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

WRIT PETITION NO. 6492 OF 2024

Dr.Yashwant Vitthalrao Patil,
aged 62 yrs., Occu.-service, r/o 55,
Yash, Shastri Layout, Subhash
Nagar Square, Nagpur 440022. PETITIONER

// V E R S U S //

1) The State of Maharashtra
through its Secretary,
Department of Higher
and Technical Education,
Mantralaya, Mumbai 400032.
2) The Director of Higher Education,
State of Maharashtra, Central
Building, Pune 411001.
3) The Joint Director of Higher
Education, State of Maharashtra,
Nagpur Region, Old Morris College
premises, Civil Lines,
Nagpur 440001.
4) Rashtrasant Tukdoji Maharaj
Nagpur University, Nagpur through
its Registrar, Campus-Ambazari
T-Point Road, Nagpur 440033.
5) People's Welfare Society, Nagpur
through its President, Advocate
Shri. Mohan Madhukarro Wasnik,
aged 52 yrs., office at PWS Arts,
Commerce and Science College,
Kamptee Road, Nagpur 440026. RESPONDENTS

Mr. F.T.Mirza, Senior Advocate a/b Mr. Shaad Mirza, Advocate for petitioner.
Mr. S. M. Ukey, Addl. Govt. Pleader for respondents/State.
Mr. S. M. Bhagde, Advocate for Respondent No.4.
Mr. B.G.Kulkarni, Advocate for respondent No.5.

CORAM : ANIL S. KILOR AND RAJ D. WAKODE JJ.
DATE : 17/04/2026

ORAL JUDGMENT (PER : ANIL S. KILOR, J.):-

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned Counsel appearing for the parties.

3. The petitioner, who was appointed as lecturer on 04.07.1991 and promoted upto the post of principal, was asked to retire at the age of 62 years by denying the extension upto the year 65 vide order dated 06.02.2025, on the ground of non-compliance of Clause 12 of the Government Resolution dated 05.03.2011, which stipulates that proposal for extension of age shall be submitted before one month of the retirement. The aforesaid denial to grant extension by the respondent No.1 to the petitioner is the subject matter of challenge in this petition.

4. The brief facts of the present case are as under:

5. The petitioner while working as Principal, attained the age of 62 years, which is the age of superannuation, on 30.10.2024.

6. The procedure as prescribed under G.R. dated 05.03.2011 for grant of extension to the age of retirement from 62 to 65, includes issuance of advertisement by the Management at least twice as per Clause 11 of the aforesaid G.R. and making attempts to appoint a suitable candidate. Before issuance of such advertisement, a permission is to be obtained

from the University and the Government. Thereafter, if no suitable candidate is found a Committee is to be constituted for assessment of performance for recommendation to extend the age of retirement. Thereupon, the Government has to take decision on such recommendation. Thus, there are various stages and in none of these steps or the stages there is any role of the petitioner. Whereas, all such procedure has to be followed by the Management or the University or the Deputy Director of Higher and Technical Education or Director of Higher and Technical Education or the Government.

7. In the present matter, the permission for issuance of advertisement was sought by the Management in the month of March 2024, which was granted after three months i.e., on 09.07.2024. Thereafter, the first advertisement was issued on 17.08.2024. In response to the aforesaid advertisement, no candidate applied and therefore, another advertisement was issued on 03.09.2024.

8. In response to the same advertisement, five candidates applied and on holding their interviews on 30.09.2024, none of the candidate was found suitable.

9. Despite the same, since nothing was done in the matter to proceed further, the petitioner filed the present petition.

10. Thereupon, a Committee was constituted on 29.10.2024 for assessment of performance of the petitioner. The said Committee was

chaired by the Vice-Chancellor of the University which, recommended the name of the petitioner for extension of his age of retirement. Such recommendation was made on 29.10.2024. However, thereafter, the Director of Higher and Technical Education took one month to forward the proposal and forwarded it on 28.11.2024. Thereafter, the impugned communication was issued on 06.02.2025, denying extension to the petitioner.

