

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11004 OF 2022

Dr. Arun R. Damle

Age 59 years

Occupation: Service

residing At A/401, Riddhi Apartment,

Ganesh Wadi, N.B Road, Chincholi,

Malad (W), Mumbai 400064

... Petitioner.

V/s.

1. Vidyavardhini

Through Its Secretary

A Society/Trust Registered Under The

Provisions Of The Maharashtra Public

Trust Act, 1950, And The Indian

Societies Registration Act, 1908.

Having Its Registered Office At:

C/O. Bhausaheb Vartak Polytechnic,

Vasai Road (West),

District: Palghar.

2. Bhausaheb Vartak Polytechnic

(Through its Principal)

Vasai road (West),

District: Palghar.

3. The State Of Maharashtra

Through Its Department Of Higher

And Technical Education.

Having its Office at:

SANJAY
KASHINATH
NANOSKAR

Digitally signed by
SANJAY KASHINATH
NANOSKAR

Date: 2024.02.16
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Mantralaya, Madame Cama Road,
Nariman Point, Mumbai 400 001.

[Summons To Be Served Upon
The Ld. Government Pleader]

4. The Director of Technical Education,
Maharashtra, Having his/her Office at:
Elphinstone Technical School,
Mahapalika Marg, Mumbai 400001.
 5. The Maharashtra State Board Of
Technical Education
(Through its Chairman)
Having its Office at:
Kherwadi, Bandra (East),
Mumbai 400051.
 6. All India Council For Technical
Education (Through its Regional Secretary)
Having its Office at:
Industrial Assurance Building,
Churchgate, Mumbai 400020.
- ... Respondents.

Mr.Abhay Anturkar (though V.C.) i/b. Mr.H.B.Suryawanshi
for the Petitioner.

Mr.Susheel Mahadeshwar i/b. Ms.Ranjana Todankar
for Respondent Nos.1 and 2.

Ms.Rupali Shinde, AGP for Respondent Nos.3 and 4.

Mr.R.V.Govilkar, Senior Advocate with Ms.Shaba N. Khan
i/b. Mr.Mihir Govilkar for Respondent No.5 (MSBTE).

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 7 February 2024.

JUDGMENT : (Per Nitin Jamdar, J.)

The Petitioner was working with Respondent No. 2 - Polytechnic, run by Respondent No. 1 - Management. The date of birth of the Petitioner is 12 November 1962. He retired on superannuation at the age of 58 years on 30 November 2020. According to the Petitioner, he should have retired on superannuation at the age of 60 years. The Petitioner has filed this petition seeking direction from Respondent - Management to reinstate him and to pay the salary for the concerned period.

2. The Petitioner was appointed as a lecturer in the Industrial Electronics Department on 1 August 1985. Thereafter, he was placed in the Senior Scale and subsequently in the Selection Grade. The Petitioner was appointed as the In-charge Principal of Respondent - Polytechnic from 17 June 2006. On 1 September 2020, the Petitioner sent an email to Respondent - Polytechnic requesting settlement and release of all money due to him as he would stand retired on superannuation upon attaining the age of 58 years on 30 November 2020, as per Rule 17 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

On 27 November 2020, Respondent No. 2 - Polytechnic informed the Petitioner that he stands retired on superannuation on 30 November 2020.

3. Two employees of Respondent - Institute had filed writ petitions in this Court. One by Mr. Lalit Rajendra Gajanan, Writ Petition No. 3125/2020, and another by Mr. Mukesh Narendra Gangrade, Writ Petition No. 3617/2020, against Respondent - Management and others regarding the retirement age of Lecturers in Polytechnics. The arguments in the said petitions were concluded by the Division Bench on 17 August 2021, and the judgment was pronounced on 29 October 2021. The Division Bench allowed the writ petitions and observed that the age of superannuation of the petitioners therein would be 60 years and not 58 years, and issued consequential directions.

4. The Petitioner retired on superannuation on 30 November 2020, and on 21 January 2021 Petitioner wrote to the Respondent- Management that the age of retirement for the Petitioner would be 60 years and not 58 years in light of the decision of this Court in the case of *Lalit Rajendra Gajanan v. Vidyavardhini*¹. Thereafter the Petitioner filed this present petition on 8 September 2022 seeking directions as stated above.

¹ WP No.3125/2020 and others decided on 29 October 2021.

