MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI, BENCH AT AURANGABAD

COMMON ORDER IN ORIGINAL APPLICATION NOS. 149, 150 & 151 ALL OF 2020

1. ORIGINAL APPLICATION NO. 149 OF 2020

DISTRICT : NANDED

Vitthal s/o Jaiwanta Ambatwad,)
Age : 65 years, Occu. : Pensioner,)
R/o : 15, Janai, Shriram Nagar,)
Hanumangad Area, Nanded, Dist. Nanded.) .. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Higher & Technical Education Department,)
Mantralaya, Mumbai-400 032.)

2. **The Director,**)
Technical Education Department,)
Maharashtra State, 3, Mahapalika Road,)
Mumbai-400 001.)

3. **The Joint Director,**)
Technical Education Department,)
Divisional Office, Aurangabad, Near)
Government Polytechnic, Osmanpura,)
Aurangabad-431005.)

4. **The Principal,**)
Government Polytechnic, Nanded,)
Ver Sawarkar Marg, Baba Nagar, Nanded,)
Dist. Nanded.)

5. **The Secretary,**)
Finance Department, Mantralaya,)
Mumbai-32.)

6. **The Accountant General,**)
Post Box No. 114, G.P.O. Civil Lines, Nagpur,)
Maharashtra State 440001.)**... RESPONDENTS**

W I T H

2. ORIGINAL APPLICATION NO. 150 OF 2020

DISTRICT : AHMEDNAGAR

Ramkrishna s/o Dashrath Nagargoje,)
Age : 64 years, Occu. : Pensioner,)
R/o : Rohatwadi, Tq. Patoda, Dist. Beed.) .... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Higher & Technical Education Department,)
Mantralaya, Mumbai-400 032.)

2. **The Director,**)
Technical Education Department,)
Maharashtra State, 3, Mahapalika Road,)
Mumbai-400 001.)

3. **The Joint Director,**)
Technical Education Department,)
Divisional Office, Nashik,)
Samangaon Road, Nashik Road, Nashik.)

4. **The Principal,**)
Government Polytechnic, Ahmednagar,)
Burudgaon Road, Ahmednagar-414001.)

5. **The Secretary,**)
Finance Department, Mantralaya,)
Mumbai-32.)

6. **The Accountant General,**)
Post Box No. 114, G.P.O. Civil Lines, Nagpur,)
Maharashtra State, 440001.) **... RESPONDENTS**

W I T H

3. ORIGINAL APPLICATION NO. 151 OF 2020

DISTRICT : BEED

Krantikumar s/o Vithalrao Penurkar,)
Age : 71 years, Occu. : Pensioner,)
R/o : Flat No. 307, Raje Govind Complex,)
Gadipura, Near Navin Pul, Nanded.) .... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Higher & Technical Education Department,)
Mantralaya, Mumbai-400 032.)

2. **The Director,**)
Technical Education Department,)
Maharashtra State, 3, Mahapalika Road,)
Mumbai-400 001.)

3. **The Joint Director,**)
Technical Education Department,)
Divisional Office, Aurangabad, Near)
Government Polytechnic, Osmanpura,)
Aurangabad-431005.)

4. **The Principal,**)
Government Polytechnic, Beed,)
Tq. & Dist. Beed.)

5. **The Secretary,**)
Finance Department, Mantralaya,)
Mumbai-32.)

6. **The Accountant General,**)
Post Box No. 114, G.P.O. Civil Lines, Nagpur,)
Maharashtra State, 440001.) **... RESPONDENTS**

APPEARANCE : Shri S.L. Bhapkar, counsel for the applicants in all these O.As.

: Shri V.R. Bhumkar, Presenting Officer for the respondent authorities in all these O.As.

CORAM : Hon'ble Justice Shri P.R. Bora, Vice Chairman

DATE : 12.10.2023.

O R A L - C O M M O N - O R D E R

1. Heard Shri S.L. Bhapkar, learned counsel for the applicants in all these matters and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities in all these matters.

2. Since in all these matters issues raised and the prayers made are identical, I have heard all these matters together and I deem it appropriate to decide all these O.As. by this common reasoning.

3. All the applicants had worked as Librarians in the respective Government Polytechnics. It is the common grievance of these applicants that though as per the service Rules applicable to them their age of retirement was 60 years, the respondents retired them on attaining the age of 58 years. The applicants have therefore, prayed for declaration that they were entitled to be in Government service till the age of 60 years and have prayed for salary and other monetary benefits of the said period of 2 years.

4. The necessary particulars in respect of applicants are as under :-

Sr. No.	O.A. No.	Name of applicant	Name of institution	Date of retirement as per the age of 58 years	Date of retirement as the per age of 60 years
1	149/2020	Vitthal Jaiwanta Ambatwad	Government Polytechnic, Nanded	30.11.2012	30.11.2014
2	150/2020	Ramkrishna Dashrath Nagargoje	Government Polytechnic, Ahmednagar	31.12.2013	31.12.2015
3	151/2020	Kantikumar Vithalrao Penurkar	Government Polytechnic, Beed	31.01.2008	31.01.2010

The respondents have not disputed the aforementioned factual aspects.

