



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4307 OF 2022**

SUDHAKAR GOVIND SHELAR
AGE: 58 YEARS, OCC: RETIRED (LIBRARIAN)
R/O: SHIVAJI NAGAR, ADINATH VASAHAT RAHURI, TQ.
RAHUI, DIST. AHMEDNAGAR. ..Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
Medical Education and Drug Department,
Maharashtra State, Mantralaya, Mumbai
2. Shri Vivekanand Nursing Home Trust,
Shri Shivaji Nagar, Tq. Rahuri,
Dist. Ahmednagar,
Through its Chairman/Trust Superintendent
3. Maharashtra University of Health Sciences,
Nashik, Maharashtra
4. Dr. Kuldip s/o Raj Kholi,
Director Ayush Department,
Govt. Dental College, 4th Floor,
Mumbai-400032
5. The Principal
Ayurved Mahavidyalaya Shivaji Nagar,
Tq. Rahuri, District, Ahmednagar. ..Respondents

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Ms. Laxmi R. Thakur h/f Mrs. S. N. Salunke, Advocate for the
Petitioner.

Mr. N. S. Tekale, AGP for Respondent No.1.

Mr. A. V. Hon, Advocate for Respondent Nos.2 to 5.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATED : 04th APRIL 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent
of the parties, matter is taken up for final hearing at the stage of
admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India impugning the order dated 03.05.2021 passed by respondent no.2-Educational Institution and seeks to quash and set aside the order of superannuation and continue his services upto attaining age of 60-62 years.

3. The petitioner contends that he was appointed as an Assistant Librarian at respondent no.5-Ayurved Mahavidyalaya since 04.01.1992. He was promoted as Librarian. Suddenly, on 03.05.2021, he received communication from the President of the Trust-respondent no.2, informing that since he is completing 58 years of age, he shall retire on superannuation on 31.05.2021. Accordingly, he shall be discharged from the service. The petitioner made representation dated 09.03.2022 to the Principal of respondent no.5-College based on Government Resolution dated 22.08.2012 and pointed out that the age of retirement for Librarian is fixed to 60 years, which can be extended up to 62 years. As such, he is prematurely discharged. However, respondents failed to take cognizance of his representation. Hence, this petition for issuance of Writ.

4. Ms. Thakur, learned Advocate holding for Mrs. Salunke, learned Advocate appearing for the petitioner submits that the petitioner was appointed as an Assistant Librarian, then he was promoted as Librarian. He is discharged from service at the age of 58 years. She would point out that Maharashtra University of Health Sciences-respondent no.3 passed Resolution dated 08.04.2011, enhancing the age of retirement of the teachers to 62 years. Similarly, she relies upon the communication dated 26.07.2010 issued by the Registrar of Maharashtra University of Health Sciences to contend that the Librarian compassed within

definition of “Teacher” under Maharashtra Universities Act, 1994, which was holding the field before inception of the Health Universities Act, 1998. She would further refer to definition of ‘Teacher’ under Maharashtra Public Universities Act, 2016, that includes “Librarian”. She would further rely upon the judgment of the Division Bench of this Court in case of **Mr. Vaijanath Maruti Kadam Vs. The Government of Maharashtra & ors.** passed in **Writ Petition No.3838/2007** dated **03.03.2008** to contend that in case retirement and discharge is declared invalid, the petitioner can be bestowed with continuity of service and consequential benefits.

5. Mr. Tekale, learned A.G.P. for respondent no.1 and Mr. Hon, learned Advocates appearing for respondent nos.2 to 5 strongly opposes the prayer in the petition. Mr. Tekale, learned A.G.P. submits that the issue raised in this petition is considered and decided by Division bench of this Court at principal seat in case of **Ravindra Chandrashekhar Kulkarni Vs. The State of Maharashtra & ors**, [**Writ Petition No.642/2021** dated **17.02.2021**] holding that the Librarian appointed in the Colleges affiliated to the Maharashtra University of Health Sciences does not get status of “Teacher” and the age of retirement of such Librarian would be 58 years.

6. We have considered the submissions advanced by the learned Advocate for the respective parties. It would be apposite to refer to the definition of “Teacher” as per Section 2(35) of the Maharashtra University of Health Sciences Act, 1998, which reads thus:

““teacher” means full time approved Demonstrators, Tutors, Assistant Lecturers, Lecturers, Readers, Associate Professors, Professors and other persons teaching or

giving instructions on full time basis in affiliated colleges or approved institutions in the University.”

7. The plain reading of the aforesaid definition would show that the Librarian is not included under the categories of teachers made therein. Even the residual entry of other persons teaching or giving instructions on full time basis would not include Librarian, since it is not demonstrated before us that the Librarian was bestowed with the responsibilities of passing the instructions to the students on full time basis. Reliance of the learned Advocate appearing for the petitioner on the definition of the “Teacher” employed under Section 2(34) of the Maharashtra University Act cannot be derived in the facts of this case, since the Institution where the petitioner worked has been affiliated to the Health University, governed by independent statute i.e. Maharashtra University of Health Sciences Act, 1998. The definition in Public Universities Act 2016 or Non-Health Universities Act cannot be burrowed for extending benefits in favour of the petitioner.

8. It appears that the Senate of Health University, Nashik has passed a Resolution and recommended to the State Government to amend the definition of Teacher in the Health University Act so as to include Librarian or Assistant Librarian within the definition of ‘Teacher’ and get the uniformity for Librarians working in the affiliated colleges either under Health University or Public University. However, till this date no such amendment is brought in vogue. Petitioner cannot seek benefit of such recommendation, unless it has been accepted and made part statute.

9. This Court in case of ***Ravindra Chandrashekhar Kulkarni*** (supra) dealt with the selfsame issue and declined to

accept the submission that the “Librarian” under Health University to be treated at par with the “Librarian” under Public University, in absence of the amendment in the Health Universities Act. We have no reason to deviate from the view taken by this Court in case of ***Ravindra Chandrashekhar Kulkarni*** (supra).

10. Although the learned Advocate for the petitioner relies on the judgment of the Supreme Court of India in case of ***P. S. Ramamohana Rao Vs. A. P. Agricultural University and Another***¹ to contend that in case of premature retirement by wrong interpretation of the Rules, the petitioner would be entitled to receive all emoluments upto the age of actual retirement, however in light of the findings recorded in the aforesaid paragraphs, we find that petitioner failed to make out any case for exercise of our writ jurisdiction under Article 226 of constitution of India. There is no infirmity in the impugned order declaring petitioner to be superannuated/retired on attaining the age of 58 years fixed for superannuation of the Librarian. Consequently, there is no merit in the Writ Petition and the same is dismissed.

11. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE