

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

WRIT PETITION NO. 8668 OF 2019

1. Mr. Rajendra Pawar
Age: 55 years, Occ: Associate Professor,
2. Dr. Baban Jogdand
Age: 49 years, Occ: Research Officer, Publication.
3. Ragini Sawant
Age: 53 years, Occ: Research Assistant.
4. Vinay Kulkarni
Age: 53 years, Occ: Research Assistant.
5. Rajani Gholap
Age: 53 years, Occ: Research Assistant.
6. Swati Kulkarni
Age: 51 years, Occ: Research Assistant.
7. Dadu Bule
Age: 46 years, Occ: Research Assistant.
8. Sunita Chimbalkar
Age: 51 years, Occ: Research Assistant.

Petitioner no.1 to 8 working at
The Yeshwantrao Chavan Academy of
Development Administration,
YASHDA Campus,
Baner Road, Pune- 411007.

... Petitioners

Versus

1. The State of Maharashtra
Through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400032.

2. The General Administration Department,
Through its Principal Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400032.
 3. The Yeshwantrao Chavan Academy of
Development Administration,
Through its Director General
YASHDA Campus,
Baner Road, Pune 411007.
- ... Respondents.

**WITH
WRIT PETITION NO. 7430 OF 2021**

1. Mr. Ajay Narayan Pithe
Age: 56 years, Occ: Assistant Professor,
R/of : - A-9, Third Floor,
Nalanda garden Co-op. Hou. Soc. Ltd.,
Opposite Mauli Garden Marriage Hall,
Baner Road, Pune-411045.
 2. Mrs. Swati Kamat.
Age: 49 years, Occ: Assistant Professor,
R/at: 52, Yashoda Hou. Soc.,
Off. Ghokale Cross Roads,
Near Om Super Market, Model Colony,
Shivaji Nagar, Pune-411016.
Petitioner No. 1 & 2 working at
The Yeshwantrao Chavan Academy of
Development Administration,
YASHDA Campus,
Baner Road, Pune- 411007.
- ... Petitioners

Versus

1. The State of Maharashtra
Through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400032.

2. The General Administration Department,
Through its Principal Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400032.
3. The Yeshwantrao Chavan Academy of
Development Administration,
Through its Director General
YASHDA Campus,
Baner Road, Pune 411007. ... Respondents.

**WITH
WRIT PETITION NO. 5608 OF 2015**

1. Mr. Ravindra L. Chavan.
Age: 57 years, Occ: Associate Professor,
R/at : Ravimangarl, Survey No. 46/6,
Pawar Baugh, B.T. Kawade Road,
Ghorpadi-gaon, Pune 411036.
2. Mrs. Jayashri Ulhas Murudkar
Age: 57 years, Occ: Assistant Professor,
R/at: Quarter No. 3, Ananth Building
Yashada Quarters, Rajbhavan Complex,
Baner Road, YASHADA, Pune 411007
3. Mr. Ramesh Waswani.
Age: 57 years, Occ: Assistant Professor,
R/at : PWDm 2/4, Pimpry Colony,
Pune 411036.
4. Dr. Shashikant Ganpat Lokhande.
Age: 54 years, Occ: Associate Professor,
R/at: House No. 111, Lane No. 04,
Madhuban Society, Sangvi,
Pune 411027.
5. Mr. Manoj Krishnarao Kulkarni.
Age: 54 years, Occ: Senior Librarian,
R/at : Neelkrishna, 137, Janta Sector 27,
Nigdi, Pune 411044.

6. Dr. Meenal Sunil Naravane.
Age: 53 years, Occ: Associate Professor,
R/at: 768/21, Yashwant, Flat No. 8,
PYC Colony, Pune 411 004.
 7. Dr. Sunil Rambhau Dhapte.
Age: 53 years, Occ: Associate Professor,
R/at : R/at: C-3/15, DSK Chintamani,
Appa Balwant Chouk, Shaniwarpeth,
Pune 411 030.
 8. Dr. Bharat Bhushan.
Age: 52 years, Occ: Professor,
R/at: G-1, Ananth Building,
Yashada Quarters, Rajbhavan Complex,
Baner Road, YASHADA, Pune 411007.
 9. Mr. Pradip Dnyandeo Garole.
Age: 50 years, Occ: Associate Professor,
R/at : A-304. Nisarg Anand,
Pimple Nilakh, Pune 411027.
 2. Mrs. Anita Bhausahab Mahiras
Age: 50 years, Occ: Assistant Professor,
R/at: Ananth Building, Yashada Quarters,
Rajbhavan Complex, Baner Road,
YASHADA, Pune 411007.
- ... Petitioners

Versus

1. The State of Maharashtra
Through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400032.
2. The General Administration Department,
Through its Principal Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400032.

3. The Yeshwantrao Chavan Academy of Development Administration,
Through its Director General
YASHDA Campus,
Baner Road, Pune 411007. ... Respondents.

**WITH
WRIT PETITION NO. 2337 OF 2025**

1. Mr. Shashikant Damu Chaudhari
Age: 58 years, Occ: Senior Librarian.
Working at :Yeshwantrao Chavan Academy
of Development Administration,
YASHDA Campus,
Baner Road, Pune- 411007. ... Petitioners

Versus

1. The State of Maharashtra
Through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400032.
2. The General Administration Department,
Through its Principal Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400032.
3. The Yeshwantrao Chavan Academy of Development Administration,
Through its Director General
YASHDA Campus,
Baner Road, Pune 411007. ... Respondents.

Mr. Rajendra Anbhule a/w. Ms. Nisha Ahire, Ms. Pooja Pall, for the
Petitioners in all the Petitions.

Ms. Priyanka Chavan, AGP for Respondent/State in all the Petitions.

Mr. Tejesh Dande a/w. Mr. Bharat Gadhavi, Ms. Trushna Shah, Mr.

Sarvesh Deshpande, Mr. Vinayak Shelar, Ms. Mansi Dande, Mr. Pratik Sabrad, Mr. Aniket Shitole and Mr. Vishal Navale i/b. Tejesh Dande & Associates, for Respondent No. 3.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

DATE : 13th MARCH, 2025

ORAL JUDGMENT : (PER RAVINDRA V. GHUGE, J)

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

2. After the extensive submissions of the learned Advocates for the respective sides on 12th March, 2025, on account of paucity of time, we posted these matters today, for dictation of order.

3. These are peculiar cases which rest purely on peculiar facts and the interpretation of law. Whether the prescribed age of retirement of employees, as fixed at the time of their entry in service, could be abruptly altered to their prejudice?