5. The claim of the applicants is based on the Government Resolution dated 05.03.2019, which reads thus :-

> *"**शासन निर्णय :***
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> *अखिल भारतीय तंत्रशिक्षण परिषदेच्या संदर्भाधीन क्रमांक ०१ व ०२ येथील आदेश विचारात घेता राज्यातील उच्च व तंत्र शिक्षण विभागाच्या अखत्यारीतील तंत्रशिक्षण संचालनालयांतर्गत असलेल्या शासकीय / अनुदानित अभियांतिकी / औषधनिर्माणशास्त्र / वास्तुशास्त्र महाविद्यालये / तंत्रनिकेतने तसेच, डॉ. बाबासाहेब आंबेडकर तंत्रशास्त्र विद्यापीठ व रसायन तंत्रज्ञान संस्थेतील ग्रंथपाल या शिक्षक समकक्ष पदाच्या सेवानिवृत्तीचे वय ५८ वर्षावरुन ६० वर्ष करण्यास खालील अटींच्या अधीन राहून शासन मंजुरी देत आहे :*
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> *(i) दिनांक ०१.०१.२००६ ते या शासन निर्णयाच्या दिनांकापर्यंत दरम्यानच्या कालावधीमध्ये सेवानिवृत्त होउन २ वर्षांपेक्षा अधिक कालावधी झालेल्या ग्रंथपालांना वयाच्या ६० व्या वर्षी सेवानिवृत्त करण्यात आले आहे असे गृहीत धरुन सेवानिवृत्तीचे लाभ व इतर सर्व अनुषंगीक लाभ देण्यात यावेत.*
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> *(ii) दिनांक ०१.०१.२००६ ते या शासन निर्णयाच्या दिनांकापर्यंत दरम्यानच्या कालावधीमध्ये सेवानिवृत्त होउन २ वर्षांपेक्षा कमी कालावधी झालेल्या ग्रंथपालांना पुन्हा सेवेत सामावून घ्यावे. त्याअनुषंगाने त्यांना देय असणारे सर्व सेवाविषयक लाभ देण्यात यावेत.*
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> *(iii) या शासन निर्णयाच्या प्रसिध्दीनंतर सेवानिवृत्त होणा-या ग्रंथपालांना वयाच्या ६० व्या वर्षी सेवानिवृत्त करण्यात यावे."*

6. The respondents in their affidavit in reply have not disputed that the age of retirement of the applicants was 60 years, but they were made to retire on attaining the age of 58 years. The respondents have however opposed the request made on behalf of the applicants seeking monetary benefits of 2 years. According to the respondents, the applicants can be notionally held entitled to be in service till their age of 60 years and extending them the notional increments of the said period, their pension and pensionary benefits can be determined and the applicants can be held entitled for the pension and pensionary benefits at the said enhanced rate. According to the respondents, the applicants however cannot be held entitled for the salary of the aforesaid period of 2 years, since the applicants had not worked during the aforesaid period. According to the respondents, the principle 'no work, no pay' would apply in the present matters. The respondents have therefore, prayed for rejecting the request of the applicants for back wages of 2 years.

7. Learned counsel for the applicants has opposed the submissions as has been made on behalf of respondents. Learned counsel submitted that having regard to the facts involved in the present matters, the respondents cannot deny the back wages to the applicants. Learned counsel referred to and

relied upon the judgment of the Hon'ble Apex Court in the case of **Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited and others, 2016 (16) SCC 663**. I have gone through the said judgment. Similar question was involved in the aforesaid matter before the Hon'ble Apex Court. The appellant in the said matter has filed W.P. before the Hon'ble Punjab and Haryana High Court assailing the order of his retirement on the ground that he was prematurely retied on 31.12.2002, when in the ordinary course his date of retirement on superannuation was 31.12.2005. The Hon'ble Punjab and Haryana High Court though allowed the W.P. and set aside the order dated 31.12.2002 denied him the back wages by applying principle "no work, no pay". The Hon'ble Apex Court while setting aside the aforesaid order has made following observations :-

> *"2. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay"."*

In view of the law laid down by the Hon'ble Apex Court, the plea taken by the respondents has to be rejected.

8. After having considered the facts and circumstances involved in the present matters, I have no hesitation in holding that in view of the G.R. dated 05.03.2019 the applicants must be held entitled to be in service till attaining the age of 60 years. In the circumstances, the orders in respective matters retiring the respective applicants on attaining the age of 58 years deserve to be quashed and set aside. In view of the law laid down by the Hon'ble Apex Court in the case of **Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited and others** (cited supra), the applicants are held entitled for the salary and all other monetary benefits of the said period of 2 years.

9. As is revealing from the record to the applicant in O.A. No. 150/2020, the respondents did pay benefits of the period of 2 years holding him to be in service after the age of 58 years. However, subsequently the respondents issued notice dated 03.12.2020 to the said applicant seeking recovery of the said amount. Learned counsel for the applicant pointed out that the recovery has not yet been effected, however, order still remains and it requires to be set aside. In view of findings

recorded above, the order dated 03.12.2020 cannot be sustained and deserves to be set aside.

10. For the reasons stated above, the following order is passed:-

O R D E R

(i) The orders dated 30.11.2012 in O.A. No. 149/2020, 31.12.2013 in O.A. No. 150/2020 and 31.01.2008 in O.A. No. 151/2020 are quashed and set aside.

(ii) The applicants be deemed to be in service for next 2 years after their respective dates of retirement and are held entitled for all service benefits of the said period.

(iii) The respondents shall pay the arrears as aforesaid within 12 weeks from the date of this order.

(iv) The order dated 03.12.2020 impugned in O.A. No. 150/2020 is quashed and set aside.

(v) The Original Applications are allowed in the aforesaid terms without any order as to costs.

PLACE : Aurangabad. **(Justice P.R. Bora)**
DATE : 12.10.2023 **Vice Chairman**