

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 639 OF 2021

DISTRICT: - BEED.

1. **Dr. Sanjay S/o Ramrao Kadam,**
Age-48years, Occu. : Service as
Taluka Health Officer, Georai,
R/o 19, Navjeevan Shikshak Colony,
Beed, Tq. & Dist. Beed.
Mob. 9422744833
2. **Dr. Vikas S/o Uttamrao Athawale,**
Age-46years, Occu. : Service as
Taluka Health Officer, Kaij,
Tq. Kaij, Dist. Beed.
Mob. 9422378400
3. **Dr. Dnyaneshwar Shesherao Nipte,**
Age-46years, Occu. : Service as
Medical Officer, District T.B. Center,
Beed, Tq. & Dist. Beed.
Mob. 9422744589
4. **Dr. Sanjeevani Chitambar Gavhane,**
Age-46years, Occu. : Service as
Medical Officer, Primary Health
Centre, Khalapuri, Tq. Shirir,
Dist. Beed.
Mob. Not available
5. **Dr. Manisha Uttamrao Kale,**
Age-44years, Occu. : Service as
Medical Officer, Assistant Director,
(Leprosy) Office, Beed.
Mob. 9423206732
6. **Dr. Satish Bapurao Shinde,**
Age-47years, Occu. : Service as
Medical Officer District T.B. Center,
Beed, Tq. & Dist. Beed.
Mob. 9422295066

.. **APPLICANTS.**

V E R S U S

1. **The State of Maharashtra,**
Through the Principal Secretary,
Public Health Department,
10th Floor, G.T. Hospital Compound,
Government of Maharashtra
Mantralaya, Mumbai-32.
2. **The State of Maharashtra,**
Through its Secretary,
Public Health Department,
10th Floor, G.T. Hospital Compound,
Mantralaya, Mumbai.
3. **The Commissioner of Health &
Mission Director,** National Health
Mission, Maharashtra State,
Arogya Bhawan, St. George Hospital
Compound, Near C.S.T. Mumbai.
4. **The Director of Health Services,**
Arogya Bhawan, St. George Hospital
Compound, Near CST, Mumbai.
5. **The Under Secretary,**
Public Health Department, 10th Floor,
G.T. Hospital Compound,
Mantralaya, Mumbai.

.. **RESPONDENTS.**

APPEARANCE :- Shri Avinash S. Deshmukh, learned
Counsel holding for Shri Sanjay B. Bhosale,
learned Counsel for the applicants.

: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

**CORAM : Hon'ble Shri Justice P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)**

DATE : 4th January, 2022

ORDER**(Per : Shri Justice P.R. Bora, Member (J))**

1. Heard Shri Avinash S. Deshmukh, learned Counsel holding for Shri Sanjay B. Bhosale, learned Counsel appearing for the applicants and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. Perused the Original Application, affidavit in reply filed on behalf of the respondents and the documents placed on record by the parties.

2. In the present Original Application the applicants have questioned the validity of the Government Resolution dated 31.5.2021 issued under the signature of respondent no. 5 and have sought the quashment of the said Resolution.

3. Vide Government Resolution dated 31.5.2021 the age of retirement of the Medical Officers Group-A working under the Health Department of the State in the pay scale of Rs. 56,100-1,77,500, of all superior Officers working in the Public Health Department in the pay scale of Rs. 67,700-2,08,700 and above and of the Medical Officers and other superior Officers working in the Employees State Insurance Scheme has been increased up to the age of 62 years by the State.

4. The preamble to the said Resolution reveals that vide Resolution dated 1.7.2019 read with Corrigendum to it dated 26.11.2019 a decision was taken to enhance the retirement age of all the Officers referred in the G.R. dated 31.5.2021 up to the age of 62 years, subject to approval of the State Cabinet. The averments in the preamble further reveal that since the period of implementation of the said G.R. dated 1.7.2019 was expiring on 31.5.2021 and having regard to the fact that 193 Officers falling in the category of Medical Officers Group-A were retiring on 31.5.2021, which was likely to have serious adverse impact on the Medical Services to be provided to public at large through the Government Hospitals and Primary Health Centres, during the pandemic of COVID-19 which was spreading fast, the Government has decided to enhance the age of retirement of such Officers up to the age of 62 years. In the Resolution it is clarified that the said Resolution would remain in force for the period of one year starting from 31.5.2021 till 31.5.2022. As stated further, the Resolution was issued, subject to post facto sanction of the State Cabinet.

