

(2024) 04 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No. 4597 Of 2018

Sharad Nagnath Bubne And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 19-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 300A
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 44, 46, 46 (1), 46(2), 46(3),
46(4), 46(5), 46(6), 66

Citation : (2024) 04 BOM CK 0055

Hon'ble Judges : Nitin Jamdar, J;M.M. Sathaye, J

Bench : Division Bench

Advocate : Vishwajeet Sawant, Prabhakar Jadhav, S.B.Kalel, Kanhaiya S. Yadav,
Neel G. Helekar

Final Decision : Disposed Of

Judgement

Nitin Jamdar, J

1. Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. The Petitioners are teaching and non-teaching staff of Respondent No. 4- Seth Govindji Raoji Ayurveda Mahavidyalaya, an Ayurvedic College. By this Petition filed on 11 January 2018, the Petitioners are seeking pensionary benefits and gratuity denied to those employees of Ayurvedic Colleges who have taken voluntary retirement.

3. Petitioner No. 1- Sharad Nagnath Bubne worked with Respondent No.4- College as a Head Clerk; Petitioner No.2-Shrikant Khandu Gawade as a Clerk; Petitioner No.3-Sunita Sudhakar Pansare as a Nurse; Petitioner No.4- Ravindra Namdev Sarvade as an Assistant Panchkarma; Petitioner No.5- Jayant Nagesh Kulkarni worked as an Associate Professor; Petitioner No.6- Narayan Goyal as a Peon; and Petitioner No. 7 -Manisha Ravindra Joshi as a Reader. The Petitioners

have taken voluntary retirement from service of the Respondent College after rendering qualifying service, except Petitioner No. 7 who has not completed the qualifying service.

4. Respondent No.1 is the State of Maharashtra through the Principal Secretary, Medical Education and Drugs Department; Respondent No.2 is the State of Maharashtra through the Principal Secretary, Education and Employment Department. Respondent No.3 is the Directorate of Ayush, and Respondent No.4 is Ayurveda Mahavidyalaya, the Management, employer of the Petitioners.

5. Though the issue in this petition pertains only to the non-extension of retiral benefits to those employees who have taken voluntary retirement from the Ayurvedic colleges, the struggle of the employees of the Ayurvedic colleges and their hospitals is a long one. It is necessary to trace this history to highlight the Respondent State's consistent refusal to extend retiral benefits to them by creating artificial and arbitrary classifications.

6. On 21 July 1983, a Government Resolution was issued by the State of Maharashtra. Under this Government Resolution, the pension, gratuity and other retiral benefits including family pension admissible to the government servants were made applicable to full-time teaching and non-teaching staff in recognized aided non-government Arts, Science, Commerce, Education Colleges and Non-Agricultural Universities in the State for those who have retired on or after 1 October 1982. A Government Resolution was issued on 7 March 1990, clarifying that those employees who have opted for voluntary retirement will be eligible under the Government Resolution dated 21 July 1983 for pensionary benefits and gratuity. These Government Resolutions did not extend the pensionary benefits to teaching and non-teaching staff of Ayurvedic Colleges and Social Work Colleges.

7. Writ Petition No. 3508 of 1992 and Writ Petition No. 2645 of 1990 were filed by the employees of the Ayurvedic Colleges and Hospitals for extending the benefits of pension and gratuity schemes to teaching and non-teaching employees and the hospitals of Ayurvedic Colleges. The Division Bench of this Court, by the judgment dated 14 June 1996, held that the non-extension of benefits of pension and gratuity scheme to teaching and non-teaching employees of non-government aided Ayurvedic and Unani Colleges was violative of Articles 14 and 16 of the Constitution of India. The Court directed extending the benefits to those employees, effective from 26 May 1981. This decision was challenged by the State of Maharashtra and its Civil Appeal Nos. 2878-2879 of 1997 were dismissed by the Hon'ble Supreme Court on 7 April 1997. The Hon'ble Supreme Court upheld the declaration of the Division Bench but observed that a direction to extend the benefits of pension and gratuity scheme from a particular date could not have been given, and the State Government was given liberty to consider the extension of the said scheme in a phased manner.

8. A contempt Petition bearing No. 346 of 1996 against the State of Maharashtra

was filed for non-compliance with the order of the Division Bench. The Contempt Petition was disposed of on 3 April 2006 wherein the Respondent -Government gave a commitment that the order would be complied with in letter and spirit. In another Contempt Petition, the Court observed that since the State Government, in the meanwhile, took a decision the decision will have to be challenged by a substantive Petition.

9. A Writ Petition bearing No. 5771 of 2011 came to be filed by Vidarbha Ayurved Mahavidyalaya and Others against the State of Maharashtra before the Division Bench of this Court at Nagpur Bench. The teachers sought a direction for extending the pensionary benefits to non-government-aided Ayurvedic Colleges. The Petitioners contended that the State has extended the , pension and gratuity scheme to various streams except for Ayurvedic and Social Welfare Colleges which was discrimination. That is by Government Resolution dated 16 November 1996 to private Arts Colleges. By Government Resolution dated 17 April 2000, to the Colleges of Physical Education. The Division Bench, after a detailed discussion, upheld the grievance of employees of the Ayurvedic Colleges and, by judgment and order dated 10 June 2013, issued appropriate directions for extending the benefits on the ground that there was unjustified discrimination.