4. For clarity, we are reproducing a ready reference chart to indicate the details of each Petitioner, in the form of a Bird's Eye View. The same is reproduced as under :

Name of the Petitioner and No.	Recruited on the Post of	Date of Joining	Nature of Post before Revised Rules, 2010	Promotion as 1		Promotion as 2		Promotion as 3		Retired on	Retire d at the age of	Remarks
				Post	Date	Post	Date	Post	Date			
WP/5608/2015												
Ravindra Chavan (1)	Research officer	08.06.1995	Teaching	Associated Professor	13.02.2004	--	--	--	--	31.05.2016	58	These petitioners retired as per new rule, before the Interim order passed by this Hon. Court
Smt. Jayshri Murudkar (2)	Research Assistant	19.08.1991	Teaching	Research Officer	01.01.2003	Assistant Professor	08.06.2010	--	--	31.12.2015	58	
Shri Ramesh Vasvani (3)	Research Assistant	25.10.1988	Teaching	Research Officer	21.07.1998	Assistant Professor	16.08.2005	--	--	30.06.2015	58	
Dr Shashikant Lokhande (4)	Research Assistant	31.09.1990	Teaching	Research Officer	21.07.1998	Assistant Professor	16.08.2005	Associate Professor	05.04.2014	Resigned (Death)	--	
Dr Manoj Kulkarni (5)	Senior Libriran	01.05.1997	Teaching	--	--	--	--	--	--	30.04.2021	60	These petitioners enjoyed and benefitted by the Hon High Court interim order dated 06.07.2017
Dr. Meenal Naravane (6)	Assistant Professor	11.10.2005	Teaching	Associate Professor	15.05.2007	--	--	--	--	31.10.2021	60	
Dr. Sunil Dhapte (7)	Associate Professor	09.05.2007	Teaching	--	--	--	--	--	--	31.05.2021	60	
Dr Bharat Bhushan (8)	Associate Professor	01.11.1997	Teaching	Professor	01.11.2004	--	--	--	--	31.07.2022	60	
Shri Pradip Garole (9)	Assistant Professor	19.05.2007	Teaching	Associate Professor	11.09.2014					31.08.2026	58	Not attained the age of 58 years yet
Smt Anita Mahiras (10)	Research Officer	17.05.2006	Teaching	Assistant Professor	15.07.2013	Associate Professor	09.11.2023	--	--	31.05.2031	58	

Name of the Petitioner and No.	Recruited on the Post of	Date of Joining	Nature of Post before Revised Rules, 2010	Promotion as 1		Promotion as 2		Promotion as 3		Retired on	Retired at the age of	Remarks
				Post	Date	Post	Date	Post	Date			
WP/8668/2019												
Dr Rajendra Pawar (1)	Course Assistant and Clerk	29.08.1992	Teaching [Assistant Professor as from 06.03.1998]	Course Associate	06.03.1998	Assistant Professor	19.02.2003	Associate Professor	05.04.2014	31.05.2022	60	this petitioner enjoyed and benefitted by the Hon High Court interim order dated 06.07.2017
Dr Baban Jogdand (2)	Assistant Publication Officer	01.02.2005	Teaching [Research officer	Research Officer Publication	17.05.2007	--	--	--	--	30.11.2028	58	Not attained the age of 58 years

			(publication) from 17.05.2007									yet.
Smt Ragini Sawant (3)	Course Assistant and Clerk	29.08.1993	Teaching [Research Assistant from 01.11.2004]	Course Associate	01.08.2001	Research Assistant	01.11.2004	Research Officer	26.11.2021	28.02.2024	58 +	These petitioners are benefitted and not yet retired because of Hon High Court interim order dated 06.07.2017 in 5608/2015
Shri Vinay Kulkarni (4)	Clerk-Typist	15.06.1996	Teaching [Research Assistant from 18.05.2005]	Course Associate	01.11.2004	Research Assistant	18.05.2005	--	--	30.04.2024	58+	
Smt Rajni Gholap (5)	Course Assistant	01.07.1998	Teaching [Research Assistant from 01.09.2006]	Course Associate	01.09.2003	Research Assistant	01.09.2006	--	--	30.04.2024	58+	
Smt Swati Kulkarni (6)	Clerk-typist	15.06.1996	Teaching [Research Assistant from 01.11.2004]	Course Associate	22.05.2001	Research Assistant	01.11.2004	Research Officer	26.11.2021	31.05.2025	58	Not attained the age of 58 yet
Shri Dadu Bule (7)	Course Assistant	01.07.1998	Teaching [Research Assistant from 28.07.2005]	Course Associate	11.06.2002	Research Assistant	28.07.2005	Research Officer	28.02.2025	30.09.2030	58	
Smt Sunita Chimbalkar (8)	Clerk-typist	15.06.1996	Teaching [Research Assistant from 18.12.2007]	Course Associate	01.11.2004	Research Assistant	18.12.2007	--	--	30.09.2026	58	

Name of the Petitioner and No.	Recruit ed on the Post of	Date of Joining	Nature of Post before Revised Rules, 2010	Promotion as 1		Promotion as 2		Promotion as 3		Promotion as 4		Retired on	Reti red at the age of	Remark s
				Post	Date	Post	Date	Post	Date	Post	Date			
WP/7430/2021														
Shri Ajay Pithe	Clerk Typist	09.10.1993	Teachin g [Researc h Assistan	Course Associ ate	06.03.1998	Resear ch Assista nt	01.9.2003	Research Officer	15.07.2013	Assistant Professor	02.9.2020	31.05.2022	60	This petitioner enjoyed and benefitte

			t from 01.09.20 03]											d by the Hon High Court interim order dated 06.07.20 17
Smt Swati Kamat	Comput er Operato r	01.10.19 94	Teachin g [Researc h Assistan t from 01.01.20 04]	Resear ch Assista nt	01.01.20 04	Resear ch Officer	22.08.2013	Assistant Professor	02.09.2020	--	--	--	58	Not attained the age of 58 yet.
WP/2337/2025														
Shri Shashik ant Chaudh ari (1)	Assista nt Libraria n	25.12.19 92	Teachin g [Assiata nt Libraria n from 25.12.19 92]	Librari an	07.08.20 07	Senior Librari an	26.11.2021	--	--	--	--	--	58	Not attained the age of 58 yet

