

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 907/2011

DIST.: AURANGABAD

Jyoti w/o Vinod Bardapurkar (Khadke),
Age : 58 Yrs. Occupation : Service as Librarian
At Government Medical College Aurangabad,
R/o Sri Apartment, Medical Housing Society,
Plot No. 24, Opp. Chankyapuri, Shanurwadi,
Aurangabad. 431005.

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APPLICANT

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Medical Education and Drugs Department, Mantralaya,
Mumbai.

(Copy to be served through P.O.
Maharashtra Administrative Tribunal,
Bench at Aurangabad)

2. The Director,
Medical Education and Research,
Government Dental College & Hospital Building,
Saint Georges Hospital Compound,
CST, Mumbai 400 001.
3. The Dean,
Government Medical College (GATI),
Aurangabad.
4. The Registrar,
Maharashtra University of Health Sciences,
Vani Road, Mhasrul, Nashik 422 004.

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RESPONDENTS

APPEARANCE : Smt. Kalpalata Patil Bharaswadkar, learned
Advocate for the Applicant.

: Shri I.S. Thorat, Learned Presenting Officer
for the Respondents.

**CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI, MEMBER (J)**

DATE : 20.10.2016.

J U D G M E N T

[PER- HON'BLE SHRI J.D. KULKARNI, MEMBER (J)]

The applicant was working as a Librarian with respondent no. 3. She has completed her graduation (B.Sc.) and then B. Lib. Sc. The post of Librarian is created as per G.R. dated 20.05.1975 and the applicant came to be appointed temporarily on 17.06.1975 and she joined on 18.06.1975. She was absorbed on permanent post vide order dated 16.08.1979.

2. During pendency of the Application, the applicant has completed her age of 58 years on 31.10.2010. The respondent no. 3 had issued necessary office order on 16.08.2010 as regards preparation and submission of her pension papers, considering that she was due to retire on superannuation on 31.10.2010.

3. Vide G.R. dated 14.11.1995, it was clarified that the post of Librarian be considered as teaching post without vacation.

4. According to the applicant, the age of retirement of all Librarians and Physical Instructors of recognized and affiliated Medical Colleges is 60 years but the Librarians and Physical Instructors of Government Medical Colleges are given discriminatory treatment, as their age of superannuation is 58 years and this is against the fundamental right to equity under Article 14 and 16 of the Constitution.

5. The applicant further submitted that the respondent no. 1 department has issued G.R. dated 30.04.2010 rising the age of superannuation of Teachers of Government Medical/ Dental/ Ayurvedic Colleges. The said G.R. was issued as per the suggestions of the Medical Council of India, Indian Council of Life Sciences, Central Government that the age of superannuation of Teachers in Government Medical College/Dental and Ayurvedic College of State of Government be increased from 58 to 60 years.

6. On 17.06.2010, the respondent no. 1 issued corrigendum clarifying that the Government Resolution dated 30.04.2010 will not be applicable to the persons like Physical Instructors and other equivalent teachers. According to the applicant, the said corrigendum is arbitrary and illegal and

therefore, the applicant was constrained to file this Original Application.

7. The Applicant has claimed that the corrigendum dated 17.06.2010 to the Government Resolution dated 30.04.2010 be quashed and set aside and office order dated 23.03.2011 regarding retirement of the applicant on superannuation on 31.12.2011 issued by the respondent no. 3 be quashed and set aside and the applicant may be continued as Librarian till 31.12.2015 and all consequential benefits be given to the applicant as per G.R. dated 30.04.2010.

8. The respondent nos. 1 to 3 have filed affidavit in reply and submitted that under the Maharashtra Civil Services, the age of retirement of an employee is 58 years. However, taking into consideration that the qualified teachers in Medical faculty were not available in the Government Medical College, Dental Colleges and Ayurvedic Colleges, the Government decided to increase the age of superannuation of teachers from 58 to 60 years. The applicant is not the Medical Teacher and therefore, she is not entitled to claim extension.

9. We have heard Smt. Kalpalata Patil Bharaswadkar, learned Advocate for the applicant and Shri I.S. Thorat, learned

Presenting Officer for the respondents. We have also perused the affidavit, affidavit in reply and various documents placed on record by the respective parties.