10. Thereafter, on 11 April 2016, the State of Maharashtra issued a Government Resolution extending the pension and gratuity scheme to teaching and non-teaching staff of privately aided Ayurvedic Colleges and hospitals in terms of Government Resolution dated 21 July 1983 but only to the Petitioners in Writ Petition disposed of by the Division Bench on 10 June 2013. Thereafter, by Government Resolution dated 10 August 2016, the State of Maharashtra extended pension and gratuity scheme to teaching and non-teaching staff of other aided Ayurvedic and Unani Colleges and Hospitals as per the list in Annexure-B to the said Government Resolution. Annexure -B contained a list of 20 Colleges, and the name of the College of the Petitioners, Respondent No.4 was included in the list. The guidelines for ground-level implementation and the procedure of implementation were referred to in Annexure- A . Annexure - A contained a clause that a separate decision would be taken in respect of the employees who have taken voluntary retirement.

11. The Petitioners and others, who had taken voluntary retirement, called upon the State Government to issue necessary instructions as regards those who have taken voluntary retirement. Representations were made on 11 January 2017, 2 March 2017 and 6 February 2017. The Directorate of Ayush informed the Petitioners that a separate decision has not been taken and that the Petitioners will be notified when it is taken. A similar response was given to other Petitioners on 15 March 2017. Again, on 1 April 2017, the Petitioners wrote a letter to the State Government, but there was no response.

12. The Petitioners filed a Writ Petition bearing No. 8583 of 2017. By order dated 28 July 2017, the Division Bench directed the State Government to decide the representations within four months. The Petitioners pointed by communication

dated 31 August 2017 that there is no distinction between those who have retired and those who have taken voluntary retirement. It was also asserted that the Petitioners have never resigned from service but have taken voluntary retirement.

13. On 10 November 2017, the Directorate of Ayush placed on record a decision taken on the representations of the Petitioners. The decision was as follows.

(a) Petitioner No.1 – Sharad Nagnath Bubne resigned on 1 October 2013, and therefore, as per the Government Resolution dated 10 August 2016, he is not eligible for any pensionary benefits.

(b) As regards Petitioner No.2- Shrikant Khandu Gawade: the Respondent-College has not passed any resolution accepting his voluntary retirement.

(c) Petitioner No.3- Sunita Sudhakar Pansare has resigned from the service.

(d) Petitioner No.4- Ravindra Namdev Sarvade: the Respondent - College has not passed any resolution accepting his voluntary retirement.

(e) Petitioner No.5-Jayant Nagesh Kulkarni did not give advance notice of voluntary retirement.

(f) Petitioner No. 6- Narayan Goyal: voluntary retirement was accepted without completing the notice period.

(g) Petitioner No. 7 – Manisha Ravindra Joshi had not completed the qualifying service of 20 years.

The response further stated that, as per the Government Resolution dated 10 August 2016, the pensionary benefits are not admissible to those employees of Ayurvedic Colleges and Hospitals who have taken voluntary retirement.

14. The Petitioners, being aggrieved, have filed the present Petition. On 18 March 2021, the Division Bench directed the State Government to make its stand clear regarding the Government Resolution dated 10 August 2016 regarding employees who have taken voluntary retirement.

15. On 5 January 2022, the State Government took a decision by Government Resolution that those employees of aided Ayurvedic and Unani Colleges who had taken voluntary retirement would not be entitled to pensionary benefits and gratuity. This Resolution dated 5 January 2022 is challenged by way of an amendment.

16. The petition therefore now pertains to extending pensionary benefits and gratuity to the employees of 20 Ayurvedic Colleges who are included in Annexure B of the Government Resolution dated 10 August 2016 and who have taken voluntary retirement.

17. We have heard Mr. Vishwajeet Sawant, the learned Senior Advocate for the Petitioners, Mr.Kanhaiya S. Yadav, the learned Counsel for Respondent No.4 and

Mr. S.B.Kalel, the learned AGP for the State.

18. The first issue is whether the Petitioners have taken voluntary retirement or resigned from the service. It is common ground that if the Petitioners have resigned from service, they will not be entitled to benefits irrespective of the policy of the State, and their challenge will be academic. Only if it is established that the Petitioners have taken voluntary retirement, then their challenge to the government's decision of non-extension of pensionary benefits can be considered.

