatically apply to the Centrally-funded institutions, to the State universities and educational institutions and also private institutions at the State level, on account of the stipulation that the Scheme would have to be accepted in its totality. As indicated hereinbefore in this judgment, the purport of the Scheme was to enhance the pay of the teachers and other connected staff in the State universities and educational institutions **and also to increase their age of superannuation from 62 to 65 years.** The Scheme provides that if it was accepted by the State concerned, UGC would bear 80% of the expenses on account of such enhancement in the pay structure and the remaining 20% would have to be borne by the State. This would be for the period commencing from 1-1-2006 till 31-3-2010, after which the entire liability on account of revision of pay scales would have to be taken over by the State Government. Furthermore, financial assistance from the Central Government would be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 1-1-2006. **While most of the States were willing to adopt the Scheme, for the purpose of receiving 80% of the salary of the teachers and other staff from UGC which would reduce their liability to 20% only, they were unwilling to accept the Scheme in its composite form which not only entailed acceptance of the increase in the retirement age from 62 to 65 years, but also shifted the total liability in regard to the increase in the pay scales to the States after 1-4-2010.**

68. Another anxiety which is special to certain States, such as the States of Uttar Pradesh and Kerala, has also come to light during the hearing. In both the States, the problem is one of surplusage and providing an opportunity for others to enter into service. On behalf of the State of Kerala, it had been urged that there were a large number of

educated unemployed youth, who are waiting to be appointed, but by retaining teachers beyond the age of 62 years, they were being denied such opportunity. As far as the State of U.P. is concerned, it is one of job expectancy, similar to that prevailing in Kerala. The State Governments of the said two States were, therefore, opposed to the adoption of the UGC Scheme, although, the same has not been made compulsorily applicable to the universities, colleges and other institutions under the control of the State authorities.

… …

70. The authority of the Commission to frame regulations with regard to the service conditions of teachers in the Centrally-funded educational institutions is equally well-established. **As has been very rightly done in the instant case, the acceptance of the Scheme in its composite form has been left to the discretion of the State Governments. The concern of the State Governments and their authorities that UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by UGC relate to Schedule VII List I Entry 66 to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under List III Entry 25, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any Central legislation.**

71. However, in the instant case, the said questions do not arise, inasmuch as, as mentioned hereinabove, **the acceptance of the Scheme in its composite form was**

> **made discretionary and, therefore, there was no compulsion on the State and its authorities to adopt the Scheme. The problem lies in the desire of the State and its authorities to obtain the benefit of 80% of the salaries of the teachers and other staff under the Scheme, without increasing the age of retirement from 62 to 65 years, or the subsequent condition regarding the taking over of the Scheme with its financial implications from 1-4-2010**.

(*Emphasis added*)

12. As the emphasized portions show, the Supreme Court clearly said that it was the right of every State Government under list the Entry 25 of the VII Schedule of the Constitution to enact its own laws with regard to the service condition of teachers and other staff of Universities and Colleges within a State. These will have effect unless shown repugnant to a Central legislation. The scheme itself (para 71) was made discretionary in its application and the Supreme Court specifically held that no State or its authorities were compelled to adopt the scheme. The conflict that the Supreme Court saw is highlighted in paragraph 71 where the State seem to have desired to obtain the financial benefit under the scheme but without adopting its other requirements. That is not the case here.

13. There is also the decision of a Division Bench of this Court (SV Gangapurwala J (as he then was) and Sangitrao S Patil J) of 6th June 2017, in *Professor Dr Yashwant Kondji Khillare & Ors v State of Maharashtra & Ors*.[2] The judgment dealt with common questions of law in a group of Petitions. The Petitioners were Associate

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2 2017 SCC OnLine Bom 9477 : (2017) 5 Mah LJ 825.