5. It is specific objection of the applicants that the impugned G.R. has been issued by the State without any authority and in utter disregard of the judgment delivered by the Division Bench of

Hon'ble Bombay High Court in Writ Petition No. 5402/2018 on 20.3.2020.

6. In the Writ Petition No. 5402/2018 the petitioners therein had challenged the G.Rs. dated 30.5.2015, 30.6.2015 and 3.9.2015 issued by the State increasing the age of superannuation of the District Health Officers, Civil Surgeons and superior Officers working in the Public Health Department from 58 to 60 years on the ground of non-availability of Medical Officers and senior Officers at General Hospitals, Sub District Hospitals and Rural Hospitals. It was the contention of the petitioners that the age of retirement as prescribed under the Maharashtra Civil Services (Pension) Rules, 1982 cannot be enhanced by issuing the G.Rs. since it amounts to exercise of legislative power by the Executives without authority. The oppose of the petitioners for increasing the age of retirement was also for the reason that it has blocked legitimate right of promotions and further prospects of the petitioners and many more similarly situated officers. The petitioners had alleged that to give benefit to some of the Officers, who are nearer and dearer to the Ministers and the higher Officers working in the Mantralaya, the impugned G.Rs. increasing the age of superannuation had been issued. It was the further contention of the petitioners that from last many years no effective steps have

been taken by the respondents to fill in the vacancies, though the petitioners and many more like the petitioners are available for promotions and though large number of candidates are available for fresh recruitment.

7. It was the stand of the Government before the Hon'ble High Court that the Government was facing difficulties in providing services to the needy people in the pandemic of Corona, which has necessitated increase in the age of retirement of the Civil Surgeons, District Health Officers and other superior Officers working under the Public Health Department. It was submitted by the Government that in the cadre of Civil Surgeons 377 posts were vacant, whereas in the cadre of District Health Officers 141 posts were vacant and 466 posts were vacant in specialty cadre. It was also the contention of the State that the age of superannuation was increased by the State in exercise of powers under rule 12 of M.C.S. (Pension) Rules, 1982.

8. The Hon'ble Division Bench after having considered the facts involved in the matter and the relevant legal provisions held that it was not within the power of the State Government to increase the age of retirement of the concerned Medical Officers as prescribed in M.C.S. (Pension) Rules, 1982 by issuing G.Rs. in that regard. The Hon'ble High Court also rejected the contention raised on

behalf of the State that the concerned G.Rs. were issued exercising the discretion under rule 12 of M.C.S. (Pension) Rules, 1982. The Hon'ble High Court has observed, that to increase the age of retirement of some employees may be permissible under rule 12 of M.C.S. (Pension) Rules, 1982, but the age of superannuation of all District Health Officers, Civil Surgeons and superior Officers working in Public Health Department could not have been increased from 58 years to 60 years merely by issuing G.R. without express authority and power under the said rules. The Hon'ble High Court has further observed that the Government was not able to point out any provision under any Statute which empowers the State to increase the age of retirement by issuing G.R. in that regard. The Hon'ble High Court ultimately declared the G.Rs. impugned in the said Writ Petition to be illegal and consequently set aside the same. Having regard to the situation of COVID-19 and considering that the Medical Officers, Civil Surgeons and Superior Officers in the Public Health Department, who were benefited by the said G.Rs., were not party to the said Writ Petition, though the impugned G.Rs. were set aside, the Hon'ble High Court did not unsettle the said Officers. However, it was specifically observed by the Hon'ble High Court that the State Government shall not grant further extension by way of executive instructions without authority and power under the Statute.

9. In backdrop of the judgment delivered by the Hon'ble High Court in Writ Petition No. 5402/2018, the G.R. dated 31.5.2021 impugned in the present O.A., apparently appears unsustainable.