19. On the question of whether the Petitioners have taken the resignation or voluntary retirement, the learned AGP heavily relied upon the decision of the Division Bench of this Court in Dr. Suhas Digambar Herlekar and Others Vs. State of Maharashtra and Others Civil Writ Petition (St.)No. 30490 of 2018, dated 28 February 2019. In this case, five petitioner employees of Ayurvedic, Unani and Homeopathic Aided Educational Institutions had sought a declaration that they were entitled to pensionary benefits. The Petitioners therein were appointed on various dates. They had completed 20 years of service. It was their case that their letters in the form of resignation should be treated as applications for voluntary retirement. The petitioners therein had also relied upon the decision of the Nagpur Bench of this Court rendered on 10 June 2013 in Writ Petition No. 5771 of 2011 and other connected Writ Petitions to contend that non-extension of pension and gratuity scheme would be arbitrary and violative of Articles 14 and 16 of the Constitution of India. It was argued by the petitioners therein that no distinction would be made between resignation and voluntary retirement.

20. The discussion in Dr Suhas Digambar Herlekar and Others focused primarily on the issue of whether the letters of resignation tendered by the petitioners can be treated as applications for voluntary retirement. In this context, the Division Bench examined the Maharashtra Civil Services (Pension) Rules 1982 [for short, MCS (Pension) Rules, 1982]. The Division Bench noted Rule 46 (1) of the MCS Pension Rules, 1982, which provided that resignation from a service or a post entails forfeiture of past service, except as otherwise provided in clauses (2) to (6) of Rule 46 of the MCS Pension Rules, 1982. Thereafter, the Division Bench examined Rule 66 of the MCS Pension Rules, 1982 and observed that once the petitioners therein had tendered resignation, the consequences of resignation were provided by forfeiture of past service. The Division Bench examined the material and observed that the intention of the petitioners therein was to resign from the service. Therefore, the Division Bench concluded that after unequivocal resignation from the service, petitioners could not turn around and call upon the court to read the letters of resignation as voluntary retirement.

21. The Petitioners have placed before us a copy of the Writ Petition in the case of Dr. Suhas Digambar Herlekar and Others. The Petitioners have drawn our attention to the letters of resignation annexed to the petition. We have gone through the annexures, letters of resignation, and acceptance, as well as the entire proceedings entered into between the employer and the petitioners therein, which are specifically based on the factum of resignation. There was no

ambiguity in correspondence as a whole in the case of Dr. Suhas Digambar Herlekar and Others that the petitioners had tendered resignation. In fact, it was a specific case of the petitioners therein that even though they had resigned, they should be considered as taken voluntary retirement. This contention was not accepted. The Division Bench had dismissed the petition on the ground that the petitioners therein had not taken voluntary retirement but had resigned as a finding of fact.

22. There cannot be any dispute on that proposition based on Rules 46 and 66 of the MCS Pension Rules, 1982, nor have the Petitioners disputed the position that if there is unequivocal resignation from the service and the material on record clearly indicates that the employee wanted to resign, then the employees cannot ask the Court to consider it a voluntary retirement. The Petitioners, however, contend that there is no such unequivocal resignation by the Petitioners, and the facts of each case, therefore will have to be examined from the basis of available material, as was done by the Division Bench in the case of Dr.Suhas Digambar Herlekar and Others.

23. Therefore, we will proceed have to examine the facts in case of each of the Petitioners.

24. Petitioner No. 7-Manisha Ravindra Joshi is not entitled to any benefit even assuming that this Petitioner has taken voluntary retirement because she has not completed the qualifying service of

20 years.

25. As far as other Petitioners (referred hereinafter as without Petitioner No. 7) are concerned, their details are given in the Petition, which reads thus:

Employee

Date of Appointment

Retirement date as per age

Date of voluntary retirement

Sharad Nagnath Bubne

01.08.1979

30.06.2014

01.10.2013

Shrikant Khandu Gawade

01.07.1980

31.05.2018

30.11.2006

Sunita Sudhakar Pansare

01.08.1979

30.06.2011

31.05.2001

Ravindra Namdev Sarvade

01.07.1980

28.02.2018

31.10.2002

Jayant Nagesh Kulkarni

01.07.1980

31.08.2013

31.10.2007

Narayan Goyal

01.07.1975

31.03.2008

12.08.1996

Therefore, there is no dispute that these Petitioners have completed their qualifying service.

26. Petitioner No.1's application for voluntary retirement is on record. A dispute had arisen between this Petitioner and the Respondent – Management and consent term were filed in Writ Petition No. 8431 of 2013 whereby it was agreed between the parties that the Petitioner has taken voluntary retirement from his post. These consent terms were accepted by the Court. Accordingly, pursuant to the order of this Court in Writ Petition No. 8431 of 2013, on 1 October 2013, Petitioner No.1 wrote to the Respondent - Management that he is taking voluntary retirement. On 1 October 2013, the Respondent -Management informed the Petitioner that his letter dated 1 October 2013 of voluntary retirement was being accepted and that he was being relieved from the service. This is a contemporaneous record. On 16 October 2017, Petitioner No.1 wrote a letter to the Respondent -Management that his service book needs to be corrected. The Respondent -Management has also communicated to the Directorate of Ayush accordingly. Therefore, it was never intended on the part of Petitioner No.1 to resign from the service.

