



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

7 WRIT PETITION NO. 13021 OF 2023

Mohammad Muzaffar Siddiqui s/o .. Petitioner
Mohammad Abdul Qadar,
Age. 63 years, Occ. Retired,
R/o. Plot No.135, Arif Colony,
Aurangabad.

Versus

- 1) The State of Maharashtra .. Respondents
Through Principal Secretary,
Minority Development Department,
Mantralaya, Mumbai – 32.
- 2) The Maharashtra State Board of Wakf,
Panchakki, Aurangabad,
Through its Chief Executive Officer

Mr.Rajendra Deshmukh, Sr. Counsel a/w. Mr. Kunal Kale i/b. Mr. S.S. Kazi,
Advocate for the petitioner.
Mr.S.K. Tambe, AGP for the respondent/State.
Mr.N.E. Deshmukh, Advocate for respondent No.2.

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRADE, JJ.
DATED : 29.01.2024

ORAL JUDGMENT : [PER : RAVINDRA V. GHUGE, J.] :-

01. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

02. We have considered the submissions of the learned Sr. Advocate representing the petitioner and the strenuous submissions of the learned Advocate representing the Wakf Board, who has relied on all the grounds set out in the affidavit dated 27.01.2024, filed by Mr. Mohinuddin Babalal Tashildar.

03. It is undisputed that the Full Bench of this Court has delivered a judgment in Writ Petition No. 5855 of 2019 on 26.09.2022 **(Iftekhharullah Baig s/o. Saidullah Baig Vs. The State of Maharashtra and Anr.)**, thereby laying down the law that when an employee joins service, the terms and conditions of service applicable to him as on the date of joining duties would continue apply to him, unless they are altered to his benefit. Any alteration in the service conditions, after the employee's joining employment on the basis of particular set of service conditions, prejudicial to his interest, would not be applicable. It would be advantageous to refer to the discussion and conclusions of the Full Bench in **Iftekhharullah(Supra)**, in paragraph Nos. 24 to 45, which read as under:-

“ISSUES AND CONCLUSIONS

24. The issue referred to our Full Bench is in the light of the divergent views noticed by the Division Bench, as recorded in paragraphs 4, 5 and 6 reproduced under paragraph 3 hereinabove. Having considered the submissions of the learned Senior Counsel on behalf of the petitioners and the Wakf Board, we are of the view that the following issues need to be dealt with by our Full Bench :-

- (a) Whether, the draft regulations, without being approved by the competent authority/Government, could be enforced though the existing regulations are in operation?
- (b) Whether, the age of retirement applicable to the employees at the time of joining duties, can be altered to their prejudice at any time during their service tenure?

ISSUE NO.1

25. In the case before us, the Wakf Board has plainly admitted, and could not have contradicted, the fact that these petitioners were appointed under the 1954 Act and the 1964 Regulations. Their age of superannuation was 60 years. The 2003 draft regulations were never approved by the Government until 2018.

26. In *Vimal Kumari vs. State of Haryana and others*, (1998) 4 SCC 114, the Honourable Supreme Court dealt with the effect of the draft rules and held that if the draft rules are intended to be notified in the near future, they can be followed in the interregnum to meet emergent situations. They cannot be followed if there is no intention to notify the draft rules. This is because they are yet to acquire a statutory character under Article 309-proviso. As the draft rules were not notified for about eight years and neither did the Government offer any explanation for not doing so, it was held that the draft rules could not be invoked for regulating promotions. The draft rules were prepared in 1983 and they were lying in nascent state since then.

27. In the instant case, the regulations were proposed in 2003 in which, the retirement age was maintained at 60 years. The proposed regulations were amended in 2005 for recommending reduction of age of superannuation to 58 years. For 15 years, these proposed regulations were in cold storage from 2003 to 2018 and it was on account of the order of this Court that the Government accorded its approval in 2018. There was no emergent situation to reduce the age of retirement from 60 years to 58 years in the light of the fact that the 1964 Regulations were still in force.

