

(2018) 11 BOM CK 0112

In the Bombay High Court

Case No : Writ Petition No. 3344, 3345 Of 2017

State Of Maharashtra And Others

APPELLANT

Vs

Girish Hanumant Thitte

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Constitution of India, 1950 — Article 162, 226
Maharashtra Civil Services (Pension) Rules, — Rule 9(38)

Citation : (2018) 11 BOM CK 0112

Hon'ble Judges : S.V. Gangapurwala, J; R. G. Avachat, J

Bench : Division Bench

Advocate : M.A. Deshpande, M.R. Kulkarni

Final Decision : Allowed

Judgement

S.V. Gangapurwala, J

1. Rule, made returnable forthwith. Heard finally with the consent of the learned A.G.P. and the learned Counsel for the respondents.

2. Both these petitions are based on similar set of facts and involve common question of law, as such, to avoid rigmarole they are decided by this common judgment.

3. The respondents herein were working as Assistant Professor (Statistics) and Assistnat Professor (Statistics & Demography) respectively in the Government Medical College, Ambajogai. The respondents, under the communication dated 23rd March, 2015 were directed to be relieved on the ground that they have attained the age of superannuation. The respondents assailed the said communication before the Maharashtra Administrative Tribunal, Aurangabad. The Maharashtra Administrative Tribunal, Aurangabad allowed the original applications filed by the respondents giving them the benefit of the Government Resolutions dated 30th April, 2010 and 05th March, 2011. The State has assailed the said orders in the present writ petitions.

4. Mrs. Deshpande, the learned Addl. G.P. eruditely put forth the following propositions :-

(A) The respondents were Assistant Professor (Statistics) and Assistant Professor (Statistics & Demography) respectively at the relevant time and the age of their retirement is 58 years. On 30th April, 2010, the State, under Government Resolution, extended the age of retirement of the Dean and the Lecturers serving under the Medical Education and Drugs Department and Ayurvedic Department. The said Government Resolution was clarified by Circular dated 17th June, 2010, thereby enhanced age of retirement, would apply only to the lecturers serving in medical colleges, possessing medical qualification. The respondents are possessing non-medical degrees. The Government Resolution dated 30th April, 2010 would not apply to the respondents.

(B) Reliance placed by the Tribunal on Government Resolution dated 05th March, 2011 is misplaced. The said Government Resolution applies to the colleges affiliated under the Non-Agricultural Universities and Technical Education Board. The respondents are working in the Government Medical College affiliated to the Maharashtra University of Health Sciences and not to Non-Agricultural University governed by the Maharashtra Universities Act, 1994.

(C) Government Resolution dated 30th April, 2010 read with Circular dated 17th June, 2010 would make it clear that the State has introduced the policy of enhancing the age of retirement of the lecturers in the medical colleges possessing medical degrees, as there is paucity of the lecturers possessing medical qualification. There was no dearth of the lecturers possessing non-medical degrees. In view of that Government Resolution dated 30th April, 2010 read with Circular dated 17th June, 2010 has been issued.

(D) The learned Addl. G.P. further submits that it is a prerogative of the State to evolve a policy. This Court in its exercise of jurisdiction under Article 226 of Constitution of India would be slow to interfere with the policy decision of the State. It is only under Government Resolution dated 08th December, 2017, the proposal has been made to constitute a Committee to consider the issue of enhancing the age of superannuation of the lecturers holding non-medical degrees to 62 years. Government Resolution dated 28th July, 2014 prescribes enhancing the age of superannuation in respect of a particular cadre of lecturers possessing non-medical qualification. However, the posts held by the respondents were not included in the said Government Resolution and the Tribunal has also arrived at the same conclusion.

(E) It was an error on the part of the Tribunal to treat the respondents on par with the teachers working in Non-Agricultural Universities to whom Government Resolution dated 05th March, 2011 is applicable. If the Government Resolution dated 05th March, 2011 is made applicable to the teachers working in Non-Agricultural Universities, as held to be applicable to the respondents and the teachers working under the Maharashtra University of Health Sciences, then

there would be no necessity for the State to issue Government Resolutions dated 30th April, 2012 and 29th April, 2014 for enhancing the age of retirement of the teachers teaching in the medical colleges under the Maharashtra University of Health Sciences.