27. Petitioner No.2-Shrikant Khandu Gawade, in his letter dated 1 August 2006, had clearly stated that because of personal reasons, he is taking voluntary

retirement and he should be relieved from the service by 30 November 2006. There is an endorsement that the Respondent -Management has given no objection to the voluntary retirement. There is absolutely no ambiguity in this communication. Petitioner No.3- Sunita Sudhakar Pansare, in her letter dated 26 February 2001, has stated that she has been working since 1 August 1979 and, due to family difficulties, she will not be able to continue her work, and she is desirous of taking voluntary retirement from 1 June 2001. Petitioner No.4- Ravindra Namdev Sarvade, in his letter dated 31 October 2002, has stated that due to personal reasons, he is taking voluntary retirement from 1 November 2002. So also Petitioner No. 5- Jayant Nagesh Kulkarni by his letter dated 29 October 2007 has stated that due to personal reasons, he will not be able to continue the work and should be relieved from 30 October 2007. Petitioner No. 6- Narayan Goyal wrote in the letter dated 12 August 1996 that he is having medical issues and does not wish to continue any more, and should be relieved from service on 12 August 1996. He was accordingly relieved from service.

28. In the reply affidavit of the State, these communications have been noted. In the case of Petitioner No.1, it is only stated that the matter is between the Management and Petitioner No.1. However, these are contemporaneous records, and there is a consent order by which Petitioner No.1 has taken voluntary retirement. As far as other Petitioners are concerned, the reply affidavit takes note of all the applications made for voluntary retirement and only states that the representations have been rightly decided. There is no specific denial, and no reason is given as to why the Petitioners have not taken voluntary retirement. The service record of the Petitioners is a part of the compilation, which shows the factum of voluntary resignations.

29. In some letters, the phrase 'voluntary retirement' has not been specifically used but, admittedly, the Petitioners have completed qualifying service and they would be on par with other employees who were retired on superannuation as per the MCS (Pension) Rules, 1982. In the case of Shashikala Devi Versus Central Bank of India and Others (2014) 16 SCC 260, the Hon'ble Supreme Court considered how to read letters of resignation and voluntary retirement. The observations of the Hon'ble Supreme Court in the case of Shashikala Devi, provide guidance to approach the present fact situation, which are as under:

"16.2 The second aspect which is equally important is that the employee had chosen to leave the employment not because of any disciplinary or other action proposed against him or any order of transfer or posting with which he was unhappy or because any proceedings had been started that could have visited him with any civil consequence if he had continued in service, but because of his physical inability to continue in service on account of diseases with which he was stricken. This is evident from the fact that not only in the letter, but also in documents enclosed therewith the employee has laid great stress on the reasons for leaving the service prematurely. No such reasons were necessary if the employee actually intended to resign in the true sense of that term. Reasons why

he was quitting were obviously meant to support his case that he was doing so under the compulsion of the circumstances. This is evident from letter dated 23-11-2007 from the Regional Manager which has recognised the poor health condition of the deceased employee and sanctioned 165 days' leave without pay in his favour. It is also evident from the letter dated 29-11-2007 by which the acceptance of the request of the employee was communicated to him that the employer had taken note of his failing health, expressed the management's sympathy with him and wishing him early recovery from his illness. The letter recognises the commitment of the employee to his duties and the contribution made by him in the growth of the organisation. To that extent there is thus no communication gap between the employee and the employer. The employee's case, however, is that all that he intended to do was to seek premature/voluntary retirement from service. This is, according to the employee, evident also from his letter dated 18-12-2007 addressed within three weeks of the acceptance of the request by the Bank. In the said letter the deceased employee, inter alia, said:

"As such, as per the said representation I requested to accept my resignation from the service. The whole reason and purpose, which I have submitted and stated through my said representation and my leftover service of one-and-half years have forced my conscience to seek voluntary retirement from the service and not resignation from the service in its literal meaning."

The letter once again enclosed with it medical certificates and prescriptions in support of his request that the letter written earlier and the expression used therein may be understood in the right spirit and terminal benefits released in his favour. The refusal of the management of the Bank to treat letter dated 8-10-2007 as a request for premature retirement was conveyed to the employee on 24-6-2008 in which the respondent Bank made reference to the decision of this Court in UCO Bank case whereby Regulation 22 of the Pension Regulations was upheld by this Court".

"17. When viewed in the backdrop of the above facts, it is difficult to reject the contention urged on behalf of the appellant that what the deceased employee intended to do by his letter dated 8-10-2007 was to seek voluntary retirement and not resignation from his employment. We say so in the light of several attendant circumstances. In the first place, the employee at the time of his writing the letter dated 8-10-2007 was left with just about one-and-a-half years of service. It will be too imprudent for anyone to suggest that a bank employee who has worked with such commitment as earned him the appreciation of the management would have so thoughtlessly given up the retiral benefits in the form of pension etc. which he had earned on account of his continued dedication to his job. If pension is not a bounty, but a right which the employee acquires on account of long years of sincere and good work done by him, the Court will be slow in presuming that the employee intended to waive or abandon such a valuable right without any cogent reason. At any rate there ought to be some compelling circumstance to suggest that the employee had consciously given up

