

(2014) 08 BOM CK 0117
In the Bombay High Court
Case No : Writ Petition No. 762 of 1999

Jagannath

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 08 BOM CK 0117

Hon'ble Judges : C.V. Bhadang, J; A.P. Bhangale, J

Bench : Division Bench

Advocate : R.L. Khapre, Advocate for the Appellant; T.R. Kankale, A.G.P. and G.G. Mishra, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. Heard the submissions made by the learned Counsel for the respective parties.
2. By this petition, the petitioner has prayed to quash and set aside the order of his retirement dt. 23.2.1999 to the extent of the petitioner with further directions to the respondents to continue the petitioner till 1.4.2001 and provide him the benefit of age of 60 years.
3. The facts, briefly stated, are as under:

The petitioner was appointed in Zilla Parishad High School, Buldana in the pay scale of Rs. 60-120/- p.m. w.e.f. October, 1962. According to the petitioner, the Zilla Parishads were established in the State of Maharashtra w.e.f. 1.5.1962 and prior to that date, Janpat Sabha was established under the Madhya Pradesh State. The age of retirement in accordance with Madhya Pradesh Secondary Act, 1951 was 60 years for teachers. It is submitted that no rules and regulations were framed in respect of Schools of Zilla Parishads in the State of Maharashtra and the services of teachers were simply governed under the Bombay Civil Services Rules with age of retirement indicated as 58 years. The State of Maharashtra had issued a circular dt. 27.10.1994 in respect of teachers who

were permanent under Zilla Parishad as on 31st December, 1965 making them entitled to continue till they attain the age of 60 years. Thus, according to the petitioner, the action of retiring him at the age of 58 years was violative of Article 14 of the Constitution of India and therefore, the petitioner has prayed that he is entitled to get benefit of retirement on the premise that he is entitled to continue till he attains the age of 60 years. The Government of Maharashtra State issued a Circular bearing No. PEN-1094/CR-70/97, dt. 27.10.1994 to clarify that teachers who were made permanent and serving from the erstwhile cadre of Janpat Madhya Pradesh continuing their service shall be treated as retired at the age of 60 years and shall retire accordingly.

4. Government Resolution No. SND/1099/34/Sewa-4, dt. 2.2.1999 (V) was referred to by the Chief Executive Officer, Zilla Parishad, Buldana and accordingly, in view of Section 10(1) of the Maharashtra Service Retirement and Pay Scale Rules, 1982, the teachers were retired including the petitioner. The name of the petitioner was shown at serial no. 17; the date of his birth was shown as 16.10.1940 and the date of his retirement was shown as 28.2.1999. Copy of letter dt. 23.2.1999 issued by the Chief Executive Officer, Zilla Parishad, Buldana was also communicated to the petitioner who was, at the relevant time, serving as a Head Master, Zilla Parishad High School, Buldana-for information and appropriate action. However, the decision dt. 23.2.1999 for retiring the petitioner was not challenged before the School Tribunal for the reasons best known to the petitioner.

5. Our attention is invited to the Judgment delivered in Writ Petition No. 586 of 1997 on 8th July, 2011 by the Division Bench of this Court, in which it was declared that the petitioner in that case, who was similarly circumstanced as an Assistant Teacher in Secondary School in Vidarbha region since prior to 31.12.1965, is entitled to continue in service till the age of 60 years. This Court was pleased to quash the order retiring the petitioner in that case at the age of 58 years.

6. In the ruling in the case of M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others, the Apex Court has considered the case of teachers serving in Secondary School who were made permanent on 31st December, 1965 and held that their age of retirement would be 60 years. The Apex Court had set aside bye-law 4 of the Bye laws in that case on the ground that the Municipal Council, Hinganghat outstepped its jurisdiction in framing the bye-laws and directed that service of the appellants in that case shall be governed by the Secondary School Code as enforced by Regulation No. 19(7) (xvi) of the Maharashtra Regulations. Thus, the bye-laws framed by the Municipal Council providing for the age of retirement as 58 years was quashed. That being so, the Hon"ble Supreme Court has already considered the age of superannuation of the teachers working in the Municipal School in Vidarbha Division of Maharashtra as 60 years instead of 58 years while setting aside the bye-laws framed to reduce the age of superannuation from 60 years to 58 years.

7. In the ruling in the case of Laxmikant Gangadhar Ancharwadkar vs. State of Maharashtra 2004-EQ (BOM)-0-1659, a group of Writ Petitions was disposed of by the Division Bench of this Court and following position of law was mentioned as emerged from the discussion for claiming benefit of Regulations 7 of the Madhya Pradesh Secondary Education Regulations, 1977. This Court expressed its opinion on teachers who had completed one year of temporary service and are continued in service as on 31.12.1965 that they are deemed to have been confirmed as teachers on 31.12.1965 by virtue of clarificatory letters of the State Government and they will be entitled to claim benefit of Regulation 7 providing for 60 years of service.

8. In view of the above discussion and the aforementioned rulings, the issue is no more res integra and the petitioner herein was, thus, entitled to continue till he attains the age of 60 years and accordingly, he is entitled for the retirement dues and benefits on the premise that he had retired at the age of 60 years. That being so, we allow this petition in terms of prayer clause (a) of the petition. Rule is made absolute accordingly. No order as to costs.