OLD RULE (1992 Rules)		NEW RULE (2010 Revised Rules)	
Rule No.	Text in Rule	Rule No.	Text in Rule
2.01 (v)	Teaching posts means posts the duties of which are closely connected with teaching. They shall include the posts of Director, Professors, Associate Professor, Research Officers, Senior Librarian, Librarian, System Manager, Programmer and Assistant Programmer. Research Assistant and Assistant Librarian and any other posts declared as teaching posts by the Director	2.01 (s)	Teaching posts means posts the duties of which are closely connected with teaching / training/research . They shall include the post of Director General, Professor/s, Director/s, Additional Director/s , Associate Professor, Assistant Professor , Research Officer, and any other posts declared as teaching post by the Director General
3.01	No person who has attained the age as indicated below shall be retained in the service of YASHADA except by reemployment. a) In respect of Lower-Level posts, 60 years. b) In the case of non-teaching posts 58 years, and c) In the case of teaching posts – 60 years.	3.01	The age of retirement for employee in the service of YASHADA (except class IV employees) shall be 58 years. In case of Class IV employees, the age of retirement shall be 60 years. An employee shall retire from service on the after noon of the last day of 58 (In case of class IV employees, at shall be 60 years) years and as amended from time to time in relevant rules on the lines of state Government employees

5. The only dispute as regards whether a Petitioner is in the teaching or non-teaching category, is with reference to Petitioner No. 2 in Writ Petition No. 8668 of 2019, namely, Dr. Baban Jogdand. It is claimed that he was in the teaching category. He is still in employment and is posted as Research Officer (Publication) from 17.5.2007.

The learned Advocate for the Petitioners points out that Dr. Baban Jogdand has two PHD Thesis to his credit (double Ph. D. holder), has 23 degrees in graduation/post graduation/diploma and has published 7 books and 29 Articles in Journals of high repute.

The learned Advocate for the Petitioners contends that earlier he was in the teaching faculty considering his huge educational qualification. Presently, he is appointed as Research Officer(Publication) which is also a teaching post.

The learned Advocate for the employer i.e. Respondent No. 3, Yeshwantrao Chavan Academy of Development Administration, Baner Road, Pune (hereinafter referred to as “the Employer”) strenuously opposes the above statement and submits that he is not in the teaching category.

If the said Petitioner Dr. Baban Jogdand is held to be in the teaching category, as the Rule stands today, the age of superannuation would be 58 years. If he is not in the teaching category, his age of superannuation would vary.

We do not intend to deal with this issue at this stage, since there is no such prayer made. We leave the said issue open to be agitated before a competent Court in an appropriate proceedings, if initiated.

6. The only issue involved in this Petition is as to whether an employee could be superannuated 2 years prior to his already fixed age of superannuation, in contravention of his service conditions indicating that he would retire 2 years later.

UNDISPUTED FACTS

7. At the outset, we desire to record the undisputed facts in these cases :

(a) Most of the Petitioners are in the teaching faculties and a small number is in the non-teaching category. The Petitioners claim that they are all in the teaching category. YASHADA claims that Dr. Baban Jogdand is the only person among the Petitioners who is presently not in any teaching activity considering his present posting.

(b) The age of retirement of all these Petitioners was specifically fixed at 60 years.

(c) The Yashwantrao Chavan Academy of Development Administration issued the Service Rules dated 1.3.1992 (in short, the 1992 Rules).

(d) All the Petitioners have been inducted in service after following the due procedure laid down in law after 1.3.1992, with a fixed age of retirement.

(e) Prior to the introduction of the 1992 Rules, the Rules prescribed by the State Government were made applicable.

(f) With the introduction of the 1992 Rules, all employees working on lower level posts, and in the case of teaching posts, would retire at the age of 60 years. In the case of non-teaching posts, 58 years was the age of retirement.

(g) All these Petitioners have been appointed after the introduction of the 1992 Rules thereby being covered by the age of retirement as is mentioned in the Rules.

(h) On 5th March, 2010 YASHADA introduced an amendment to the 1992 Rules and the said Clause 3.01 was modified as under :

3.01 Age.of retirement

The age of retirement for employee in the service of YASHADA shall be 58 years. An employee shall retire from service on the afternoon of the last day of the month in which he/she attains the age of 58 years (and as amended from time to time in relevant rules on the lines of State Government employees.)

(i) In the 31st Meeting of the Board of Governors, an amendment was introduced on 31.3.2012. It was with regard to the age of retirement being 60 years. The proposed amendment reads as under :

YASHADA Service Rule No. 3.01	Amendment Proposed
Age of retirement	3.01 Age of retirement.

The age of retirement for employee in the service of YASHADA (except class IV employees) shall be 58 years. In case of class IV employees, the age of retirement shall be 60 years. An employee shall retire from service on the afternoon of the last day of the month in which he/she attains the age of 58 (in case of class IV employees, at shall be 60 years) years and as amended from time to time in relevant rules on the lines of State Government employees.	The age of retirement for employee in the service of YASHADA shall be 58 years. An employee shall retire from service on the afternoon of the last day of the month in which he/she attains the age of 58 years and as amended from time to time in relevant rules on the lines of State Government employees.
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(j) The Petitioners have challenged the revised Rule 3.01 of the Service Rules which was introduced by the March, 2010 amendment thereby reducing the age of retirement of the Petitioners from 60 years to 58 years.

Therefore, the issue as to whether the fixed age of retirement of an employee at the time of joining duties in the light of the Service Conditions, could be altered to his/or detriment in the midst of his/her service.

8. In view of the undisputed facts recorded above, there is no confusion or contradiction as regards the aspect of these Petitioners whose age of retirement was fixed at 60 years when they joined employment. This is the core issue on facts in these matters.

WRITTEN ARGUMENTS ON BEHALF OF PETITIONERS

9. The learned Advocate for the Petitioners has tendered written notes of submissions which are reproduced, verbatim, as under :

1. The present petitions challenge's the legality and validity of impugned revised YASHADA Service Rule No. 3.01 of Respondent no. 3, Yeshwantrao Chavan Academy of Development Administration, Service Rules, 1992, revised by March 2010, which reduced the age of retirement of petitioners from 60 years to 58 years, as violative to Article 14 and 16 of the Constitution of India, 1950. The impugned rule reads thus:

Rule 3.01 – Age of retirement:

The age of retirement for an employee in the service of YASHADA shall be 58 years. An employee shall retire from service on the afternoon of the last day of the month in which he/ she attains the age of 58 years and as amended from time to time in relevant rules on the lines of State Government employees.

