

(2011) 07 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 2954 of 2011

Samadhan Umak

APPELLANT

Vs

Dr. Punjabrao Deshmukh Krishi Vidyapeeth and Associate
Dean Agriculture College Dr. Punjabrao Deshmukh Krishi
Vidyapeeth

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 10(1), 10.1, 10.2

Citation : (2011) 5 ALLMR 267

Hon'ble Judges : P.D. Kode, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : A.M. Gordey and R.D. Raskar, for the Appellant; Abhay Sambre, for the Respondent

Final Decision : Allowed

Judgement

1. In Writ Petition No. 2954/2011 filed under Article 226 of the Constitution of India, the Petitioner Samadhan Umak - a Laboratory Attendant working with Respondent No. 1 Agriculture University has challenged the notice of retirement dated 14.06.2011 served upon him by the Secretary of Respondent No. 1, interalia mentioning that as he completes 58 years of age on 30.06.2011, he would stand retired on that date as per Rule 10[1] of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "1982 Rules" for short). It is not in dispute that his date of birth is 01.07.1953, however, according to the Petitioner, as he is ClassIV or Group D employee, age of retirement in his case is 60 years, as laid down in Rule 10.2 of the 1982 Rules.

This petition was filed on 27.05.2011 and this Court issued notice in the matter on 28.06.2011 and made it returnable on 30.06.2011. The matter was then adjourned on one or two dates and was heard on 06.07.2011, when we permitted Respondent Nos. 1 and 2 time till 11.07.2011 to clarify the issue in

relation of status of Petitioner. Accordingly on 11.07.2011, Respondent Nos. 1 and 2 have filed additional affidavit stating that, in appointment order of Petitioner he was shown to be in Category D or Group D. They further disclosed that, they have not published any grouping or categorization depending upon the payscales of their own, but were relying on the Government Resolution dated 02.07.2002.

2. Another Writ Petition No. 2505/2011 also filed under Article 226 of the Constitution of India, the Petitioner Maroti Dhote - a Laboratory Attendant working with Respondent No. 1 Agriculture University has challenged the notice of retirement dated 28.04.2011 served upon him by the Secretary of Respondent No. 1, interalia mentioning that as he completes 58 years of age on 20.05.2011, he would stand retired on 31.05.2011 as per Rule 10[1] of the Maharashtra Civil Services (Pension) Rules, 1982. In this case also it is not in dispute that date of birth of Petitioner - Maroti is 21.05.1953, however, according to the Petitioner, as he is ClassIV or Group D employee, age of retirement in his case is 60 years, as laid down in Rule 10.2 of the 1982 Rules.

This Writ Petition No. 2505/2011 was filed on 30.05.2011 and this Court issued notice in the matter on 31.05.2011 and made it returnable on 21.06.2011. The matter was then adjourned on one or two dates and was heard and closed for orders on 20.07.2011. As the issue involved in both these petitions is identical, with the consent of parties common judgment is being passed.

3. We have heard both the petitions finally by consent of Shri A.M. Gordey, learned Senior Counsel with Mrs. R.D. Raskar, learned Counsel for Petitioners and Shri Abhay Sambre, learned Counsel for Respondents, by making Rule, returnable forthwith.

4. Shri Gordey, learned Senior Counsel places reliance upon the appointment orders as issued to Petitioners to urge that as per its Clause 9, Petitioners were in Group D. It is further pointed out that appointment of Petitioner in Writ Petition No. 2954/2011 as laboratory attendant was on pay scale of Rs. 30504590, and appointment of Petitioner in Writ Petition No. 2505/2011 also as laboratory attendant was in the pay scale of Rs. 200 3 230 5 255 Extn5 280. In this background, Government Resolutions dated 29.07.1993, 08.06.1995 and 02.07.2002 are relied upon to show that though there could have been and there was pay revision, State Government had taken precaution to see that, that wage revision and fixation does not deprive the Group D employees like Petitioners, of their retirement at 60. He contends that, though in the process of wage revision, employees like Petitioners may draw salary in pay scale shown in ClassIII or Group C, then age of retirement remains 60.

