



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 1535 of 2020

Dr. Meena D/o Laxman Kapshikar

Versus

Vice Chancellor, Rashtra Sant Tukdoji Maharaj, Nagpur and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Dr.R.S.Sundaram, Advocate a/w Ms. U.R.Tanna,
Advocate for the petitioner.

Shri N.D.Khamborkar, Advocate for the respondent
nos. 1 to 3.

Ms. Mrunal Naik, AGP for the respondent/State.

CORAM : N.R.BORKAR, J.

DATED : 12th SEPTEMBER, 2024.

This petition takes exception to the order dated 26th June, 2019 passed by the learned University and College Tribunal, Nagpur in Misc. Application No. 11 of 2017 arising out of Appeal No. N-4/2006.

2. The petitioner, who was working as a lecturer with respondent-University had filed an appeal before the learned University and College Tribunal, Nagpur against the order of compulsory retirement dated 18th March, 2006.

3. During the pendency of the appeal fresh order of compulsory retirement dated 21st February,

2007 was issued. The appeal was amended and the said order was challenged. In the meantime the petitioner submitted the application dated 23rd June, 2010 for voluntary retirement.

4. By order dated 3rd February, 2015 the appeal filed by the petitioner came to be allowed. The operative part of the order passed by the learned Tribunal reads thus:

“The appeal is allowed. The order passed on 18.03.2006 and 21.02.2007 are set aside. The respondents no.1 and 2 are directed to consider the application of the appellant for voluntary retirement and pass necessary orders. No order as to costs.”

5. The petitioner being dissatisfied with the direction of the learned Tribunal to consider the application for voluntary retirement, filed an application for modification of order to that extent. It was claimed in the said application that during the pendency of appeal after reaching the age of superannuation on 31st July, 2012, she had withdrawn the application for voluntary retirement. It was thus prayed that direction to consider the application for voluntary retirement be modified and as the Tribunal has set aside the orders of compulsory retirement, she be granted all consequential benefits.

6. By the order impugned the learned Tribunal has rejected the said application and again directed the respondent-University to comply with the order dated 3rd February, 2015 and to consider the application of the petitioner for voluntary retirement within one month. Hence, this petition.

7. During pendency of the present petition, the respondent-University in compliance of the order of the Tribunal has passed the following order on 28th March, 2022.

“The said VRS application is considered and accepted from the date of tendering the same i.e. 23-06-2010 and the period from 18-03-2006 till 23-06-2010 shall be treated only for the purpose of retirement benefits and Ms. Meena Laxman Kapshikar will not be entitled for any monetary benefits as she has not worked in that period. Thus period will be treated as ‘in service period’ only for the purpose of retirement benefits.”

8. I have heard learned counsel for the petitioner and the learned counsel for the contesting respondents.

9. Learned counsel for the petitioner submits that the learned Tribunal after setting aside the order of the compulsory retirement, erred in directing the respondent-University to consider the application of the petitioner for voluntary retirement. It is submitted that the order of the learned Tribunal, therefore to the extent

of directing the respondent-University to consider the application of the petitioner for voluntary retirement needs to be quashed and set aside and respondent-University be directed to grant all consequential benefits to the petitioner.

10. On the other hand, learned counsel for the contesting respondent-University submits that in compliance of the order passed by the learned Tribunal, the respondent-University by order dated 28th March, 2022 has accepted the application of the petitioner for voluntary retirement. It is submitted that in absence of any specific direction in the order of the learned Tribunal, the respondent-University has rightly denied monetary benefits to the petitioner from 18th March, 2006 to 23rd June, 2010. It is submitted that even otherwise the grievance in relation to the order dated 28th March, 2022 may not be entertained in the present petition as the remedy of appeal is available to the petitioner against the said order. It is submitted that the petition be dismissed.

11. The finding recorded by the learned Tribunal to quash the order of compulsory retirement reads thus :

“...It is clear from this rule that where a Government servant is to be retired on invalid pension, the Government is bound to inform the servant that he has

been declared to be completely and permanently incapacitated for further service and it is further proposed to invalidate him. This rule seems to be mandatory. It was therefore, necessary for the respondents no. 1 and 2 to inform the appellant that such report has been received and it is proposed to invalidate her. Such intimation having not been given, there has been breach of Rule 74 and principles of natural justice. Such notice was necessary also because of the fact that the Rule 74 gives the appellant or the employee right to appeal against the finding of the Board. On account of non intimation, a valuable right of the appellant has been lost. The appellant has contended that she has filed an application for voluntary retirement and her request was rejected by the respondent nos. 1 and 2. The respondent nos. 1 and 2 have filed an affidavit of one Wasim Ahmad on 12th December, 2014 and alongwith that affidavit they have filed Form No.6. It seems that the appellant has been given three years additional service benefits on account of the fact that she holds a Ph.D.Degree in Zoology. From Form No.6, it is clear that she has put in more than 22 years of service. Under Rule 66, 20 years is the qualifying service for voluntary retirement and pension. Since the appellant had put in more than 22 years of service, the respondent is bound to consider the request of the appellant for voluntary retirement. The orders passed on 18th March, 2006 and 21st February, 2007 are therefore, liable to be quashed and set aside...”

12. It is evident from the above finding that grievance was made before the learned Tribunal in relation to wrongful rejection of application for voluntary retirement and therefore in the facts and

circumstance of the case, I am not inclined to interfere with the order of the learned Tribunal. At the same time the order passed by the respondent-University dated 28th March, 2022 in compliance of the order of the learned Tribunal to the extent of refusing the monetary benefits to the petitioner for the period from 18th March 2006 to 23rd June, 2010 can not be allowed to stand as the order to that extent is wholly unjust. The respondent-University while denying the monetary benefits to the petitioner, has taken hyper technical view of the matter and ignored the fact that their orders of compulsory retirement were held to be bad in law and were set aside. As a consequence of it, the petitioner was entitled to all consequential benefits till 23rd June, 2010 i.e. the date on which the application for voluntary retirement was submitted. Considering the facts and circumstances, I am not inclined to relegate the petitioner to appellate remedy against the order dated 28th March, 2022. In the result the following order is passed.

13. The respondent-University shall pay the monetary benefits to the petitioner for the period from 18th March, 2006 till 23rd June 2010 within a period of three months from today.

14. The respondent-University shall revise the retiral benefits in terms of its order dated 28th March,

2022 and arrears, if any, shall be paid to the petitioner within a period of six months from today.

15. The writ petition is disposed of in aforesaid terms.

[N.R.BORKAR, J.]