28. In *Union of India through Government of Pondicherry and another vs. V. Ramkrishnan and others*, (2005) 8 SCC 394, it was held that the rules validly framed under proviso to Article 309, existing at the time of adhoc promotion, remained operative till replaced by another set of validly framed rules. Promotions based on draft rules, which were contrary to the rules then in force, were held to be invalid. This was the exact situation when the Division Bench of this Court dealt with

Ghulam Mustaffa Khan (supra). The 1964 Regulations were in force and the proposed/draft regulations were not approved. Hence, the Division Bench could not have relied upon the draft regulations when the 1964 Regulations were in operation.

29. In **Mahabir Vegetable Oils (P) Ltd. and another vs. State of Haryana and others, (2006) 3 SCC 620**, the Honourable Supreme Court held that an exemption granted, can be given retrospective effect by subordinate legislation if the power in that behalf is contained in the main Act. A statute cannot be construed to have retrospective operation unless such construction appears very clearly in terms thereof or arises by necessary and distinct implication. The State Government had notified its intention to amend the rules and had invited objections to the draft amendments. However, in the case before us, the Government had not notified its intention to amend the regulations, inasmuch as, there is no clause in the Regulations of 2017 that they would apply retrospectively to the employees of the Wakf Board.

30. In **Mahabir Vegetables (supra)**, the Honourable Supreme Court concluded that promissory estoppel under the administrative law would operate even in the legislative field. It was observed in paragraph 25 as under :-

“25. *It is beyond any cavil that the doctrine of promissory estoppel operates even in the legislative field. Whereas in England the development and growth of promissory estoppel can be traced from Central London Property Trust Ltd. v. High Trees House Ltd. [(1947) 1 KB 130], in India the same can be traced from the decision of this Court in Collector of Bombay v. Municipal Corporation of the City of Bombay, AIR 1951 SC 469. In that case the government made a grant of land (which did not fulfill requisite statutory formalities) rent free. It, however, claimed rent after 70 years. The government, it was opined, could not do so as they were estopped. It was further held therein that there was no overriding public interest which would make it inequitable to enforce estoppel against the State as it was well within the power of the State to grant such exemption.*”

31. As such, until new regulations were approved by the competent authority/Government so as to replace the earlier regulations, the draft regulations could not have the force of law. They would assume the effect of law only after they are approved. These proposed regulations, in fact recommended the retirement age of 60 years. Subsequently, by resolution dated 30.11.2005, this proposal was altered and the age of superannuation was reduced to 58 years. These draft regulations remained on the file of the Government without any approval until 2018. Hence, we conclude that the draft regulations without being transformed into a law, would not amount to the repealing of the earlier 1964 regulations. It is, therefore, our considered view that the draft regulations would have no effect as they are purely in the form of a draft and cannot assume the character of law. We answer issue No.1 accordingly.

32. Considering the above, we are unable to endorse the view taken by

the learned Division Bench at Aurangabad in *Ghulam Mustafa Khan (supra)* and we conclude that it does not lay down the correct law.

ISSUE NO.2

33. In *M.G. Pandke (supra)*, the Honourable Supreme Court dealt with the issue of retirement age of the teachers. It was held in paragraphs 13 and 14 as under:-