10. In the affidavit in reply submitted on behalf of the respondents it is contended that the G.Rs., which were challenged in the Writ Petition No. 5402/2018 before the Hon'ble High Court were effective up to 31.5.2018. It is further contended that the Government thereafter issued the G.R. dated 29.8.2018 after the approval of the State Cabinet. It is further contended that the impugned G.R. dated 31.5.2021 has also received post facto sanction from the State Cabinet. It is further contended that the Government has taken the decision to amend M.C.S. (Pension) Rules, 1982 and more particularly rule 10 thereof. It was, therefore, argument of the learned C.P.O. that the impugned G.R. is based on the decision of the State Cabinet to amend the relevant rules and hence cannot be faulted with.

11. In para 6 of the affidavit in reply the respondents have given the reasons for which the State was required to issue the impugned G.R. increasing retirement age of Group-A Medical Officers. We deem it appropriate to reproduce the entire said para which reads thus :-

“6. I say that meanwhile in the year 2020 covid-19 pandemic started and the Health Department had to face many problems due to shortage of medical officers. Therefore Government decided vide Government resolution dated 31st May, 2021, to increase superannuation age up to 62 years for the officers working in Maharashtra Medical and Health Services Group-A, Maharashtra Medical Insurance Services Group working in pay level S-20 and senior officers working in S-23 and above pay levels for the period of 1 year i.e. from 31st May, 2021 to 31st May, 2022, to be able to find solutions and implement the same to control spread of covid-19 pandemic. Post facto sanction of state cabinet for the decision has also been taken and it is conveyed vide GR dated 9th August, 2021. State cabinet has also decided to amend Maharashtra Civil Services (Pension) Rules, 1982, Rule 10 accordingly. So said Government Resolution is based on decision of Cabinet to amend the relevant statues / Rules.”

12. In para 7 of the affidavit in reply the respondents have attempted to submit how the act of issuance of the impugned G.R. is in consonance with the observations made by the Hon’ble High Court in the judgment in Writ Petition No. 5402/2018. Para 7 reads thus :-

“7. I say that Government resolutions issued in 2015 which were challenged in the honourable High Court Aurangabad bench was in effect up to 31st May of 2018.

The Government resolution issued thereafter on 29th August 2018 has been issued after the approval of state cabinet and also post facto sanction has been taken of the state cabinet for the decision taken vide Government resolutions 31st May 2021. Based on judgment of Hon'ble High Court dated 20th March, 2020 it appears that State can increase the age of superannuation by amending the rules. Accordingly Government has taken decision to amend Maharashtra Civil Services (Pension) Rules."

13. We are, however, not convinced with the defence as has been raised in the reply filed on behalf of the respondents and submissions made by the learned C.P.O. based on the said averments in the reply. While deciding Writ Petition No. 5402/2018, the Hon'ble High Court has clearly held that unless the Pension Rules are amended the age of retirement of the concerned Medical Officers cannot be increased. It is thus evident that mere decision by the Cabinet to amend the said rules was not sufficient, legal requirement was to get the said rules amended by following the due procedure.

14. Judgment in Writ Petition No. 5402/2018 was delivered on 20.3.2020. The impugned G.R. has been issued about 14 months thereafter. It does not appear to us that it was not possible for the Government to bring the suitable amendment in M.C.S. (Pension)

Rules, 1982, during the said period, if at all the Government was finding it necessary to increase the age of retirement of the concerned Medical Officers. Admittedly, it has not been done and instead of taking legal recourse, the age of retirement of the concerned Medical Officers has been again increased by the State by issuing the impugned G.R., without any statutory authority. On this ground alone the impugned G.R. deserves to be quashed.

15. In para 7 of the affidavit in reply filed by the respondents it is stated that “based on the judgment of the Hon’ble High Court dated 20.3.2020, it appears that the State can increase the age of superannuation by amending the rules.” It is further stated that, “accordingly the Government has taken decision to amend the M.C.S. (Pension) Rules, 1982.” However, no further information is provided as to when the Government has taken the decision to amend the M.C.S. (Pension) Rules, 1982, nor the copy of any such decision is placed on record. The question further arises why the said decision of amending the M.C.S. (Pension) Rules, 1982 has not been implemented, though sufficient time was available with the Government. Moreover, in the impugned G.R. it is not even whispered that the Government is intending to amend the M.C.S. (Pension) Rules, 1982. It is the matter of record that the State has not challenged the decision rendered in Writ Petition No.