5. Mr. Kulkarni, the learned Counsel for the respondents in lucid manner canvassed the following submissions :-

(A) The respondents are working in Government Medical College. Government Resolution dated 30th April, 2010 did not make any distinction between the teachers possessing medical qualification and those possessing non-medical qualification. Government Resolution dated 30th April, 2010 could not have been superseded by Circular dated 17th June, 2010.

(B) The teachers working in medical colleges have to be considered on par with the teachers working in the colleges affiliated under the Non-Agricultural Universities. The Tribunal has rightly considered the judgment delivered by the Maharashtra Administrative Tribunal at its Principal Seat in Original Application No. 72 of 2011 dated 25th July, 2014. It is submitted that the petitioners have now corrected their own mistake and have issued Government Resolution dated 08th December, 2017 enhancing the age of retirement. When they have corrected the mistake, the same should have been communicated to the concerned. Mr. Kulkarni, the learned Counsel for the respondents relied on the judgment of this Court in Writ Petition No. 1201 of 2016 dated 18th February, 2016.

(C) The respondents were allowed to continue to work after the age of 60 years. It would demonstrate that even respondents accepted that Government Resolutions dated 30th April, 2010 and 05th March, 2011 are applicable to the petitioner. The Tribunal has rightly considered all these aspects and has passed the impugned order.

6. The focal point of the dispute is the age of superannuation of the respondents. It is undisputed that the respondent in Writ Petition No.3344 of 2017 is appointed as Assistant Professor (Statistics), whereas the respondent in Writ Petition No. 3345 of 2017 is appointed as an Assistant Professor (Statistics & Demography). Their age of retirement at the time they entered into the services undisputedly was 58 years. The respondent in Writ Petition No. 3344 of 2017 would retire on attaining the age of superannuation of 58 years on 31st May, 2011, whereas the respondent in Writ Petition No. 3345 of 2017 would retire on attaining the age of superannuation at the age of 58 years on 30th June, 2013.

7. It is a matter of record that both these respondents were allowed to continue in service even after they attained the age of 58 years. It is only under the impugned communication dated 23rd January, 2015, the petitioners have relieved them on the ground that they have attained the age of superannuation on 31st May, 2011 and 30th June, 2013 respectively. The said communication further states that they stand retired on 31st May, 2011 and 30th June, 2013

with retrospective effect.

8. The Tribunal, while considering the case of the respondents has relied upon the Government Resolutions dated 30th April, 2010 and 05th March, 2011. It appears that while deciding the matters, the Tribunal has lost sight of circular dated 17th June, 2010, thereby clarifying the Government Resolution dated 30th April, 2010. Government Resolution dated 30th April, 2010 enhanced the age of retirement from 58 years to 62 years of the teachers in medical colleges under the Medical Education and Drug Department. Immediately on 17th June, 2010 it was clarified that Government Resolution dated 30th April, 2010 has been issued enhancing the age of retirement from 58 years to 62 years only with regard to the teachers with medical qualification and the same would not apply to the teachers other than holding medical qualification. The said circular suggests that it is because of the paucity of the teachers holding medical qualification, the age of retirement has been enhanced. Government Resolution dated 05th March, 2011 is issued by the Higher and Technical Education Department and the same is applicable to the institutions affiliated to the Non-Agricultural Universities and the teachers working in Higher and Technical Education. Clause 5 of the said Government Resolution in regional language reads thus :-

^^5- jkT;karxZr dk;Zjr vd`"kh fo|kfiBka'kh layfXur 'kkldh; egkfo|ky;s o egkjk"V~ jkT; ra= fudsrukrhy ikpk;kZaO;frjhDr moZjhr v/;kidkaps fu;ro;ksekukuqlkj Isokfuo`Rrhps o; 58 o"kkZo#u 62 o"ksZ dj.;kr ;sr vkgs- ijarq] o;kP;k 60 o"kkZuarj Isokfuo`RrhkBh eqnrok< ns.;kiwohZ v/;kidkaP;k dkedktpk foghr lferhdMwu vk<kok ?ks.;kr ;sbZy- Inj lferhP;k vgokykrhy f'kQkjlhuqlkj lacaf/kr v/;kidkauk deky 62 o"kkZai;Zar Isokfuo`RrhkBh eqnrok< ns.;kph dk;Zokgh 'kklukP;k ekU;rsus dj.;kr ;sbZy-^^

9. The age of retirement is extended to 62 years as per Government Resolution dated 05th March, 2011 in respect of those teachers, who are working in the government colleges affiliated to the non-agricultural universities and the government technical institutions affiliated to the State Technical Education Board. The Government Resolution further provides that after the age of 58 years performance review would be conducted and upon the report of the committee, the candidate would be continued till the age of 62 years.