the right and benefit, which he had acquired so assiduously. Far from the material on record suggesting any such conscious surrender, abandonment or waiver of the right to retiral benefit including pension, we find that the material placed on record clearly suggests that the employee had no source of income or sustenance except the benefit that he had earned for long years of service. This is evident from a reading of the letter dated 8-10-2007 in which the employee seeks release of his retiral benefits at the earliest to enable him to undergo medical treatment that he requires. The letter, as seen earlier, lays emphasis on the fact that for his sustenance the employee is dependent entirely on such benefits. It is in that view difficult for us to attribute to the employee the intention to give up what was rightfully his in terms of retiral benefits, when such benefits were the only source not only for his survival but for his medical treatment that he so urgently required. For a waiver of a legally enforceable right earned by an employee, it is necessary that the same is clear and unequivocal, conscious and with full knowledge of the consequences. No such intention can be gathered from the facts and circumstances of the instant case. The employee's subsequent letters and communication which are placed on record cannot be said to be an afterthought. Being proximate in point of time the letter dated 8-10-2007 must be treated to be a part of the subsequent communication making the employee's intentions clear, at least for purposes of determining the true intention underlying the act of the employee."

"18. It is, in our opinion, abundantly clear that the beneficial provisions of a Pension Scheme or Pension Regulations have been interpreted rather liberally so as to promote the object underlying the same rather than denying benefits due to beneficiaries under such provisions. In cases where an employee has the requisite years of qualifying service for grant of pension, and where he could under the service conditions applicable seek voluntary retirement, the benefit of pension has been allowed by treating the purported resignation to be a request for voluntary retirement. We see no compelling reasons for not doing so even in the present case, which in our opinion is in essence a case of the deceased employee seeking voluntary retirement rather than resigning".

(emphasis supplied)

The Hon'ble Supreme Court thus observed that the use of the word resignation seeking to quit employment is not conclusive enough, and whether a given communication is a letter of resignation simpliciter or is a request for voluntary retirement would depend on facts and circumstances of each case and applicable Rules. The Court would be reluctant to presume that the employee intended to waive any right that would flow from qualifying service, unless the record shows a conscious surrender, abandonment or waiver of such rights.

30. None of the correspondence before us shows that the Petitioners have chosen to leave the employment because of any impending disciplinary action, nor is it the affidavit of the Respondent- College to that effect. Nor there was any situation where had the Petitioners continued, they would have faced disciplinary

action therefore, they left the service. The reasons given are family difficulties or a personal nature.

31. Reply affidavit has also been filed on behalf of Respondent No.4-Management wherein it is categorically stated that all the Petitioners from time to time have given applications for voluntary retirement to the Management, and the same have been received and accepted, and the applications were forwarded to the State with relevant documents, and there was no query from the State Government about any deficiencies in the applications from the Management.

32. There has to be a specific intent on the part of the employee to relinquish all the rights accrued after qualifying service specifically stating that it is a conscious decision to resign borne out by surrounding material and contemporary record. It is when the employee consciously tenders to resign, knowing fully well the consequences of the resignation of forfeiture of all his past service, that the communication can be taken as a resignation. In none of the communications of the Petitioners, can such a specific intent be discerned. The Petitioners had not deliberately given up their rights accrued on account of their continuous work of more than 20 years. Forcibly treating the letters issued by the Petitioners as letters of resignation under Rule 44 when none of these Petitioners intended to resign would be a perverse approach.

33. The Respondent- State, in the order rejecting the representations, has sought to raise an issue of not giving adequate notice at the time of taking voluntary retirement or of procedural infractions. The learned AGP has also urged the ground. While taking this objection, the basic position is that the service period is for the benefit of the employer, is being lost. The advance notice given for voluntary retirement enables the employer to make alternate arrangements. An employee can make a request to waive the period of notice, and the employer, if it does not cause any administrative inconvenience, can relax the requirement of notice. This course of action is adopted by the Petitioners and the Respondent –Management. Therefore based on this objection, it cannot be said that discontinuation of service should be treated as a resignation. Such a hyper-technical stand taken by the State is unwarranted. The record clearly shows that all the Petitioners had taken voluntary retirement.

34. Therefore, we hold that none of the Petitioners resigned from service, but they tendered voluntary resignation after duly completing their qualifying service under the MCS (Pension) Rules, 1982.

35. That takes us to the second aspect, which is the validity of the State Government's decision to deny pensionary benefits to the Petitioners on the ground that since they have taken voluntary retirement they are not entitled to pensionary benefits even though they have completed qualifying service.

36. The Petitioners have challenged the Government Resolution dated 5 January 2022, which states that employees of aided Ayurvedic and Unani Colleges who have taken voluntary retirement will not be entitled to pensionary benefits and

gratuity. The Petitioners have alleged discrimination on two counts.

(i) First, between those employees who have taken voluntary retirement in other aided colleges and those in Ayurvedic Colleges.

(ii) Second, between those employees who have retired on superannuation in Ayurvedic Colleges and those who have taken voluntary retirement after completing qualifying service.