Rule 3.01 of Yeshwantrao Chavan Academy of Development Administration, Service Rules, 1992

2. The Rule 3.01 of Yeshwantrao Chavan Academy of Development Administration, Service Rules, 1992, **initially** provided the age of retirement in case of teaching posts. It states that, “no person who has attained

the age as indicated below shall be retained in the service of YASHDA except by reemployment.

a) ...

b) ...

c) In case of Teaching posts -60 years

3. WRIT PETITION NO. 8668 OF 2019

Before the Revised Service Rules, March, 2010, the petitioner no. 1 was working as an Assistant Professor. The petitioner no. 2 was working as an Assistant Publication Officer and then Research Officer. Petitioner no. 3 was working as Research Assistant from November, 2004. Petitioner no. 4 was working as Research Assistant from December, 2007. The petitioner no. 5 was working as Research Assistant September, 2006. The Petitioner no. 6 was working as a Research Assistant from November, 2004. The Petitioner no. 7 was working as a Research Assistant from July, 2005. The petitioner no. 8 was working as Research Assistant from December, 2007. It is pertinent to note that as per Rule 3.01 of Yeshwantrao Chavan Academy of Development Administration, Service Rules, 1992, the petitioner's were working on Teaching post and the service rules of 1992 were applicable to them which provides 60 years age of retirement in case of teaching posts.

4. WRIT PETITION NO. 7430 OF 2021

Before the Revised Service Rules, March, 2010, the petitioner no. 1 was working as an Research Assistant from September, 2003. The petitioner no. 2 was working as Research Assistant from April, 2006. It is pertinent to note that as per Rule 3.01 of Yeshwantrao Chavan

Academy of Development Administration, Service Rules, 1992, the petitioners were working on Teaching post and the service rules of 1992 were applicable to them which provides 60 years age of retirement in case of teaching posts.

5. WRIT PETITION NO. 5608 OF 2015

Before the Revised Service Rules, March, 2010, all the petitioner were working on teaching posts hence the service rules of 1992 were applicable to them which provides 60 years age of retirement in case of teaching posts.

6. WRIT PETITION NO. 2337 OF 2025

Before the Revised Service Rules, March, 2010, the petitioner was working as an Assistant Librarian which is a teaching post and hence the service rules of 1992, is applicable to him which provides 60 years age of retirement in case of teaching posts.

7. That after perusal of Rule 3.01 of Yeshwantrao Chavan Academy of Development Administration, Service Rules, 1992, it is clear that the age of superannuation in case of teaching posts is 60 years. These rules have been amended in 2010, by rule 3.01 wherein the age of superannuation has been brought down to 58 years. It is an admitted fact that the petitioners are employees in teaching cadre and are working prior to the date of revised rules of 2010. It is a settled principle of law that the service condition of employee cannot be changed to his detriment with retrospective effect.
8. That in *Iftexharullah Baig v. State of Maharashtra*, 2022 (6) Mh.L.J. 223, the Full bench of Hon'ble Bombay High Court has held that the service conditions

applicable to the employee under the rules and regulations existing on the date of appointment, cannot be altered to their prejudice. The case of the petitioners is squarely covered by the Full Bench judgment of Hon'ble Bombay High Court.

9. That relying on *Iftexharullah Baig v. State of Maharashtra*, 2022 (6) Mh.L.J. 223, the Full bench Judgment of Hon'ble Bombay High Court, Bench at Aurangabad, the Bombay High Court in Writ Petition no. 13021 of 2023, *Mohammad Siddiqui v. State of Maharashtra*, decided on 29/01/2023, in para. 7 has stated that as the petitioner has crossed the age of superannuation, their retirement was quashed and petitioner was entitled for full salary including increments and allowances.
10. That the Respondent no. 3 has relied on *K. Nagraj & Ors. v. State of Andhra Pradesh*, 1985 (1) SCC 523, wherein initially the age of retirement was 55, which came to be increased to 58 in 1979 and again it was reverted back to 55 in 1983 (Para. 2 of judgment). This judgment has already been considered by the Full Bench of Bombay High Court in para. 39 of *Iftexharullah Baig v. State of Maharashtra*, 2022 (6) Mh.L.J. 223 stating that it would not assist the Wakf Board.
11. That in case of Water and Land Management Institute, Aurangabad, (WALMI) an Institution performing function of similar nature like respondent no. 3, the Government of Maharashtra has issued a GR dated 29/05/2008 thereby extending the date of retirement of teaching post to 60 years. Petitioners have been denied this opportunity without any justification.

12. In March 2012 the Respondent no. 3 extended the age of retirement of Class IV employees to 60 years by amending revised service rules of 2010.
13. That the Respondent no. 3 has no powers and authority to reduce the age of retirement to 58 years in case of petitioners. The rules which are in form of the delegated legislation are to be framed under any specific parent Act. The respondent no. 3 is not having power to make such ultra rules.
14. That considering the settled facts and position of law the present petitions may please be allowed.

WRITTEN ARGUMENTS ON BEHALF OF RESPONDENT NO. 3

10. The learned Advocate representing YASHADA, has also tendered his written notes of submissions, which are reproduced, verbatim, hereunder :

1. The present petition challenges the legality and validity of Rule No. 3.01 of the Yashwantrao Chavan Academy of Development Administration Service Rules, 1992 (Revised on 5th March 2010), pursuant to which the age of retirement for an employee of the Respondent No. 3 was reduced to 58 years from 60 years. The impugned rule reads thus:

Rule 3.01 – Age of retirement:

The age of retirement for an employee in the service of YASHADA shall be 58 years. An employee shall retire

from service on the afternoon of the last day of the month in which he/ she attains the age of 58 years (and as amended from time to time in relevant rules on the lines of State Government employees).

2. It is submitted that there is a substantial amount of delay occurred in filing the present petition as the impugned rules have been made applicable to all the employees since March 2010. Petitioners have not explained any reason for such delay. Moreover, there is absence of reasonable, satisfactory, or even appropriate explanation for seeking condonation of delays. Petitioners have failed to explain each and every day delay. Petitioners have also not let in any evidence before the Court, nor filed any document to prove that the delay is not wanton and only in the circumstances in the petition. Therefore, the present petition is barred by the limitation and is liable to be dismissed on the ground of delay only.