Professors and Librarians in various Respondent Colleges. They too sought the quashing of the GR dated 12th July 2016 — the very same GR that is the subject matter of prayer clause (b) in the present Petition. Those Petitioners also invoked the earlier GR of 23rd November 2011 among others and raised the questions of the age of superannuation. The Division Bench noted the submission on behalf of the government that the Petitioners had no vested right in claiming an enhanced age of retirement. The Division Bench made extensive reference to the Supreme Court decision in *Jagdish Prasad Sharma* as also the other decisions cited. Pertinently the Division Bench dealt with another argument that is also canvassed before us namely that after the State Government adopted the UGC scheme some persons obtained benefit. This is noted by the Division Bench in paragraph 14. But it was also held that after the 12th July 2016 GR, there was not a single case of a person similarly situated getting the benefit of the enhanced retirement age. In paragraph 20, obviously following the decision of the Supreme Court in *Jagdish Prasad Sharma*, the Division Bench held:

> "20. As stated above, the State Government, in exercise of its policy making power resolved to reduce the age of retirement of the Lecturers/Associate Professors/ Librarians from 62 years as per the impugned Government Resolution dated 12.07.2016. It was the prerogative of the Government to fix the age of retirement of such employees. As stated above, there is nothing on record to show that after issuance of the said resolution, the Government granted the benefit of enhanced age of retirement upto 62 years to any of the Associate Professors/Lecturers/Librarians. All the incumbents, whose cases were pending till 12.07.2016, have been treated equally in terms of the impugned Government Resolution.

Thus, no discrimination has been caused by the State Government. **As stated above, the reasoning given by the State Government for change in the policy in the matter of age of retirement appears to be reasonable, proper and acceptable. The impugned Government Resolution, thus, is neither irrational nor unreasonable, nor discriminatory. In the circumstances, the above cited judgment would not be of any help to the petitioners to challenge the validity of the impugned Government Resolution.**

21. In our opinion, the impugned Government Resolution is neither unreasonable nor irrational, nor arbitrary. The proposals of the individual incumbents for getting benefit of enhanced age of retirement have been considered as per the policy that was prevailing at the time of their consideration. No discrimination has been caused by the State Government in extending or denying such benefit of any incumbent. We do not find anything unconstitutional or violative of Article 14 of the Constitution of India in the impugned Government Resolution dated 12.07.2016. **The petitioners have no vested right in claiming enhancement in the age of retirement upto 62 years. If that be so, they are not entitled to get any relief as claimed in the petitions.** The petitions are devoid of any substance. They are liable to be dismissed. Hence the order:- ……

(*Emphasis added*)

14. Accordingly, the Division Bench dismissed the Writ Petition.

15. There is also another short order of Division Bench of this Court (BR Gavai J as he then was and RI Chagla J) of 29th June 2017 in Writ Petition No. 13950 of 2016 (*Professor Dr MR Khan v*

The Chairman, Anjuman Khairul Islam & Ors) on an identical point, though without reference to the Supreme Court judgment. The Writ Petition before the Division Bench was dismissed.

16. All these decisions are binding on us. We cannot possibly go down the route Dr Warunjikar would have us traverse, to hold now that the GR of 12th July 2016 is arbitrary or unconstitutional etc. The Division Bench in *Yashwant Kondji Khillare* has already held that the GR is not arbitrary, unreasonable, irrational or unconstitutional. We are bound by that view; and, in any case, we endorse it entirely.

17. We are unable to see how the Petitioner can have any legal or constitutional let alone fundamental right to demand that the retirement age should be fixed by the State Government only in conformity with the UGC guideline or to hold that the UGC Guideline binds the State Government. The Supreme Court decision in *Jagdish Prasad Sharma* is to the contrary.

18. There is nothing shown to us to indicate that the impugned decision of 13th October 2021 is otherwise in any way vulnerable.

19. We find no merit in the Petition. The Petition is dismissed.

20. There will be no order as to costs.

(Neela Gokhale, J) **(G. S. Patel, J)**