5402/2018. It is also a matter of record that though one Dr. Yeshwant Sindhojirao Chavan had filed S.L.P., the same has been dismissed by the Hon'ble Apex Court with an observation that no interference is warranted. Issuance of impugned G.R. in the premise of aforesaid facts demonstrates the hostility of the respondents towards the orders passed by the Hon'ble High Court.

16. In para 6 of the affidavit in reply shortage of Medical Officers is the reason assigned for increasing the retirement age of the existing higher Officers working on the posts of Civil Surgeons, District Health Officers etc. It is the matter of record that even while increasing the age of superannuation of such higher Officers for the first time vide G.R. dated 30.5.2015, the reason assigned was the same that there was shortage of Medical Officers. Since 2015 to 2021 why the Government did not get the candidates for the post of Medical Officers is the matter of introspection for the Government.

17. It is not the case that there are no sufficient numbers of eligible candidates for appointment on the post of Medical Officers. However, as pointed out by the applicants many of them are reluctant to accept the said appointments. The applicants have stated the reason also why these young Medical Officers are reluctant to join the Government Hospitals. It is the specific

allegation of the applicants that as because promotions are not timely given in the Government jobs, there is lot of frustration amongst the aspiring Medical Officers and apprehending the said situation the young Medical graduates are not opting for jobs in the Government Hospitals. It is difficult to reject the aforesaid allegation.

18. The information on record shows that after 2015 no due steps have been taken for effecting the promotions. In the circumstances, if the Government is suffering a shortage of Medical Officers, we reiterate that it is a matter of introspection for the Government. We regret to state that instead of addressing aforesaid genuine bottleneck and making amends to remove the same by giving timely promotions to the aspiring eligible candidates, the Government has chosen the impermissible and illegal way of enhancing the retirement age of existing Medical Officers working on the higher posts.

19. We reiterate that it is not the case of the respondents that they are not getting the competent persons to promote them on higher posts like Civil Surgeons, District Health Officers etc. The contentions of the applicants in the present O.A. that there are large number of Medical Officers in the Health Services, who are eligible for such promotion, has not been denied or disputed by

the respondents. No explanation is however coming forth from the respondents as to why their promotions have not been effected from time to time. The respondents have not provided any concrete information as to what steps have been taken in that regard.

20. For the facts discussed and the reasons stated hereinabove the G.R. dated 31.5.2021 issued under the signature of respondent no. 5 cannot be sustained, firstly : for the reason that the same is issued without any express authority or power under the statute and hence is illegal; secondly : that it has been issued in utter disregard of and in violation of the order passed by the Division Bench of the Hon'ble High Court in Writ Petition No. 5402/2018 and thirdly : that the respondents have utterly failed in giving any acceptable justification for issuance of such G.R.

21. While praying for setting aside the G.R. dated 31.5.2021, the applicants have also prayed for directing the respondents for taking immediate steps to fill in the vacancies as on today in the Public Health Department of the State. According to us, the applicants are fully justified in making such prayers which deserve to be granted.

22. For the reasons stated above, we quash and set aside the G.R. dated 31.5.2021 issued under the signature of respondent no.5. Further, we direct the respondents to take all prompt steps to fill in the vacancies existing as on today in the Public Health Department and complete the entire process as expeditiously as possible.

23. Though we have allowed both the prayers made in the O.A., we may not unsettle the Medical Officers, who are benefitted by the impugned G.R. dated 31.5.2021 in view of the fact that they are not party before us. We leave it to wisdom of the respondents to take appropriate decision in that regard in view of the observations made by us in the body of the order and in light of the fact that the G.R. on the basis of which the said Officers are presently holding the respective posts has been set aside by us.

24. Before concluding our order, we deem it necessary to caution the respondents that they should take serious note of the unrest amongst the Medical Officers, who are eligible for promotions to the higher posts, but have not been promoted or else the "Health" of the Health Department is likely to deteriorate fast. To tide over the present situation, the more preferable way would be to promote the aspiring eligible candidates to the higher posts and simultaneously expedite the fresh recruitment.

25. The Original Application No. 639/2021 is allowed in the aforesaid terms with no order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
MEMBER (J)

Place : Aurangabad
Date : 4th January, 2022

ARJ-O.A.NO. NO. 639-2021 D.B. (CHALLENGING G.R.)