3. It is further submitted that the Respondent No. 3 i.e., Yashwantrao Chavan Academy of Development Administration (YASHADA) is the Administrative Training Institute of the Government of Maharashtra, and its objective is to meet the training needs of government departments, rural and urban non-officials, and other stakeholders. Human Resource Development has traditionally been one of Maharashtra's major strengths and the importance of evolving sound and responsive administrative system was realized far back in the year 1963 when the Administrative Staff College (ASC) was established in Mumbai. The ASC was later relocated in Pune in 1984 and renamed as "Maharashtra Institute of

Development Administration” (MIDA). MIDA was constituted an autonomous society which came to be registered under the Societies Registration Act, 1860, vide Maharashtra Government, General Administration Department, Government Resolution dated 24th May 1984, to serve as the apex body for promoting and developing modern management practices to function as the nodal state level training institute in the field of development administration. Eventually, it was rechristened as “Yashwantrao Chavan Academy of Development Administration” (YASHADA) in 1990.

4. It is further submitted that vide Government Resolution dated 8.5.1986, the Government of Maharashtra sanctioned the Memorandum of Association (MOA) of the Respondent No. 3 Institute and as per Rule No. 4 of the aforesaid MOA, the Authorities of the Institute are as follows:

Rule No. 4: The authorities of the Institute shall be:

- a. *The Board of Governors*
- b. *The Executive Committee and*
- c. *Such other authorities as may be constituted by the Board of Governors or the Executive Committee.*

Moreover, as per Rule No. 8 of the aforesaid MOA, the management, supervision, and control of the Institute vests in the Board of Governors. It is pertinent to note that proper procedure was followed before revising the impugned Rules in the year 2010. As such, before seeking approval of the impugned Rules from the Board of Governors, the same was published and circulated to the employees of

YASHADA inviting instructions and suggestions on the same. And only after considering all the suggestions and instructions from the employees, the report was placed before the 39th Meeting of the Board of Governors whereafter the revised Rules of March 2010 were approved and enforced. Being an autonomous body, the Respondent No. 3 was well within its powers to alter or modify their Rules without being influenced by the rules established by the State Government or its various resolutions.

5. It is further submitted that the Hon'ble Apex Court in the matter of *K. Nagraj & Ors. versus State of Andhra Pradesh & Anr. [1985 (1) SCC 523]* has dealt with the exact issue of reduction in age of superannuation under the Andhra Pradesh Employment (Regulation of Conditions of Service) Ordinance, 1983, whereby the age of superannuation of all government employees, other than those in the Last Grade Service, was reduced from 58 to 55. Such reduction in age of retirement was held as *not* violative of the Articles 14 and 16 of the Constitution of India. It was observed by the Hon'ble Apex Court that public interest demands that there ought to be an age of retirement in public services. A common scheme of general application governing superannuation has therefore, to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to employees at the lower levels early in their career. The balancing of the conflicting claims of the different segments of society

involves minute questions of the Executive and the Legislature and it is not proper to put them in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. However, if the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter. It was also observed by apex court that there are precedents within our country itself for fixing the retirement age at 55 or for reducing it from 58 to 55. Either the one or the other of these two stages is regarded generally as acceptable, depending upon the employment policy of the Government of the day. It is not possible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not.

6. It is further observed that the contentions of Shri Venugopal which are set out in paragraphs (c) to (g) above and, partly in paragraph (b) itself, are by and large matters of legislative policy in the formulation of which the Government of the day must be allowed a free, though fair play. Indeed, the acceptance of argument advanced by the various counsel for the petitioners must lead to the conclusion that there, must be a uniform age of retirement all over India. If reduction of the retirement age from 58 to 55 is to be regarded as arbitrary on the ground that it overlooks the advance made in longevity, fixation of retirement age at 58 is also not likely to sustain the charge of arbitrariness.

7. It is further submitted that in a recent ruling in the matter of *State of Maharashtra & Ors. versus Bhagwan & Ors. [2022 (4) SCC 193]*, the Hon'ble Apex Court has reiterated the effect of any decision taken on the administrative side by the autonomous body which is registered under the Societies Registration Act, 1860, and is an independent entity governed by its own Rules and Regulations. Therefore, any modification made in its Rules by following proper procedure cannot be challenged on the ground that some employees of Water and Land Management Institute (WALMI), which is also an autonomous body, is 60 years and therefore, the age of retirement of an employee of YASHADA ought be 60 years in consonance with the State Government or WALMI employees. As a result, the employees of petitioner No. 3, which is an autonomous body, cannot claim, as a matter of right, the same benefits at par with some of the employees of government or WALMI.
8. It is further submitted that the Government Resolution dated 29.5.2008 issued by the State Government in relation to WALMI (supra) is with respect to the teaching posts in agricultural and non-agricultural universities as mentioned in the preamble of the resolution. Moreover, University Grant Commission scales are applied to the 'Teaching Post' of the WALMI. It is pertinent to note that the Respondent No. 3 is not an Agricultural or Non-Agricultural University, and it is not affiliated with any such universities. Moreover, the Respondent No. 3 is not working under the guidelines of

University Grants Commission as respondent No. 3 is the apex Administrative Training Institute of Government of Maharashtra registered under the Societies Registration Act, 1860 and the Public Trust Act, 1950. Furthermore, none of the Petitioners were appointed on 'Teaching Post' and therefore, the reliance placed by the Petitioners is itself misconceived in view of the admitted fact that their original appointments were made on 'Non-teaching Post'. In view thereof, the present Petitioners are not entitled to take the benefit of the aforesaid GR made applicable to WALMI.

9. It is further submitted that the application of impugned Rule is applicable to all the "Non-teaching" and 'Teaching Posts'. Moreover, the draft rules were introduced before the Executive Committee on 24.2.1992 which were made operational on trial basis. Subsequently, on 1.3.1992, the aforesaid rules came into force whereafter the Board of Governors of the Respondent No. 3 approved such rules on 21.11.1992. After such approval, the aforesaid rules viz. Yashwantrao Chavan Academy of Development Administration Service Rules, 1992, were enforced and followed till its revision on 5.3.2010. By revising said rules, the age of retirement of an employee in the service of YASHADA was reduced to 58 years from 60 years and said modification was applicable to all the employees except Class IV employees which the present Petitioners are in no way concerned with. The present Petitioners *cannot be treated* on par with the Petitioners in Civil Writ Petition No.

5608 of 2015 as the original appointment of the present Petitioners was not made on 'Teaching Post', and as such, they cannot claim reliefs on the grounds of parity.