11. In the above backdrop, Shri Mirza, learned Senior Counsel appearing for the petitioner argues that if, in submitting proposal for extension of age of retirement for the post of Principal a delay is caused on the part of the authorities, the petitioner cannot be punished for the same. It is submitted that Clause 12 of the aforesaid G.R., mandates submission of the proposal before one month of the retirement, cannot therefore be considered as mandatory. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***Additional Director General Adjudication, Directorate of Revenue Intelligence vs. Suresh Kumar and Company Impex Private Limited and others*** reported in ***(2026) 1 Supreme Court cases 756*** and ***C. Bright vs. District Collector and others*** reported in ***(2021) 2 Supreme Court Cases 392.***

12. On the other hand, Shri Ukey, learned Additional Government Pleader strongly opposed the petition. He submits that the Government

Resolution dated 05.03.2011, has given a complete modality and there is a reason for imposition of condition as regards the time-line to be followed while seeking extension. It is submitted that in the reply, the importance of following strict time-line is stated and to avoid difficulty and to face a situation where the employee has got superannuated, there is no provision under the G.R. to reinstate such employee. It is, therefore, submitted that the submission made by the learned counsel for the petitioner that Clause 12 of the G.R. dated 05.03.2011 is not mandatory, cannot be accepted.

13. He further submitted that the petitioner has pointed out certain instances wherein in similar matters, the extension was granted. He argued that the equality cannot be claimed in illegality. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of **State of Bihar and others vs. Kameshwar Prasad Singh and another** reported in **(2000) 9 Supreme Court Cases 94.**

14. He further argued that if, certain thing is required to be done in a manner provided, it has to be done in the same way or not at all. He, therefore, submits that if the complete procedure is given under the G.R. dated 05.03.2011, any act in deviation of the same, the consequences may be as in the present matter. For this purpose, he placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***State of U.P. and others vs. Rajkumar Sharma and others*** reported in ***(2006) 3***

Supreme Court Cases 330.

15. Shri B. G. Kulkarni, the learned Advocate for the Management supports the case of the petitioner and submits that because of delay at the time of granting permission to issue advertisement and thereafter, in forwarding the proposal by the Director, the timeline could not be followed. He, therefore, submits that the petitioner should not be punished for the wrong not committed by him.

16. Shri Bhagde, learned counsel appearing for the respondent No.4-University, reiterates the submissions of Shri Ukey, learned Additional Government Pleader.

17. We have heard the learned counsel for the respective parties and perused the record.

18. It is evident from the record that the respondent-Management applied for issuance of advertisement to fill up the vacancy, which was going to become vacant because of the retirement of the petitioner on 31.10.2024. This permission was sought in pursuance to the condition i.e., Clause 11 of the G.R. dated 05.03.2011, which says that, in case of institutions other than the government institutions, for grant of extension of the age of the post of Principal from 62 to 65 years, the Management shall first issue advertisement at least twice to fill up the such post and shall take efforts to fill such post. It further mandates that such process shall be initiated immediately upon completion of age of 61 years of age

of such employee.

19. Though, the permission was sought in the month of March 2024 by the Management for issuance of advertisement, it was not granted for three months, and on 09.07.2024, the University granted permission. Thereafter, the Government permitted issuance of the advertisement on 16.08.2024, and accordingly, the first advertisement was issued on 17.07.2024, without any delay.

20. Since, nobody applied in pursuance to the said advertisement, the second advertisement was issued on 03.09.2024. In pursuance to same five candidates applied for the post of 'Principal'.

21. Thereupon, the interviews were held on 30.09.2024. However, none of the candidates was found suitable and eligible.

22. Thus, this is the point when the question arose about the constitution of a Committee for performance assessment of the petitioner for grant of extension.

23. Hence, the process, which was started in the month of March 2024, ended in the month of September 2024 with an unsuccessful attempt to appoint anyone.

24. The aforementioned dates clearly indicate that at every stage, the University or the Public Authority has not acted promptly and has delayed the procedure.

25. The above referred scenario has constrained the petitioner to

approach this Court and file this petition.

26. Thereafter, a Committee was constituted for assessment of the petitioner's performance under the chairmanship of the Vice-Chancellor. The said Committee, on finding the petitioner suitable for grant of extension, recommended extension by forwarding the proposal to the Director on 29.10.2024. Thereafter, the Director took one month to forward the proposal to the Government and accordingly, on 28.11.2024, the proposal was forwarded.