“13. When the Code was enforced in the year 1963, the Act and Regulations were holding the field in Vidarbha Division. Under the Act and the Regulations the age of superannuation being 60 years, the Code, while fixing 58 years as the age of superannuation for rest of Maharashtra, permitted the Vidarbha teachers to superannuate on attaining the age of 60 years. The Maharashtra Act which came into force on January 1, 1966 repealed the Act and the regulations. In Baboolal's case (supra) the High Court referred to the repealing and saving section of the Maharashtra Act and came to the conclusion that there was no provision thereunder to save the regulations. Assuming that the Regulations under the Act stood repealed, the Code which was framed by the Maharashtra Government continued to hold the field. It is not disputed by the learned Counsel for the appellants that the Code by itself is not statutory and is in the nature of executive instructions. But he strongly relies on Regulation 19(7)(xvi) of Maharashtra Regulations and contends that the said Regulation makes it obligatory for the Municipal Council Hinganghat to follow the provisions, of the Code. It is for the State Government to frame the Code in whatever manner it likes but once the Code is in operation its provisions have to be followed by the Municipal Council Hinganghat under the mandate of Regulation 19(7)(xvi) of Maharashtra Regulations. We see considerable force in the argument of the learned Counsel. The Code has been framed with the purpose of bringing security of service, uniformity, efficiency and discipline in the working of non-Government High Schools. It has to be applied uniformly to the schools run by various Municipal Councils in the State. It is no doubt correct that the Municipal Councils have the power to frame bye-laws under the Maharashtra Municipalities Act, 1965 but if the field is already occupied under the mandate of statutory Maharashtra Regulations, the Municipal Council cannot frame bye-laws to the contrary rendering the mandate of the Maharashtra Regulations nugatory. We are of the view that the Municipal Council Hinganghat has out stepped its jurisdiction in framing bye-law 4 of the bye-laws. We, therefore, direct that the conditions of service of the appellants shall be governed by the Code as enforced by Regulation 19(7)(xvi) of the Maharashtra

Regulations. Bye-law 4 of the bye-laws shall not be applicable to the appellants.

14. *We also agree with the second contention advanced by the learned Counsel for the appellants. It is not disputed that the High Schools are run by various Municipal Councils in Vidarbha Division under identical circumstances. The conditions of service of the teachers working in these schools are governed by the provisions of the Code as amended from time to time. Only the age of superannuation has been reduced from 60 to 58 years by some of the Municipal Councils by framing bye-laws. In the Municipal Councils where there are no such bye-laws, the age of superannuation continues to be 60 years. Since 1951, when the Act came into force in the erstwhile State of Madhya Pradesh, the conditions of service of the teachers in Vidarbha Division have been identical. They have been and are governed by the same statutory provisions and the same Education Code. Historically the teachers working under the Municipal Councils in Vidarbha Division belong to the class. It would not be fair to bring in disparity within the class in the matter of superannuation. We, therefore, strike down bye-law 4 of the bye-laws framed by Hinganghat Municipal Council as violative of Article 16 of the Constitution of India."*

34. It was thus, concluded that the condition of service regarding the age of retirement of teachers was governed by the Code as applicable and the Municipal Councils had no jurisdiction to frame bye-laws to the contrary rendering the regulations nugatory. The conditions of service are governed by the provisions of the Code applicable and the age of superannuation cannot be reduced from 60 to 58 years by framing bye-laws.

35. In ***Union of India and others vs. Arun Kumar Roy, AIR 1986 SC 737***, the Honourable Supreme Court concluded that the Government servant, whose appointment, though originates in a contract, acquires a status and thereafter, is governed by his service rules and not by the terms of the contract. The powers of the Government under Article 309 to make rules to regulate the service conditions of its employees are very wide and unfettered. These powers can be exercised unilaterally without the consent of the employees concerned. The terms and conditions of an employee under the Government, who enters service on a contract, will, once he is appointed, be governed by the rules governing his service conditions. It will not be permissible thereafter, for him to rely upon the terms of contract which are not in consonance with the rules governing the service. ***Roshan Lal Tandon vs. Union of India, AIR 1967 SC 1889*** and ***State of Jammu and Kashmir vs. Triloki Nath Khosa, AIR 1974 SC 1***, were followed in ***Arun Kumar Roy (supra)***. In ***M.G. Pandke (supra)***, the Honourable Supreme Court concluded that the service conditions applicable to the employees cannot be altered to the prejudice of such employees.

36. Section 24 of the Wakf Act, 1995, which repealed the 1954 Act, specifically prescribed in sub-section (2) that the appointment of officers and other

employees, their term of office and conditions of service, shall be such as may be provided by the regulations. Considering the applicability of Section 24(2) of the 1995 Act, which was brought into force on 01.01.1996, the regulations of 1964 prescribing the age of superannuation as 60 years, were not disturbed. The said regulations of 1964 were neither repealed nor replaced by new regulations. Admittedly, all the petitioners before us have been appointed prior to 1995 when the 1954 Act and the 1964 Regulations were applicable.