10. It is further submitted that in the matter of *Chairman cum Managing Director, Coal India Limited and Ors. versus Ananta Saha and Ors. [2011 (5) SCC 142]*, the Hon'ble Apex Court has categorically held in Paragraph No. 14 that rules made under the proviso to Article 309 of the Constitution of India, being legislative in nature and character, could be given effect to retrospectively by placing reliance on *State of Mysore vs. M.H. Krishna Murthy [1973 (3) SCC 559]*, *Raj Kumar vs. Union of India [1975 (4) SCC 13]* and *K.C. Arora vs. State of Haryana [1984 (3) SCC 281]*. Furthermore, in Paragraph No. 17, it is held that conditions of service can be altered unilaterally by the employer, but it should be in conformity with legal and constitutional provisions by placing reliance on *State of Karnataka vs. Mangalore University Non-Teaching Employees' Association [2002 (3) SCC 302]*. Similarly in Paragraph No. 18, it was held that the law which to be applied in a case is the law prevailing on the date of decision making by placing reliance on *State of T.N. vs. Hind Stone [1981 (2) SCC 205]*, *V. Karnal Durai vs. District Collector [1999 (1) SCC 475]*, *Union of India vs. Indian Charge Chrome [1999 (7) SCC 314]*, and *Howrah Municipal Corporation vs. Ganges Rope Co. Ltd. [2004 (1) SCC 663]*.

11. It is further submitted that in another judgment of the Hon'ble Apex Court in the matter of *Punjab State Cooperative Agricultural Development Bank Limited vs. Registrar, Cooperative Societies and Ors.* [2022 (4) SCC 363], it is held that amendment having retrospective operation divesting employee of benefit already granted to him under existing Rules is violative of Articles 14 and 16 of the Constitution of India, that is to say, such an amendment would be violative of Articles 14 and 16 only in if such benefit was derived out of a vested/ accrued right before introduction of such amendment. Furthermore, it distinguishes between the terms 'legitimate expectation' and 'vested/ accrued right' in Paragraph No. 51 which reads thus – *“It may also be noticed that there is a distinction between the legitimate expectation and a vested/ accrued right” in favour of the employees. The rule which classifies such employees for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the rules, but it operates in futuro. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service.*” Further in Paragraph No. 52 reads thus – *“For the sake of illustration, if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed in the scheme of promotion or the age of superannuation, it may alter other conditions of*

service such scheme of rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme of rules retrospectively, that certainly will take away the vested/ accrued right of the incumbent which may not be permissible and may be violative of Articles 14 and 16 of the Constitution.”

It is, therefore, abundantly clear considering the present factual matrix that the aspect of age of retirement does not fall within the ambit of any vested/ accrued right, rather it is a legitimate expectation which operates in the future. And any amendment in the rule modifying the age of retirement is applicable retrospectively. Therefore, the impugned Rule herein is neither violative of Articles 14 and 16 of the Constitution of India nor detrimental to the rights of an employee.

- 12 It is further submitted that in view of the fact that the original appointment of the present Petitioners was never made on the ‘Teaching Post’, and in view of the admitted position that the present Petitioners were appointed on the posts viz. Course Assistant, Assistant Publication Officer and Clerk Typist which do not fall within the purview of ‘Teaching Post’, the revised Rule No. 3.01 of the YASHADA Service Rules is applicable to the present Petitioners and the said rule is neither violative of any of the rights of the Petitioners nor is it detrimental towards them.

13. It is further submitted that in connection with the petitioner no. 2 of this petition, the petitioner was neither appointed on the “Teaching post” nor promoted on the “Teaching post”. According to the Yashwantrao Chavan Academy of Development Administration Service Rules 1992 and Yashwantrao Chavan Academy of Development Administration Service Rules (Revised), the Petitioner No. 2 of this petition had never come in the purview of “Teaching Posts”. Hence Petitioner No. 2 is trying to mislead the court by making false statement.
 14. Considering the settled view of the Hon’ble Apex Court in various judgments cited herein above, the affidavit in-reply of Respondent No. 3 and the aforesaid written arguments, the present petition deserves to be dismissed with costs.
11. The Petitioners have relied upon the following Judgments :
 - (a) Iftekharullah Baig v. State of Maharashtra, 2022(6) Mh. L.J. 223.
 - (b) Mohammad Siddiqui v. State of Maharashtra, Writ Petition No. 13021 of 2023
 - (c) K. Nagraj & Ors. v. State of Andhra Pradesh, 1985 (1) SCC 523
 12. Respondent No. 3 has relied upon the following Judgments :

- (a) Iftekharullah s/o. Saidullah Baig v. State of Maharashtra & anr., [2022 SCC Online Bom 2973]
- (b) Mohammad Muzaffar Siddiqui s/o. Mohammad Abdul Qadar v/s. State of Maharashtra & Anr.
Judgment & Order dated 29.01.2024 in Writ Petition No. 13021 of 2023-Aurangabad Bench.
- (c) State of Maharashtra & anr. v/s. Bhagwan & Ors.
[2022 (4) SCC 193]
- (d) Punjab State Cooperative Agricultural Development Bank Ltd. v/s. Registrar, Cooperative Societies & Ors.
[2022 (4) SCC 363]
- (e) Chairman cum Managing Director, Coal India Limited & Ors. v/s. Ananta Saha & Ors. [2011 (5) SCC 142]
- (f) Howrah Municipal Corporation v/s. Ganges Rope Co. Ltd.
[2004 (1) SCC 663]
- (g) State of Karnataka v/s. Mangalore University Non-teaching Employees' Association [2002 (3) SCC 302]
- (h) Union of India v/s. Indian Charge Chrome
[1999 (7) SCC 314]
- (i) V. Karnal Durai v/s. District Collector [1999 (1) SCC 475]
- (j) K. Nagraj & Ors. v/s. State of Andhra Pradesh & Anr.
[1985 (1) SCC 523]
- (k) K.C. Arora v/s. State of Haryana [1984 (3) SCC 281]
- (l) State of T.N. v/s. Hind Stone [1981(3) SCC 205]

- (m) Raj Kumar v/s. Union of India [1975(4) SCC 13]
- (n) State of Mysore v/s. M.H. Krishna Murthy.
[1973 (3) SCC 559]

13. To avoid enlarging the size of this Judgment, we are not referring to all the cited Judgments, merely because they have cited by the litigating parties. To cut short the issue, we posed a query to the learned Advocate Mr. Dande as to whether in any of the Judgments that he has cited, barring *Iftekhharullah s/o. Saidullah Baig* (supra), the facts are similar to the facts of the cases in hands. At the cost of repetition, in the cases before us, a particular age (60 years) of superannuation was fixed for all the Petitioners when they joined duties and this became a part of their service conditions, which has been modified by the 2010 Rules, thereby reducing their superannuation age by 2 years, just prior to their superannuation.