27. When the petitioner found that the Government has failed to take any decision on the recommendation, it prompted this Court to intervene in the matter and direct the Government to take decision within 15 days, vide order dated 23.01.2025. Thereupon, the impugned order came to be passed.

28. From the aforesaid facts, it is evident that the petitioner had no role in the entire process; rather, the functions required to be performed in the matter were to be carried out by the Management or the University or the Public Authority.

29. In light of this, a question arises for consideration is whether, for the delay at every stage committed by the University or the Government, the petitioner shall be punished by asking strict compliance of Clause 12 or by treating Clause 12 as mandatory.

30. To answer this question, it would be beneficial to refer to the

judgment in the case of *Additional Director General (supra)*, which reads thus:

> *"37. This Court was called upon to consider in what manner Section 65-B(4) should be construed as mandatory and in what manner it should be understood to have been duly complied with in its letter and spirit. While explaining the mandatory nature of Section 65-B(4) this Court applied two Latin maxims:*
> *"(i) impotentia excusat legem.*
> *(ii) lex non cogit ad impossibilia."*

31. Similarly, it will be beneficial to refer the judgment in the case of *C. Bright (supra),* which reads thus:

> *"8. A well-settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid and that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute.*
> *10. The Constitution Bench of this Court held that when the provisions of a statute relate to the performance of a public duty and the case is such that to hold acts done in neglect of this duty as null and void, would cause serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, the practice of the courts should be to hold such provisions as directory. In a seven-Bench judgment, this Court was considering as to whether the power of the Returning Officer to reject ballot papers is mandatory or directory. The*

> *Court examined well-recognised rules of construction to observe that a statute should be construed as directory if it relates to the performance of public duties, or if the conditions prescribed therein have to be performed by persons other than those on whom the right is conferred.*
> *15. A recent Constitution Bench held that the provisions of the Consumer Protection Act granting 30 days' time to file response by the opposite party or such extended period not exceeding 15 days is mandatory as the object of the statute is for the benefit and protection of the consumer. It observed that such Act had been enacted to provide expeditious disposal of consumer disputes. In this case, an individual was called upon to file his written statement in contradiction for a pubic authority to decide the issue before it."*

32. If the above principles are applied to the peculiar facts of the present case, we are of the opinion that the petitioner is not at fault for not submitting the proposal for extension of his age from 62 to 65 before one month of his superannuation, and therefore, the petitioner cannot be punished for the wrong not committed by him and further, not considering the various functions to be performed by the authorities, as there is no timeline framed under the G.R. for these authorities including the Management, University and Deputy Director of Higher and Technical Education to complete the process in a time framed manner. Hence, the Clause 12 cannot be held as mandatory.

33. There is no doubt that it is well settled law, as laid down in the case of *State of U.P. and others (Supra)* that if certain thing is provided to be done in a particular manner, it has to be done in the same manner or not

at all. However, for the reasons stated above, this principle will not apply to this case. Similarly, for the reasons stated above, it cannot be said that granting extension to the petitioner, will amount to allow the illegality to continue in perpetuity. Therefore, we are of the opinion that since the judgment in the case of *State of Bihar and others (Supra)* is distinguishable on facts, the same is not of any assistance to the State.

34. Furthermore, even if there is no challenge to G.R. dated 05.03.2011 and 23.11.2011, it will make no difference as far as the present case is concerned. In a peculiar facts and circumstances of this case, we are of the opinion that the present petition needs to be allowed.

35. The difficulty sought to be raised by the respondents/State regarding reinstatement is misconceived, as the petitioner has been continuously working, therefore, no question of reinstatement arises. The benefit as claimed in the petition cannot be denied to the petitioner on such ground. Accordingly, we pass the following order:

(i) The writ petition is allowed.

(ii) The order passed by respondent No.1 on 06.02.2025 is hereby quashed and set aside.

(iii) We direct the respondent nos. 1, 2 and 3 to grant an extension to the retirement age of the petitioner from 62 to 65 years for the post of 'Principal' and all the consequential benefits from 01.11.2024 shall be paid to the petitioner within a period of six months from today.

36. Rule is made absolute in aforesaid terms. No order as to costs.

(RAJ D. WAKODE, J.) (ANIL S. KILOR, J.)