10. From the facts discussed hereinabove, it will be clear that the applicant is not possessing graduation in Medical faculty nor she has serving as Medical Teacher. It seems to be admitted fact that the vide G.R. dated 30.04.2010 the age of retirement in respect of medical Teachers has been increased from 58 to 60 years. The said relevant G.R. is at page no. 152 to 153 (both inclusive). The decisions taken by the Government vide said G.R. is as under:-

“शासन निर्णय :-

वैद्यकीय शिक्षण व संशोधन संचालनालय आणि आयुर्वेद संचालनालयातील संचालक, सहसंचालक तसेच शासकीय वैद्यकीय, दंत आणि आयुर्वेद महाविद्यालयातली अधिष्ठाता व अध्यापकांच्या नियतवयोमान सेवानिवृत्तीचे वय ५८ वर्षांवरून ६२ वर्ष करण्याचा निर्णय शासनाने घेतला आहे.

२. सदर आदेश वित्त विभागाने अनौपचारिक संदर्भ क्रमांक ८८/१०/सेवा-४, दिनांक ३०.४.२०१० अन्वये दिलेल्या सहमतीनुसार निर्गमित करण्यात येत आहेत.

३. सदर आदेशाची अंमलबजावणी आदेशाच्या दिनांकापासून करण्यात येईल.”

11. The Government of Maharashtra subsequently issued corrigendum dated 17.06.2010 and thereby specifically

mentioned that the extension of age limit granted vide G.R. dated 30.04.2010 will not be applicable to the Teachers who were Physical Instructors or equivalent. The said G.R. reads as under:-

“ शासन पुरकपत्र : —

वैद्यकीय शिक्षण व संशोधन संचालनालय आणि आयुर्वेद संचालनालयातील संचालक, सहसंचालक तसेच शासकीय वैद्यकीय, दंत आणि आयुर्वेद महाविद्यालयातील अधिष्ठाता व अध्यापकांच्या नियत वयोमान सेवानिवृत्तीचे वय ५८ वरून ६२ करण्याचा निर्णय घेऊन तसे आदेश दिनांक ३० एप्रिल, २०१० रोजी निर्गमित करण्यात आलेले आहेत. संचालक, अधिष्ठाता, प्राध्यापक, सहयोगी प्राध्यापक व अधिव्याख्याता हे वैद्यकीय अर्हताधारक आहेत. शासकीय वैद्यकीय महाविद्यालयातील वैद्यकीय अर्हता धारकांच्या कमतरतेच्या पार्श्वभूमीवर नियतवयोमान सेवानिवृत्तीचे वय वाढविण्याचा निर्णय घेण्यात आलेला आहे. त्यामुळे शासकीय वैद्यकीय, दंत व आयुर्वेद महाविद्यालयातील वैद्यकीय अर्हता धारक अध्यापकांव्यतिरिक्त इतर अध्यापकांना म्हणजेच फिजीकल इन्स्ट्रक्टर वा तत्सम अध्यापकांना दिनांक ३० एप्रिल, २०१० च्या शासन निर्णयातील सेवानिवृत्तीच्या वयोमानात वाढ केल्याची तरतुद लागू होणार नाही. असे अध्यापक वयाची ५८ पूर्ण झाल्यानंतर नियत वयोमानानुसार सेवानिवृत्त होतील.

सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtrgov.in या संगणक संकेत स्थळावर उपलब्ध असून त्यांचा संगणक सांकेतांक २०१००६१७१९३१२१००१ हा आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,”

12. The material question therefore, to be decided is to whether the G.R. dated 30.04.2010 is applicable to the Librarian like applicant and whether the corrigendum dated 17.06.2010 to said G.R. is required to be quashed?