14. Shri Dande submitted that in all the judgments cited by him, the facts are that there was a particular age of retirement in the reported judgments, which was increased subsequently and thereafter, reduced back to the original age which was the fixed age of superannuation. The learned Advocate Mr. Anbhule, therefore, reacted by saying that none of the Judgments cited by Mr. Dande would be applicable to his cases since

his cases are based on completely different facts. In his cases, the fixed age of retirement was never increased any time during their service period, so as to be reduced back to the original age of superannuation.

15. In *Iftexharullah s/o. Saidullah Baig v. State of Maharashtra & anr.(supra)*, the Full Bench of this Court was dealing with the issue of the service regulations prescribing the age of superannuation as 60 years, when the Petitioners joined employment. At the verge of completing 58 years, the Marathwada Waqf Board Regulation of 2017 were introduced by reducing the age of superannuation of these Petitioners by 2 years and declaring that they had superannuated. These facts are identical to the cases before us. Such fact situation was dealt with by this Court by referring to various reported Judgments of the Hon'ble Supreme Court, in paragraphs nos. 38 to 45, which read as under :

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 *28* FB5855o19group.odt 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 *29* FB5855o19group.odt 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](#), 2018 Mh.L.J Online (S.C.) 194 = (2022) 5 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.

16. As such, in all the Judgments referred to in *Iftekharullah s/o. Saidullah Baig v. State of Maharashtra & anr.(supra)*, more particularly, the Judgment delivered by the 5 Judges Bench of the Hon'ble Supreme Court in *Chairman, Railway Board and others vs. C.R. Rangadhamaiah and others* (supra), it was held that the reduction of the age of superannuation by a Rule introduced after the aggrieved employees were already in employment with a fixed age of superannuation, is unreasonable, arbitrary and violative of Article 14 and 16 and therefore, such Rule would operate “*in futuro*”. In *Bank of Baroda and Anr. v/s. G. Palani & Ors.* (supra) and *P. Tulsidas & Or. v/s. Government of A.P. & Ors.* (supra), the Hon'ble Supreme Court concluded that such regulations taking away a right of an employee to

retire at a fixed age of superannuation cannot be made applicable with retrospective effect.

17. Notwithstanding the contention of Shri Anbhule that none of the Judgments cited by the Shri Dande would be applicable to the case, we find that Shri Dande has laid a heavy reliance on the Judgment of the Hon'ble Supreme Court delivered in *K. Nagaraj and Ors. v/s. State of Andhra Pradesh and Ors.* (1985) 1 SCC 523 (3 Judges Bench). He has drawn our attention to paragraph 28, 29, 31 and 37, which read as under :

28. On the basis of this data, it is difficult to hold that in reducing the age of retirement from 58 to 55, the State Government or the Legislature acted arbitrarily or irrationally. There are precedents within our country itself for fixing the retirements age at 55 or for reducing it from 58 to 55. Either the one or the other of these two stages is regarded generally as acceptable, depending upon the employment policy of the Government of the day. It is not possible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not. If the policy adopted for the time being by the Government or the Legislature is shown to violate recognised norms of employment planning, it would be possible to say that the policy is irrational since, in that event, it would not bear reasonable nexus with the object which it seeks to achieve. But such is not the case here. The reports of the various Commissions, from which we have extracted relevant portions, show that the creation of new avenues of employment for the youth is an integral part of any policy governing the fixation of retirement age. Since the impugned policy is actuated and influenced predominantly by that consideration, it cannot be struck down as arbitrary or irrational. We would only like to add that the question of age of retirement should always be examined by the Government with more than ordinary care, more than the State Government has bestowed upon it in this case. The fixation of age of retirement has minute and multifarious dimensions which shape the lives of citizens. Therefore, it is vital from the point of view of their well-being that the question

should be considered with the greatest objectivity and decided upon the basis of empirical data furnished by scientific investigation. What is vital for the welfare of the citizens is, of necessity vital for the survival of the State. Care must also be taken to ensure that the statistics are not perverted to serve a malevolent purpose

29. Shri V.M. Tarkunde, who appears for some of the petitioners, A limited his argument to the contention that arbitrary fixation of retirement age amounts to "removal" from service and is therefore violative of [Article 311 \(2\)](#) of the Constitution This argument has to be rejected because of our conclusion that the reduction of the age of retirement from 58 to 55 in the instant case is not hit by [Article 14](#) or [Article 16](#), since it is not arbitrary or unreasonable in the circumstances of the case. But, apart from this position, we find it difficult to appreciate how the retirement of an employee in accordance with a law or rules regulating his conditions of service can amount to his "removal" from service. It is well-settled that [Article 311 \(2\)](#) is attracted only when a civil servant is reduced in rank, dismissed or removed from service by way of penalty, that is to say, when the effect of the order passed against him in this behalf is to visit him with evil consequences. See *Satish Chandra v. Union of India*¹, *Shyam Lal v. State of U P*², *State of Bombay v. Saubhagchand M. Doshi*³, *Parshottamlal Dhingra v. Union of India*⁴ and *P. Balakotiah v. Union of India*⁵. Besides, the point made by Shri Tarkunde is concluded by a Constitution Bench decision of this Court in *Bishun Narain Misra v. State of U.P.*⁶ In that case, the Government of Uttar Pradesh and raised the age of superannuation from 55 to 58 years by a Notification dated November 27, 1957 but reduced it again to 55 years by a Notification dated May 25, 1961. The appellant therein, who had attained the age of 55 years on December 11, 1960 and was continued in service when the age of retirement was raised to 58 years, was one of those who had to retire on December 31, 1961 as a result of reduction of the age of retirement to 55. It was held by this Court that the termination of service of an employee on account of his reaching the age of superannuation does not amount to his removal from service within the meaning of [Article 311 \(2\)](#). Learned counsel contends that this decision is of doubtful authority since the Court based its opinion on the majority judgment in *Moti Ram Deka v. General Manager, N.E. F.*