10. The respondents are working in the colleges affiliated to the Maharashtra University of Health Sciences and not the Non-Agricultural University. It would appear that the Government came out with a policy to enhance the age of retirement to some of the teachers working in medical colleges possessing non-medical qualification with regard to certain subjects under Government Resolution dated 28th July, 2014. The subjects with which the respondents are concerned, were not included in the said Government Resolution. The State, again on 08th December, 2017, issued a fresh Government Resolution thereby constituting the committee to consider the increase in age of retirement in respect of the teachers possessing non-medical qualification in Government Medical Colleges. In the said Government Resolution, the respondents would be

covered. This make it clear that the respondents, working in the Government Medical College affiliated to the Maharashtra University of Health Sciences, would not be covered by the earlier Government Resolutions dated 30th October, 2010 and 05th March, 2011.

11. It is the prerogative of the State Government to formulate a particular policy. Framing a policy is within the competence of State in its executive authority. The policy decision is in the domain of the executive authority of the State. The efficacy or otherwise may not be questioned so long the same does not offend any provision of the Statute or the Constitution of India. It is not for the Courts to consider the relative merit of the different policies. The Court can not sit in judgment of the policy of the Legislature or the Executive. The executive power can be exercised by issuing administrative Orders, Circulars, Instructions or Resolutions, so long the Legislature does not make any law on that subject. Purely administrative decision can be reviewed by the authority at any time provided no constitutional provision is violated thereby and one administrative order may be changed by another administrative order. The Administrative Rules or Orders may be relaxed, altered or revoked without any formality provided there is no legislation or statutory Rules to the contrary and no provision of the Constitution is violated by such change. The Government Resolution issued by the petitioners cannot be said to be irrational and arbitrary. The powers have been exercised by the State under Article 162 of the Constitution of India. We do not find any irrationality or arbitrariness in the exercise of such powers. It is in the exigency of the circumstances, the State took a decision to enhance the age of retirement in favour of the teachers holding the medical qualification. The reason given is self-explanatory viz. the teachers in Government Medical and Ayurvedic college possessing medical qualification were not available and as such the age of retirement is enhanced. There is no dearth of the teachers possessing non-medical qualification working in the Government Medical College and Ayurvedic College. Considering the exigency of the circumstances, a conscious decision has been taken by the Government and a different class has been carved out of the teachers possessing medical qualification and the teachers possessing non-medical qualification.

12. The Tribunal committed an error while applying Government Resolution dated 05th March, 2011 to the respondents. The respondents cannot be equated with the teachers under the technical education nor they can be equated with the teachers working in non-agricultural universities or institutions affiliated to non-agricultural universities. The respondents are working in the colleges affiliated to the Maharashtra University of Health Sciences established under the separate Statute viz. Maharashtra Health University Act.

13. In light of the above, we have no hesitation to hold that the Tribunal has committed an error while allowing the original applications in toto. The orders of the Tribunal are set aside.

14. It appears that the respondent have worked upto 23rd January, 2015. The

respondent in Writ Petition No. 3344 of 2017 ought to have been relieved from service on attaining the age of 58 years on 31st May, 2011 and the respondent in Writ Petition No. 3345 of 2017 ought to have been relieved on 30th June, 2013. However, they have been continued till the impugned communication dated 23rd January, 2015 has been issued. It appears that the petitioners and the respondents both were under bonafide belief that the respondents deserve to be continued till the age of 62 years. The respondent - Thitte has been continued in service upto the age of 61 and half years, whereas the respondent - Deshpande has been continued in service upto the age of 60 years. The question of pensionary benefits would arise. As per Rule 9(38) of the Maharashtra Civil Services (Pension) Rules, pension is to be paid on the basis of last ten months salary or last month's salary, which is beneficial to the employee. In light of the above, the respondents, who have worked upto 23rd January, 2015, shall be paid pension on the basis of the salary which they have drawn during the last ten months or the last month, whichever is beneficial to them. The pension proposals of the respondents shall be processed and retiral benefits shall be paid to the respondents by the petitioners as expeditiously as possible and preferably within a period of three months from today.

15. In view of the above, rule is made absolute. Both the writ petitions are allowed. No costs.