37. Section 110 of the 1995 Act prescribed the powers of the Board to make regulations, only with the previous sanction of the State Government. Clause (e) of sub-section (2) of Section 110 mandates that the terms and conditions of service of the officers and other employees of the Board shall be under Section 24(2) of the 1995 Act. Section 24(2) adverts to the regulations insofar as the term of office and conditions of service of the employees are concerned. Section 110(3) specifically provides that all regulations made under this Section shall be published in the official gazette and shall have effect from the date of such publication. It is undisputed that the 2017 Regulations were published in the official gazette "June 21-27, 2018". It is thus, beyond any debate that the 1964 Regulations were applicable until the 2017 Regulations were introduced in June, 2018.

38. The law laid down in *Bishun Narain Misra (supra)* would have no applicability since the issue before the Honourable Supreme Court was based on different set of facts. The appellant joined service in July, 1933 and his age of retirement was prescribed as 55 years. Just before his retirement, the Government raised the age to 58 years. Soon thereafter, the Government again reverted back to the earlier age of superannuation which was 55 years. It was in these circumstances that the Honourable Supreme Court concluded that the Government had first raised the age from 55 years to 58 years and then, reduced the age to 55 years, which was the original condition of service of the appellant.

39. In *D.Shankaran (supra)*, the Honourable Supreme Court dealt with the power of the Government in regulating the age of retirement. Even in this case, the State of Andhra Pradesh decided to increase the age of retirement from 55 years to 58 years, which was not based on the recommendation of the A. Krishna Swamy Commission. This decision was then retracted by the Government. A data pertaining to various States was produced before the Court wherein, there were several instances of Governments increasing the retirement age to 58 years and then, retracting the decision to revert back to the original age of retirement as was the condition of service of the employees. This judgment as well would not assist the Wakf Board.

40. The judgment delivered by the Honourable Supreme Court in *Shri Ram Krishna Dalmia (supra)* is on the issue of determining the validity of a statute on the ground of violation of Article 14 and whether, Section 3 of the Commissions of Enquiry Act (60 of 1952) violates Article 14 of the Constitution of India.

41. In *Magic Wash Industries (Private) Limited vs. Assistant Provident Fund Commissioner and others, 1999 Vol.II Current Labour Reports 426*, the learned Division Bench of this Court at Goa concluded on the issue of reduction of the infancy

period under Section 16(1)(d) of the EPF and MP Act, 1952, that there can be no doubt that the vested rights or benefits under the legislation could be retrospectively taken away by legislation, but the statute taking away such rights or benefits must expressly reflect its intention to that effect. It was held that the amended provision does not curtail the infancy period of the already existing establishments which enjoyed five years infancy period and that the amended provision would be applicable only to establishments newly set up after coming into effect of the said provision on the statute book.

42. In ***Chairman, Railway Board and others vs. C.R. Rangadhamaiah and others, (1997) 6 SCC 623***, the learned Five Judges Bench of the Honourable Supreme Court concluded that the retrospective amendment affecting vested or accrued rights of government employees, is invalid. It was held that the retrospective reduction of pension as admissible under the Rules and the service conditions is unreasonable, arbitrary and therefore, violative of Articles 14 and 16. A rule which operates 'in futuro' so as to govern future rights of those already in service, cannot be assailed on the ground of retrospectivity. But, a rule which seeks to reverse from an anterior date a benefit which has already been granted or availed of, can be assailed as being violative of Articles 14 and 16 of the Constitution of India. In paragraph 24, the Honourable Supreme Court held as under :-

“24. *In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon, B.S. Yadav and Raman Lal Keshav Lal Soni.*”

43. In ***P. Tulsidas and others vs. Government of Andhra Pradesh and others, (2003) 1 SCC 364***, the Honourable Supreme Court concluded that the rights acquired under the provisions, were very much rights acquired and protected by law. Such rights could not be withdrawn by an Act of the legislature with retrospective effect. Rights acquired by employees under the provisions are legally protected rights and cannot be withdrawn by the legislature with retrospective effect.