5. We have heard Mr.Abhay Anturkar, learned counsel for the Petitioner, Mr.Susheel Mahadeshwar, learned counsel for Respondent Nos.1 and 2 and Mr.R.V.Govilkar, Senior Advocate for Respondent No.5.

6. The Petitioner contends that the decision given in the case of *Lalit Rajendra Gajanan* would operate in *rem* and must be made universally applicable to all the lecturers in Polytechnics of the Respondent- Management and the Petitioner had made a request before completion of his age of 60 years and, therefore, the Petitioner had not acquiesced to any position and the benefits of the decision of this Court in the case of *Lalit Rajendra Gajanan* should be extended to the Petitioner and, now since the Petitioner has crossed the age of 60 years, the monetary benefits for the extended period of two years should be given to the Petitioner. The Petitioner has relied upon the decisions of the Hon'ble Supreme Court in *State of Uttar Pradesh v. Arvind Kumar Srivastava*² and *M/s.Motilal Padampat Sugar Mills v. State of Uttar Pradesh*³.

7. A reply affidavit has been filed by the Respondent-Management and the Polytechnic. Respondent-Management contends that the Petitioner had sent a letter to the Management stating that he had retired on 30 November 2020 and had conveyed

² (2015) 1 SCC 347

³ (1979) 2 SCC 409

his gratitude to the Management for giving him the opportunity to work. It is stated that the Petitioner was fully aware that there was an interim order dated 20 October 2020 in Writ Petition No. 3617/2020 filed by Mr. Mukesh Narendra Gangrade, whereby the Respondent-Management was restrained from retiring Mr. Gangrade at the age of 58 years. Yet, the Petitioner did not file a writ petition and, without protest, accepted his retirement at the age of 58 years. It is submitted that the Petitioner did not approach the High Court, as other lecturers did, but accepted the retirement and, after two years, has approached this Court raising a monetary claim, which should not be entertained. The Respondent- Management accordingly opposed the petition and relied upon the decision of the Hon'ble Supreme Court in the case of *U.P. Jal Nigam v. Jaswant Singh*⁴.

8. We have considered the rival contentions.

9. The Petitioner retired on superannuation on 30 November 2020 at the age of 58 years. The Petitioner would have retired on 30 November 2022 at the age of 60. Relying on the decision of this Court in the case of *Lalit Rajendra Gajanan*, the Petitioner made an application to the Management on 10 November 2021 and thereafter a writ petition was filed in September 2022, thus, almost one year from the decision in the case of *Lalit Rajendra Gajanan*. Though the decision of the Division Bench in *Lalit Rajendra Gajanan* and another was delivered on 29 October 2022, in

4 (2006) 11 SCC 464

the writ petition filed by Mukesh Gangrade, the Division Bench had restrained the Respondent- Management from retiring him at the age of 58 years. It is not in dispute that the Petitioner and Mukesh Gangrade are colleagues in the same Institute. The Respondents have argued, and it is not specifically controverted, that the Petitioner would be aware of the interim order passed by the Division Bench on 20 October 2020, as Mukesh Gangrade continued beyond 58 years in the same Institute. Yet, on 27 November 2020, the Petitioner accepted retirement at the age of 58 years, conveying his gratitude to the Management for giving him an opportunity to work, and chose not to contest the age of retirement. Furthermore, there is no reason whatsoever why the Petitioner approached this Court two years after his retirement. There is an unexplained delay even after the judgment in the case of *Lalit Rajendra Gajanan* dated 29 October 2021.

10. The question of delay and laches has been examined by the Hon'ble Supreme Court in situations where the claimant seeks the benefit of a legal position extended to others. Delay and laches are important factors in the exercise of discretionary relief under Article 226 of the Constitution. When a person is not vigilant of their rights and acquiesces to the situation, filing a belated writ petition on the grounds that the same relief should be granted to them as to others similarly situated would imply no distinction between them and those who were vigilant about their rights. It would also be inequitable if a person, by their conduct, puts the other party in a

position that would not be reasonable to place them in if the remedy were to be asserted later. In such cases, lapse of time and delay are relevant criteria.

11. In paragraphs 22.2 and 22.3 of the decision in the case of *Arvind Kumar Srivastava*, relied upon by the Petitioner, the Hon'ble Supreme Court observed that exceptions in the form of laches and delays, as well as those persons who did not challenge the wrongful action in their cases and acquiesced to the same, would be valid grounds to dismiss their claim, even though they rely upon the judgment of the Court. The Supreme Court observed, however, that this position may not apply in cases where the judgment pronounced by the court was a judgment in rem with the intention to give benefit to all similarly situated persons, whether they approached the court or not. However, in *Arvind Kumar Srivastava*, after analyzing the factual position, the Hon'ble Supreme Court held against the employees on the grounds of gross unexplained laches. We have not been shown how the decision in the case of *Lalit Rajendra Gajanan* is a decision in *rem*.