1 1953 SCR 655 : AIR 1953 SC 250 : 1953 SCJ 323

2 (1955) 1 SCR 26 : AIR 1954 SC 369 : 1954 SCJ 493

3 1958 SCR 571 : AIR 1957 SC 892 : 1958 SCJ 161

4 1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544

5 1958 SCR 1052 : AIR 1958 SC 232 : 1958 SCJ 451

6 (1965) 1 SCR 693: AIR 1965 SC 1567 : (1966) 1 LLJ 45

Railways⁷, in which the Court was not called upon to consider and did not consider the validity of a rule of superannuation. It is true that in *Moti Ram Deka*, the Court was concerned to determine the validity of Rules 148 (3) and 149 (3) of the Railway Establishment Code which provided for the termination of the service of a permanent servant by a mere notice. But, interestingly, the judgment in *Bishun Narain Mishra* shows that it was the appellant therein who relied on the decision in *Moti Ram Deka* in support of his contention that the rule by which the age of retirement was reduced to 55 years amounted to removal within the meaning of [Article 311 \(2\)](#). The Court held that the decision in *Moti Ram Deka* had no application to the case before them since "that case did not deal with any rule relating to age of retirement". (See page 696 of the Report). It was after noticing this distinction that the Court observed that the very case, namely, *Moti Ram Deka's* case on which the appellant relied, contained the observation that the rule as to superannuation or compulsory retirement resulting in the termination of service of a public servant did not amount to removal from service. The Court, in *Bishun Narain Misra*, came independently to the conclusion that "as the rule in question only dealt with the age of superannuation and the appellant had to retire because of the reduction in the age of superannuation it cannot be said that the termination of his service which thus came about was removal within the meaning of [Article 311](#)".

31. It is impossible to accept the submission that the Ordinance can be invalidated on the ground of non- application of mind. The power to issue an ordinance is not an executive power but is the power of the executive to legislate. The power of the Governor to promulgate an ordinance is contained in [Article 213](#) which occurs in Chapter IV of Part VI of the Constitution. The heading of that Chapter is 'Legislative Power of the Governor'. This power is plenary within its field like the power of the State Legislature to pass laws and there are no limitations upon that power except those to which the legislative power of the State Legislature is subject. Therefore, though an ordinance can be invalidated for contravention of the constitutional limitations which exist upon the power of the State Legislature to pass laws it cannot be declared invalid for the reason of non- application of mind, any more than any other law can be. An executive act is liable to be struck down on the ground of non-application of mind. Not the act of a Legislature.

37. Finally, there is no substance in the contention that the amendment to the Fundamental Rules, whereby the proviso to rule 2 was deleted, is beyond the powers of the rule- making authority or the

⁷ (1964) 5 SCR 683 : AIR 1964 SC 600 : (1964) 2 LLJ 467

Legislature. The Fundamental Rules and the amendments thereto are issued by the State Government under the powers delegated to it by the Civil Services (Governors' Provinces) Delegation Rules 1926, the Civil Services (Classification, Control and Appeal) Rules 1930, and under the Proviso to [Article 309](#) of the Constitution. The Fundamental Rules which came in to force with effect from January 1, 1972 were amended earlier by G.O. Ms. No. 128 dated April 29, 1969. By that amendment, a proviso was added to Rule 2 which reads thus:

"Provided that the rules shall not be modified or E; replaced to the disadvantage of any person already in service."

By G.O. Ms. No. 48 dated February 17, 1983 this proviso was deleted with retrospective effect from February 23, 1979. The contention of the petitioners is that the proviso which conferred a benefit upon Government servants by protecting their conditions of service, cannot be amended so as to empower the Government to alter those conditions to their prejudice and, in any event, they cannot be amended retrospectively so as to take away rights which had already accrued to them. The simple answer to this argument is that the amendment of February 17, 1983 to the Fundamental Rules was made by the Government of Andhra Pradesh in exercise of the powers conferred by the proviso to [Article 309](#) read with [Article 313](#) of the Constitution. It is well-settled that the service rules can be as much amended, as they can be made, under the proviso to [Article 309](#) and that, the power to amend these rules carries with it the power to amend them retrospectively. The power conferred by the proviso to [Article 309](#) is of a legislative character and is to be distinguished from an ordinary rule making power. The power to legislate is of a plenary nature within the field demarcated by the Constitution and it includes the power to legislate retrospectively. Therefore, the amendment made to the Fundamental Rules in the exercise of power conferred by [Article 309](#), by which the proviso to rule 2 was deleted retrospectively, was a valid exercise of legislative power. The rules and amendments made under the proviso to [Article 309](#) can be altered or repealed by the Legislature but until that is done, the exercise of the power cannot be challenged as lacking in authority. (See [B.S. Vaderu v. Union of India](#);⁽¹⁾ [Raj Kumar v. Union of India](#)⁸).

18. It cannot be lost sight of that, in *K. Nagara*(supra), the fixed

8 (1975) 3 SCR 963, 965: (1975) 4 SCC 13,14 : 1975 SCC (L&S) 198, 199 : AIR 1975 SC 1116 : 1975 Lab IC 669 : (1975) 1 SLR 774.

age of superannuation of the Petitioners was actually 55 years. A new Government introduced a notification and enhanced the age to 58 years. The succeeding Government promptly reduced the age from 58 back to 55 years, which was the originally fixed age of retirement of the Petitioners when they joined employment. In the cases before us, the age of retirement of the Petitioners was 60 years when they joined employment. In *K. Nagaraj*(supra) the Hon'ble Supreme Court concluded that the fixed age of retirement of the Petitioner was 55 years which was increased to 58 years by a Government and the succeeding Government again brought it down to 55 years and this was permissible. In *Chairman, Railway Board and Others* (Supra), the 5 Judges Bench of the Hon'ble Supreme Court concluded that retrospective amendment affecting a vested or accrued right in a Government employee thereby taking away such right, is invalid and violative of Articles 14 and 16 of the Constitution of India, since such a service condition, newly introduced is unreasonable and arbitrary.

19. In the light of the cited reports, we are of the view that the prayer put forth by the Petitioners only to the extent of restraining YASHADA from reducing their fixed age of retirement to 58 years vide the 2010 Rules, deserves acceptance. **All these Writ Petitions are,**

therefore, partly allowed. The said amended Rule 3.01 of the 2010 Rules, in relation to the Petitioners before us, is declared to be operable prospectively to those employees who have been appointed after the introduction of the amended Rule.

20. Considering the view taken by this Court in *Mohammad Siddique* (supra), those Petitioners who were superannuated by YASHADA prematurely, at the age of 58 years and who have preferred their Petition within reasonable time, shall be entitled for their last drawn salary with allowances, for a period of 24 months, on account of the involuntary unemployment foisted on them. These salaries be calculated and be paid to these Petitioners within a period of 60 days from today, failing which, interest @ 6% p.a. payable from the date the Petitioners were retired, would be payable to them along with the arrears of wages.

21. **Rule is made absolute** in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)