44. In ***Bank of Baroda and another vs. G. Palani and others, (2022) SCC 612***, the Honourable Supreme Court concluded that existing provisions of the

regulations could not have been amended with retrospective effect, taking away the rights accrued to the employees, that too merely on the basis of a joint note signed between Indian Banks Association and Officers Association having no statutory basis.

45. In view of the above, we are of the view that the service conditions applicable to the employees under the Rules and Regulations existing on the date of appointment, cannot be altered to their prejudice. Issue No.2 is answered accordingly.”

04. In the case in hands, the petitioner joined service on 09.02.1983.

It is undisputed that his retirement age as prescribed by the Act and the Rules was 60 years. He was declared as being superannuated on 30.06.2018 at the age of 58. The Full Bench laid down the law on 26.09.2022 and concluded that such employees should have been permitted to work for further period of two years so as to superannuate at the age of 60 years. Had that happened with the present petitioner, he would have continued in employment till 30.06.2020, when he would have completed 60 years of age.

05. The strenuous submissions of the Wakf Board on the basis of the affidavit filed by Mr.Tashildar, are totally fallacious and wholly unsustainable. The contents of the affidavit practically run counter to the law laid down by the Full Bench. A cause of action for the present petitioner arose initially when he was retired at the age of 58 years and surely after the Full Bench delivered the verdict on 26.09.2022. This verdict was followed by several

judgments of the Division Benches of this Court granting benefits to the employees in the light of the law laid down by the Full Bench. One such judgment is dated 07.09.2023 delivered in Writ Petition No. 10516 of 2019 (Mohammad Abdul Majid Khan Vs. State of Maharashtra and Ors.).

06. In view of the above, **this petition is allowed** in terms of prayer clauses (B) and (C), which reads as under :-

“(B) By issuing writ of mandamus or any other writ or direction in like nature, the respondent nos.1 and 2 be directed to release the salary benefits, including increment and allowance for two years till the deemed date of retirement at 60 years on 30.06.2020.

(C) By issuing writ of mandamus or any other writ or direction in like nature, the impugned order dated 28.06.2018 issued by respondent no.2 be quashed and set aside and the respondent nos.1 and 2 be directed to release the salary benefits, increments, allowances etc. uptill the deemed date of retirement of the petitioner at the age of 60 years.”

07. As the petitioner has already crossed the age of superannuation at 60 years, there cannot be an order of reinstatement. However, the retirement of the petitioner on 30.06.2018 shall stand quashed and set aside and he shall be deemed to be in continuous service till 30.06.2020. He will be entitled for full salary including increments and allowances for the said period of 24

months along with a nominal interest @ 6% p.a. until the amounts are paid. We direct that the amount be paid within 60 days from today. If gratuity amount is not yet paid to the petitioner or if it is paid by considering his date of retirement as 30.06.2018, same shall be recalculated on the basis of the last drawn salary as on 30.06.2020 and the said gratuity amount shall be paid along with 10% interest, which is prescribed under the Payment of Gratuity Act, 1972 within 60 days.

08. Since the petitioner has filed this petition on 25.09.2023, which is after the judgment of the Full Bench dated 26.09.2022, we do not find that the contention of the Wakf Board that this petition is barred by delay or laches, could be sustained.

09. The learned Sr. Advocate has drawn our attention in the light of instructions received by him from the briefing lawyer that there are several similarly situated employees who have moved applications to the Wakf Board after the judgment was delivered by the Full Bench of this Court and the Wakf Board is keeping those applications pending on the plea that there is no order in their individual cases by the High Court. We need to remind the Wakf

Board that the view taken by the Full Bench binds all parties as well as the Courts. The law laid down by the Full Bench is applicable to all persons whose cases can be covered by the said law. As such, the view of the Full Bench would be a view taken in the interest of all, since the issue framed by the Division Bench as referred to the Full Bench, has been answered. We, therefore, direct the Wakf Board to immediately take decisions on all pending applications, raising similar grounds, within 30 days from today, in view of the conclusions drawn in the foregoing paragraphs.

10. Rule made absolute accordingly in above terms.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]