37. On 10 August 2016, the State Government issued a Government Resolution regarding pensionary benefits and gratuity for the employees of Ayurvedic Colleges, and annexures thereto stated that the decision regarding employees who have taken voluntary retirement will be taken separately. Thereafter, a series of representations were made yet no steps were taken by the State Government. It was only when this Court directed by order dated 18 March 2021 that the decision was taken on 5 January 2022. The decision in one sentence, states that those employees who have taken voluntary retirement or for any other reason have retired from service and will not get pensionary benefits or gratuity. As to what is any other ground for retirement is not specified. Why the distinction is being made between voluntary retirement after qualifying service and retirement on superannuation is also not stated. Even assuming that there is discretion on the part of the State Government to take a decision whether to extend pensionary benefits to those who have taken voluntary retirement, it cannot be an arbitrary discretion to be exercised at will. From a perusal of the government decision dated 5 January 2022, no rationale is discernible.

38. This stand taken by the State Government is not to be considered in isolation but will have to be seen in the backdrop of litigation which we have briefly narrated earlier. The State Government has resisted extending pensionary benefits to teaching and non-teaching staff of Ayurvedic Colleges even though the benefits were extended to other streams. Orders were passed by this Court and the Hon'ble Supreme Court. Contempt Petitions were filed. It is thereafter that the Government Resolution dated 10 August 2016 was issued. In the case of Vidarbha Ayurved Mahavidyalaya and Others, the Petitions were filed by the employees of both Ayurvedic Colleges and Social Work Colleges. The Division Bench disposed of the Petitions, issuing directions to the State Government for both Ayurvedic Colleges and Social Work Colleges. The State Government issued two different Government Resolutions for Ayurvedic Colleges and Social Work Colleges. As regards Social Work Colleges, the Government Resolution was issued on 29 October 2014 and for Ayurvedic Colleges on 10 August 2016. As regards Social Work Colleges, there is no specific clause that states that for those who have taken voluntary retirement, a separate order would be passed and that any distinction would be made between the two. This is another facet of discrimination.

39. Singling out of the Ayurvedic Colleges for separate treatment was the core issue which arose for consideration of this Court more than twice in Writ Petition

No. 3508 of 1992 and Writ Petition No. 2645 of 1990 as above. The Court found that this discriminatory treatment of the employees of Ayurvedic Colleges violated Article 14 of the Constitution of India, and the Writ Petitions were allowed. When the decision in the case of *State of Maharashtra v. Hari Shankar Vaidhya (Dr.)* (1997) 9 SCC 521 was challenged, the Hon'ble Supreme Court, while disposing of the challenge of the State of Maharashtra, held as under :

"3. The admitted position is that the respondents are teachers working in Ayurvedic, Unani and Homeopathic private-aided educational institutions. One of the questions which requires examination is whether they are eligible for pension and gratuity scheme on par with State Government Civil Servants under the Maharashtra State Government Civil Service (Pension) Rules, 1982 (for short "the Rules"). Admittedly, per se, the Rules do not apply to them. Pursuant to the recommendations made by the UGC, the Government of Maharashtra by its Resolution dated 26-5-1981 have adopted the uniform pay scales being paid to the non-teaching staff and teachers working in aided educational institutions, i.e., Ayurvedic, Unani and Homeopathic colleges. By another Resolution dated 29-7-1983, they extended the benefit to the non-government organisations on par with the government organizations. Since the Government have not extended the benefit of pension and gratuity scheme, a writ petition was filed in the High Court in that behalf. The High Court has disposed it of in the impugned order. Thus, these appeals by special leave.

4. As regards the grant-in-aid, this is not in controversy and, therefore, we need not go into the question. The only question is whether the respondents are entitled to the pension and gratuity on a par with government servants. Shri Mohta, learned Senior Counsel appearing for the State, has contended that in view of the huge financial outlay, the Government has been, in a phased manner, extending the benefits from time to time and, therefore, the direction cannot be given to tie down the hands of the Government to extend all the benefits to all of them at a stretch. Shri D.A. Dave, learned Senior Counsel for the respondents, on the other hand, has contended that when the grant-in-aid and the pension were not being extended to the teachers working in the private law colleges, the High Court has given direction to extend the benefit which was affirmed by this Court in *State of Maharashtra v. Manubhai Pragaji Vashi*. Therefore, the same benefit may be extended to them. He also cited *State of H.P. v. H.P. State Recognized and Aided Schools' Managing Committees* wherein this Court has directed to extend grants-in-aid to the private educational institutions, middle class and lower middle class aided schools.

5. In view of the respective contentions, the only question that arises for consideration is whether the High Court would be justified to grant the pension and gratuity scheme to the teachers working in the Ayurvedic, Unani and Homeopathic aided institutions. It is seen that pursuant to the direction issued by this Court, the pension and gratuity scheme were extended to the Law Colleges from 1995. Whether the scheme could be extended or not is a question

of an executive policy and the Court would not take the responsibility of directing the Government to extend the policy. The Court requires examination as to how the policy laid down is being worked out. It is stated that since huge financial outlay is involved in extending the benefits and the Government is not intending to deny the benefit to the segment of the teachers, we appreciate the stand taken by the Government. The Government is, therefore, directed to consider extension of the benefit of pension and gratuity scheme to the teachers working in the Ayurvedic, Unani and Homeopathic aided educational institutions in a phased manner, as was done with respect to the other aided institutions.”