13. Learned Advocate for the applicant invited our attention to the judgment delivered by this Tribunal at Principal seat at Mumbai. The said judgment is passed in O.A. Nos. 117/2013 with M.A. No. 522/2013 in O.A. No. 117/2013 with O.A. NO. 1108/2013 with M.A. No. 104/2014 in O.A. No. 1108/2013 with M.A. NO. 28/2014 in O.A. No. 1108/2013 in the case of Mrs. Vasudha Kallur & Ors. Vs. the State of Maharashtra and others on 20.07.2015. In the said judgment the G.R. dated 30.04.2010 and its corrigendum dated 17.06.2010 have been interpreted. It seems that the petitioners Librarians in the said judgment, were made to retire on superannuation on completion of age of 58 years, but the benefit of G.R. dated 30.04.2010 as regards extension of age of superannuation has been extended to the petitioners. In paragraph no. 49 of the said judgment, the Tribunal has observed as under:-

“49. The orders herein impugned are quashed and set aside. The supplement dated 17.06.2010 to the G.R. dated 30.04.2010 is hereby quashed and set aside and the Applicants are held entitled to the benefit of the 1st G.R. dated 30.04.2010 whereby they be treated at par with the Librarians of Non-medical Colleges for the purposes of the age of retirement on superannuation. Consequently, the Applicants be

allowed to join their duties on or before 13th August, 2015 and on joining as above, the Applicants will be entitled to continuity of service and all other benefits. Within four weeks of such joining by the Applicants, the Respondents shall decide upon the period from the date of “retirement” by the quashed orders till such joining and convey such a decision to the Applicants within one week. These two Original Applications are allowed in these terms. The Misc. Applications get concluded herewith. No order as to costs. ”

14. From the aforesaid circumstances, it will be clear that the corrigendum (supplement) dated 17.06.2010 to the G.R. dated 30.04.2010 has been quashed and set aside by the Principal seat of this Tribunal at Mumbai and now the Librarians in Government Medical/Dental/Ayurvedic College have been treated at par with the Librarian of the non-medical colleges for the purposes of age of retirement on superannuation.

15. In view of the aforesaid admitted position the present applicant will be entitled to benefit of the G.R. dated 30.04.2010 and the Corrigendum dated 17.06.2010 the said G.R. will not come in her way.

16. Learned Presenting Officer invited our attention to the fact that the judgment by this Tribunal at Mumbai in O.A. No. 117/2013 and others as cited supra has been assailed before the Hon'ble High Court in W.P. no. 10822/2016. It seems that the learned Advocate for the applicant Smt. Kalpalata Patil Bharaswadkar, also appeared in the said W.P. filed by the State of Maharashtra for respondents. It is true that the Hon'ble High Court has not granted any stay to the order passed by this Tribunal at Principal seat at Mumbai but the fact remains that the dispute as to whether the corrigendum dated 17.06.2010 is arbitrary and illegal is now pending before the Hon'ble High Court of Bombay.

17. Learned Presenting Officer further stated that the applicant in the present case has retired on superannuation on 31.12.2011 itself. Even she has completed her age of 62 years on 31.12.2015 and therefore, in any case, the applicant cannot be reinstated in the service, and cannot be asked to continue in the service. The only question therefore, remain as to whether the applicant will be entitled to monetary benefits of service till attains the age of 62 years as per G.R. dated 30.04.2010. Admittedly, the applicant has not worked on her post during the extended period and also considering the fact that the matter is

now pending before the Hon'ble High Court Bench at Aurangabad, it will not be in the interest of justice and equity to direct the respondents to pay the consequential benefits in view of the extended age limit of superannuation to the applicant at this juncture. At the most, we can say that in case W.P. before Hon'ble High Court is decided in favour of the petitioner therein, she may make a representation for getting consequential benefits from the date of retirement i.e. after 31.12.2011 till she attains the age of 62 years on 31.12.2015 and therefore, we pass following order:-

ORDER

1. The Original Application is partly allowed.
2. The order of retirement of the applicant dated 23.03.2011 issued by respondent no. 3 whereby she has made to retire on 21.12.2011 is quashed and set aside.
3. In view of the fact that the corrigendum dated 17.06.2010 to the G.R. dated 30.04.2010 has been quashed and set aside by the Principal seat of this Tribunal at Mumbai in O.A. Nos. 117/2013 & others, the applicant would have been continued as Librarian till she attains the age of 62 years i.e. on 31.12.2015.

4. The applicant is at liberty to file representation for consequential benefits that she may be entitled in view of the enhanced age of retirement up to 62 years as per G.R. dated 30.04.2010, depending upon the result of the W.P. No. 10822/2016 (The State of Maharashtra Vs. Mrs. Vasudha Kallur) before the Hon'ble High Court of Bombay.

There shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)