12. On the other hand, the decision of the Hon'ble Supreme Court in the case of *U.P. Jal Nigam* is directly applicable to the facts of the present case, where the issue of retirement had arisen. The Hon'ble Supreme Court in the case of *Harwindra Kumar v. Chief Engineer, Karmik*⁵, had held that the employees of U.P. Jal Nigam

⁵ (2005) 13 SCC 300

were entitled to continue in service up to the age of 60 years. After the petitions were decided, a spate of writ petitions followed on various dates after the judgment in the case of *Harwindra Kumar*, some in 2002 and some in 2005. Some of them had retired long back. Some petitions were filed before retirement, and some were filed after retirement. In some petitions, there were interim orders. All the petitions were disposed of by the High Court in light of the decision of the Supreme Court in the case of *Harwindra Kumar*, and relief was granted to them to continue in service up to the age of 60 years. The question that arose before the Supreme Court in *U.P. Jal Nigam* was whether the employees who did not challenge their retirement and accepted the same, receiving post-retirement benefits, should be given relief in light of the earlier decision of the Supreme Court. The Hon'ble Supreme Court answered the question in the negative., observed thus:

“13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the

liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?

14. As against this, our attention was invited to a decision of this Court in *Dayal Singh v. Union of India* [(2003) 2 SCC 593] . In that case their Lordships observed that when the High Court exercised discretion and condoned the delay, it is not proper for the Supreme Court at the SLP stage to set aside the High Court's order on that ground alone and more so, where the impugned judgment is legally sustainable. This case does not provide any assistance to the respondents.

15. Learned counsel for the appellants has also pointed out that at this belated stage if the relief is given to the respondents who have retired and accepted the retirement, that will cause a huge burden to the Nigam to the tune of Rs 17,80,43,108 and there are no sufficient funds for incurring such a huge amount at this belated stage. This will completely ruin the financial condition of the Nigam if all the persons who were not vigilant and did not take up their cause before the court were granted relief. It would prove a great set back to the Nigam. In this regard, a reference was made to a decision of this Court in *Krishena Kumar v. Union of India* [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] . In that case the question was to grant pensionary benefit to the provident fund holders of the Railways. A submission was made that if the court feels that a positive direction cannot be given to the Government, it was prayed that at least an option should be given to the respondents either to withdraw the benefit of switching over to pension from everyone or to give it to the petitioners as well, so that the discrimination must go. This Court negated the submission and it was observed as follows: (SCC p. 238, para 45)

“45. We are not inclined to accept either of these submissions. The PF retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three coequal organs of the Government under the Constitution.”

16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement.

(emphasis supplied)

Thus, the Hon'ble Supreme Court did not grant any relief to the persons who had approached the court after their retirement and relief was granted to only those who had filed the petitions when they were in service or had interim orders in their favour.

13. Therefore, the question which arises for consideration is whether the Petitioner, who was not vigilant and did not take up the challenge to his retirement age and filed a petition much after the judgment of this Court in the case of *Lalit Rajendra Gajanan*, is entitled to the same relief as was extended to the petitioners in *Lalit Rajendra Gajanan*.

14. The Respondent is an unaided institution. The learned counsel for the Respondent-Management contends that the Management will suffer serious consequences if all the lecturers who retired in the distant past approach the Court and start raising claims, even though they had not filed any petitions before their retirement. It will place an intolerable economic burden on the Management, and it will be virtually impossible for them to function under the liability of payment. There is no answer to this proposition. The factor of financial hardship, if relief is granted to those who have accepted retirement, is a relevant factor along with the delay and acquiescence of its employees. In the present case, the decision in the case of Lalit Rajendra Gajanan is not shown to be in rem. Also, had the Petitioner challenged his retirement age by approaching the Court, the Respondent-Management could have taken steps to raise funds. However, the Petitioner accepted retirement, and after a lapse of two years, has filed the present petition seeking monetary benefits for the period of two years. In these circumstances, no case is made out to exercise writ jurisdiction.

15. The writ petition is dismissed.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)