40. A similar situation arose in respect of Social Work Colleges, which was dealt with by the Division Bench of this Court in the case of Dr. Suresh Shrikrishna Naik vs. Karmveer Hire Rural Institute and Others 2000 (2) ALL M.R. 94 . The grievance of the Petitioner therein was that though Social Work Colleges were receiving grant-in-aid and the employees of Social Work Colleges under different departments were receiving pensionary benefits, the same was not extended to the Social Work Colleges under the Social Welfare Department. The ground given by the State Government was of financial difficulty. In the case of Dr Suresh Shrikrishna Naik, the Division Bench found that such a position was discriminatory and offended Article 14 of the Constitution of India. The Division Bench observed thus :

“6. The petitioner claims retirement benefits on parity with the teaching and non-teaching staff of non-Government aided Arts, Science, Commerce and Education Colleges and non-Agricultural Universities in the State to whom pension-cum-gratuity scheme and other retirement benefits have been extended by the State Government side Resolution dated 21-7-1983. His grievance is that when such benefits are granted to teaching and non-teaching staff of the Colleges under the Department of Education and Cultural Affairs, there is no reason or justification to deny such benefits to the teaching and non-teaching staff of the Institutes/Colleges under the Social Welfare Department. The Institutes/Colleges under the Social Welfare Department as well as the Colleges under the Department of Education and Cultural Affairs are affiliated to the same Universities, viz., Shivaji University and Pune University and all norms of the University Grants Commission are equally applicable to the Colleges under the Department of Education and Cultural Affairs as well as Social Welfare Department. In the facts and circumstances, there is considerable merit in the grievances of the petitioner. The only difference is the Department of the Government under which the Institutes fall in which the petitioner and others are working. In a welfare State, the Government is bound to look after the interest of all the employees similarly situated alike without any discrimination whatsoever.

7. The ground on which the State Government had taken the policy decision to deny benefit of pension scheme to the teaching and non-teaching staff of Social Welfare Department is financial burden/crunch. The State Government had earlier denied such benefits to the teachers working in Ayurvedic, Unani and

Homeopathic private aided educational institutions on the ground of huge financial outlay which was the subject matter of litigation before this Court as well as the Apex Court in *State of Maharashtra and others v. Dr. Shri Hari Shankar Vaidhya and others* (supra). In that case, the learned Senior Counsel appearing on behalf of the State had contended that in view of huge financial outlay, the Government has been, in a phased manner, extending the benefits from time to time, but directions cannot be given to tide down the hands of the Government to extend all the benefits to all of them at a stretch. It was pointed out before the Apex Court in the said case that in *State of Maharashtra v. Manubhai Pragaji Vashi*, 1995 (5) S.C.C. 730, directions were given to extend similar benefits to the teachers working in private Law Colleges. In this view of the matter, the Apex Court had observed that whether the scheme could be extended or not is a question of executive policy and the Court will not take, the responsibility of directing the Government to extend the policy. The Apex Court appreciated the stand taken by the Government that in view of huge financial outlay, the policy of extending benefits could be implemented only in a phased manner. Accordingly, the Government was directed to consider the extension of benefit of pension and gratuity scheme to the teachers working in Ayurvedic, Unani and Homeopathic aided educational institutions in a phased manner as was done in respect of other aided institutions”.

(emphasis supplied)

Therefore, when the Division Bench in the case of *Vidarbha Ayurved Mahavidyalaya and Others* considered the grievance of the Petitioners therein, there was already a dictum holding the field that the employees of Ayurvedic Colleges and Social Work Colleges cannot be discriminated against. The Division Bench accordingly observed that the employees of Ayurvedic Colleges cannot be treated differently in the matter of pension-cum- gratuity benefits. They constituted a homogeneous class with other teachers and were entitled to the same privileges.

41. The decisions rendered in the case of Ayurvedic Colleges referred to above have attained finality. This Court and the Hon'ble Supreme Court have repeatedly emphasized that the employees of Ayurvedic Colleges cannot be discriminated against in terms of pensionary benefits and other benefits. Therefore, on the face of it, the decision dated 5 January 2022 is a purely arbitrary exercise.

42. Another aspect for consideration is whether the decision dated 5 July 2022 could override the Government Resolution dated 10 August 2016 whereby the pensionary benefits and gratuity was extended to employees of Ayurvedic Colleges. It contained Annexure-A for ground-level implementation of the policy. A bare perusal of the clauses of Annexure- A would show that it lists only modalities for implementation, for example, giving specific options for payment of amounts under CPF, how to handle paperwork, completing all the entries in the service book, cash management etc. Then clause (xvii) refers to clauses (v) and (vi) of the main decision. Clause (xvii) states that the pension and gratuity

scheme is applicable to the approved post. Then it states that as regards those who have retired on superannuation, for payment of their gratuity, a separate decision will be made. It does not indicate that those who have taken voluntary retirement will not get pensionary benefits, at the most a separate decision was contemplated.