5. Shri Sambre, learned Counsel for Respondent Nos. 1 and 2 has relied upon the government resolution dated 02.07.2002 to urge that as per categorization there, only those posts whose maximum in pay scale is below Rs. 4400/qualify to be treated as Group D. Thus whose pay scale exceeds Rs. 4400/, but is less than

Rs. 9000/fall in Group C. As the minimum of pay scale applicable to Petitioners is Rs. 4590/, it is in excess of Rs. 4400/and hence, the Petitioners has been rightly treated as Group C employee. He contends that Rule 10.1 of the 1982 Rules prescribe 58 as age of retirement for such Group C employee.

6. After hearing the respective Counsel, we find that the application of 1982 Rules to Petitioners is not in dispute. The only question is, whether case of Petitioners need to be regulated by Rule 10.1 thereof or then by its Rule 10.2. Rule 10.1 deals with group C employees and prescribes 58 as age of their superannuation. Rule 10.2 deals with group D employee and prescribes 60 as age for that purpose.

7. Perusal of appointment order dated 04.09.2005 issued to Petitioner in Writ Petition No. 2954/2011 by Respondent reveals his designation as laboratory attendant and appointment in pay scale of Rs. 3050 75 3950 80 4590 on probation for a period of two years. Similarly appointment order dated 03.07.1980 issued to the Petitioner in Writ Petition No. 2505/2011 as laboratory attendant shows pay sale of Rs. 20032305255Extn5280. The terms and conditions of appointment enclosed in Schedule, particularly Condition No. 9 show that post of laboratory attendant is in Group D and equivalent to post of Attendant/Watchman etc. This appointment order or its terms and conditions therein are not in dispute. While removing disparities, at the time of implementation of 3rd wage revision, the State Government issued a resolution on 29.07.1993. Its perusal reveals that till then post having minimum of 1100 or below it, were treated as Group D post. This was hiked from 1100 to 1400. But, then its clause [5] specifically stipulates that after wage revision, some group D posts may get pay scales which are covered by group C, and this may create confusion about their superannuation age or other benefits. Government therefore, has clarified that this change in wage revision will not in any way prejudice such group D employees and their service conditions, and age of retirement will continue to remain the same.

8th June, 1995 is the another government resolution issued on account of assured promotion scheme. Perusal of its Clause 2[c] again reveals the same protection to group D employees. At the time of implementation of 4th wage revision, State Government has issued resolution dated 02.07.2002. The Respondents have placed reliance upon this resolution. This resolution shows post having maximum upto Rs. 4400/are included in Group D. Post above it and having maximum upto Rs. 9000/are treated as group C post, but its Clause 5 again shows similar protection to employees in Group D. Hence the employee appointed in Group D is entitled to same service conditions and age of superannuation, even if on account of such wage revision, his pay is fixed in scale maximum of which exceeds Rs. 4400/and therefore, is covered by group C pay scales. Here maximum of pay scale of Petitioners is Rs. 4590/and hence that pay scale is of group C. In view of this clarification or protection extended by the State Government vide Clause 5 of the government resolution dated 02.07.2002,

it is apparent that their age of retirement cannot be changed and they are entitled be treated as group D employee for all service conditions including the age of retirement. We, therefore, find justification being pressed into service for retiring them at 58, unsustainable. With the result, it is apparent that their retirement as per notice having No. 856 dated 14.06.2011 and No. 340 dated 28.04.2011, cannot stand and Petitioners are entitled to be continued till they reaches 60 yeas of age. Accordingly we quash and set aside the order of retirement dated 14.06.2011 (Annexure V with Writ Petition No. 2954/2011) and dated 28.04.2011 (Annexure V with Writ Petition No. 2505/2011) and declare 9 that the Petitioners are entitled to be taken back in service and continue therein, till they attains the age of 60 years i.e. till 30.06.2013 and 31.05.2013. Respondent Nos. 1 and 2 are accordingly directed to take them back forthwith, to pay salary from 01.07.2011 and 01.06.2011 till they are reinstated and to permit them to work till they attains age of 60 years.

8. Writ Petitions are thus allowed by making rule absolute in the aforesaid terms. However, in the circumstances of the case, there shall be no order as to costs.