43. The Petitioners therefore submit that these procedural modalities in Annexure -A did not contemplate taking away the substantive right given by the main Government Resolution dated

10 August 2016. The Government Resolution dated 10 August 2016, issued pursuant to the decision of this Court, extended pensionary benefits to all employees of Ayurvedic Colleges. It is under the garb of procedural formalities one class is sought to be excluded. We find merit in this alternate submission of the Petitioners that the main policy decision of 10 August 2016 had not contemplated the exclusion of those who have taken voluntary retirement. When the procedural formalities mentioned that the decision would be taken separately at the most, it meant that the benefits would be in the second phase. It cannot be that the decision dated 5 January 2022 issued under Annexure -A of the Government Resolution dated 10 August 2016 superseded the policy decision itself. More so excluding this class would create a classification not only among the employees of Ayurvedic colleges but also between employees who have taken voluntary retirement from Ayurvedic colleges and those who have taken voluntary retirement from other colleges. The state's reply affidavit does not provide any reasons for this distinction. Such discrimination is entirely impermissible in view of the law already laid down for employees of Ayurvedic colleges.

44. The Petitioners point out that under the MCS (Pension) Rules, 1982, a person who has completed qualifying service of 20 years upon voluntary retirement does not lose pensionary benefits or gratuity. The decision of 5 January 2022, without any reasons whatsoever, seeks to take away the right accrued to those who have taken voluntary retirement. After the decision of the Division Benches of this Court and the Government Resolution dated 10 August 2016, a right had accrued to the Petitioners for the pensionary benefits. The MCS (Pension) Rules, 1982 do not distinguish between those who have retired on superannuation and those who have taken voluntary retirement after qualifying service. The entitlement of the petitioners had been crystallized by the judicial pronouncements of the Division Benches of this Court, the Hon'ble Supreme Court, and the Government Resolution dated August 10th, 2016. At most, the implementation of this entitlement was deferred.

45. The grant of pension and gratuity should not be considered as an act of charity. In aided institutions, if employees have dedicated a long period of service and completed the qualifying period, then denying them pensionary benefits cannot be at the arbitrary discretion of the authorities. The Hon'ble Supreme Court, in the case of D.S.Nakara v. Union of India 5 (1983) 1 SCC 305 ,

explained the concept of pension in the following words :

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19 What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh".

(emphasis supplied)

46. In the case of the State of Jharkhand and Others Versus Jitendra Kumar Srivastava and Another (2013) 12 SCC 210 , the Hon'ble Supreme Court, while reiterating the legal principle that the right to receive a pension is recognized as a right in property, observed thus:

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law." Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative

instruction cannot be countenanced”.

17. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300 -A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different” .

(emphasis supplied)

The rules governing the Petitioners do not state that individuals who have taken voluntary retirement after completing their qualifying service are not entitled to pensionary benefits. The decision made on 5 January 2022 cannot take away the right that has been accrued under these statutory rules.

47. It is not permissible for the State to classify the employees of aided Ayurvedic Colleges and Hospitals who have taken voluntary retirement after completing qualifying service separately from those who have retired on superannuation. Similarly, it is not permissible to classify the employees of Ayurvedic Colleges who have taken voluntary retirement after completing qualifying service separately from the employees who have taken voluntary retirement after qualifying service in other aided Colleges. The distinction that the Respondents are trying to make is completely arbitrary and goes against the judicial pronouncements that have been referred to above.

48. In conclusion, the decision dated 5 January 2022, being arbitrary, contrary to the decisions of the Court, and offending the equality clause enshrined under Article 14 of the Constitution of India, is required to be quashed and set aside. A case for issuing a mandatory direction is made out.

49. In light thereof, the following directions are issued:

a) It is declared that the Resolution/ decision dated 5 January 2022 denying the benefits of pension and gratuity to the employees working in Ayurvedic aided Educational Institutions who have taken voluntary retirement after qualifying service is arbitrary and ultra vires and infringing Article 14 of the Constitution of India. The Resolution/ Decision dated 5 January 2022 is quashed and set aside.

b) It is declared that the Petitioners (except Petitioner No. 7) are entitled to all the pensionary benefits and gratuities as per the Government Resolution dated 10 August 2016 with arrears, as applicable to the other employees of the aided Ayurvedic Colleges listed in Annexure B to the Government Resolution dated 10 August 2016 who have retired on superannuation.

c) The Respondents shall disburse the pensionary benefits and gratuity with arrears to the Petitioners (except Petitioner No.7) within twelve weeks from today. Thereafter, the amount of arrears will carry 6 per cent interest until

payment.

50. Rule is made absolute in the above terms in respect of Petitioners Nos. 1 to 6. Rule is discharged in respect of Petitioner No. 7.

51. The Writ Petition is disposed of accordingly.