

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.1055 OF 2018**

**DISTRICT: MUMBAI  
SUBJECT: RECOVERY & TIME  
BOUND PROMOTION**

Smt. Vijayalakshmi Sundarrao Mone, )  
Aged 66 years, Occ. Retired as Ex-Assistant Professor, )  
Grant Medical College and Sir J.J. Group of Hospitals, )  
Byculla, Mumbai-8. )  
R/O. 8/14, Vishakha Apartment, Adarsh Nagar, )  
New Link Road, Oshiwara, Jogeshwari (W), )  
Mumbai – 400 102. )... **Applicant**

**Versus**

1) The State of Maharashtra, )  
Through Principal Secretary, Medical Education )  
and Drugs Department, Having Office at )  
Mantralaya, Mumbai-400 032. )

2) The Dean, )  
Grant Medical College and Sir J.J. Group of )  
Hospitals, Mumbai, Having Office at Byculla, )  
Mumbai-400 008. )... **Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Ms. Swati P. Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)**

**DATE : 21.12.2021.**

**JUDGMENT**

1. The Applicant has challenged order dated 25.10.2017 as well as 21.08.2018 whereby the Applicant was held not entitled to 2<sup>nd</sup> benefit of Time Bound Promotion Scheme (TBPS) and Pension was ordered to be fixed considering his pay as on 30.09.2014 instead of 30.09.2016.

2. Following are admitted facts giving rise to this O.A.
- 1) The Applicant is B.A., M.S.W. and M.Phil and initially appointed in Government service as M.S.W. on 27.02.1976.
  - 2) The Government by order dated 31.07.1982 appointed her as Lecturer in Health Education and Family Planning (Public Health Department) initially on probation of 2 years and after completion of 2 years she was continued in services.
  - 3) The Government by G.R. dated 03.07.1992 took decision to apply pay scale of Rs.3700-5700 to the Lecturer who completed 8 years complete service and pursuant to it the Applicant was also placed into pay scale of Rs.3700-5700.
  - 4) The Applicant was to retire on attaining age of 58 years on 30.09.2010 but by virtue of Government Resolutions age of superannuation of Medical Officer and Associate Professor in Government Medical Colleges was extended initially upto 62 years again extended upto 64 years, and therefore, the Applicant had filed O.A. No.72/2011 before this Tribunal challenging her retirement at the age of 58 years. O.A. was allowed by this Tribunal by Judgment dated 25.06.2014 and the Applicant was held entitled to extension of benefits of age upto 62 years.
  - 5) Respondents being aggrieved by the decision rendered by the Tribunal filed W.P. No.7440/2015 before Hon'ble High Court which was disposed of having found that the Applicant was already allowed to continue in service until she attain age of 64 years. Order of Hon'ble High Court is as under:-

*In pursuance to the decision rendered by the Maharashtra Administrative Tribunal in Original Application No. 72 of 2011, the Original Applicant/Respondent was permitted to continue in employment till she attains the age of 62 years. The learned Counsel appearing for Respondent/Original Applicant, on instructions, states that the Respondent/Original Applicant has availed of the benefit of increase in the age of retirement. In view of subsequent change in respect of age of retirement, she was allowed to continue in employment until she attained the age of 64 years. The*

*Respondent/Original Applicant on reaching age of 64 years was permitted to retire*

2. *In view of the facts as disclosed above, the challenge raised by the Petitioners/ State to the order passed by the Maharashtra Administrative Tribunal in Original Application No. 72 of 2011 is rendered stale.*

3. *The writ petition is accordingly rejected.*

- 6) Review petition filed by Respondents also came to be dismissed by order dated 08.02.2021 by following order.

2. *We have perused the order passed by us on 28 February 2017. In the peculiar facts of the case, since we noticed that the Respondent-Original Applicant has already attained the age of 64 years and she was permitted to retire, the challenge raised in the Petition is rendered stale. In the peculiar facts of the case before us, the decision has been rendered, which need not be reviewed in exercise of powers conferred on the High Court.*

3. *In view of above, Review Petition is disposed of.*

- 7) The Applicant thus continued in service and came to be retired on attaining at the age of 64 years on 30.09.2016.
- 8) After retirement the Applicant made representation dated 22.11.2018 addressed to Dean, Government Medical College, Mumbai claiming 2<sup>nd</sup> benefits of Time Bound Promotion Scheme on completion of 24 years *inter-alia* contending that from 1990 she continued on the same post of Assistant Professor for 26 years without any enhancement in pay scale.
- 9) Dean, Grant Medical College however by communication dated 21.08.2018 rejected claim of the Applicant for 2<sup>nd</sup> benefit of Time Bound Promotion Scheme *inter-alia* stating that she was given pay scale in terms of U.G.C., and therefore, not entitled to the benefits of 2<sup>nd</sup> Time Bound Promotion Scheme which is impugned in the present O.A.

- 10) Dean, Grant Medical College by order dated 25.10.2017 also ordered that Applicant was to retire on 30.09.2014 (on attaining age of 62 years) but she was allowed to continue till attaining age of 64 years upto 30.09.2016, and therefore, directed that Pension be fixed w.e.f. 01.10.2014 considering date of retirement as 30.09.2014 which is also under challenge in the present O.A.
- 11) It is on above background, the Applicant has challenged order dated 25.10.2017 as well as 21.08.2018 in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant while assailing order dated 25.10.2017 sought to contend that the Applicant was continued in service in view of the decision rendered by this Tribunal in O.A. No.72/2011 which had attained finality, and therefore, pension has to be fixed as per last drawn pay at the time of retirement. As regard, order dated 21.08.2018 he submits that since the Applicant rendered 26 years of service without getting 2<sup>nd</sup> benefit of Time Bound Promotion, she is entitled to the said benefits on par with Government servant in terms of scheme of Time Bound Promotion Scheme / Assured Career Progression Scheme (ACPS). He has pointed out that after 8 years of completion of service the Applicant was given benefits of pay scale of Rs.3700-5700 for Associate Professor but thereafter she did not get any benefits of ACPS, and therefore, rejection of the 2<sup>nd</sup> benefit of TBPS/ACPS by order dated 21.08.2018 is arbitrary and unsustainable in law.

4. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer has pointed out that in fact the Applicant being non Medico, she was not entitled to the enhancement of age which was made applicable only to Lecturer, Associate Professor having M.B.B.S. qualification engaged in teaching in medical colleges. However the Applicant continued in service till she attained age of 64 years due to administrative lapses, and therefore, she is not entitled to the pension as per last drawn pay. She therefore sought to justify impugned order dated 25.10.2017 whereby

Dean, Grant Medical College, Mumbai issued direction to fix pension considering pay drawn by the Applicant on 30.09.2017 (on attaining age of 62 years). In this behalf, she referred to decision of **Hon'ble High Court in W.P. No.3344/2017, State of Maharashtra v/s. Dr. Girish Hanumant Thitte, decided on 30.11.2018**. As regard, denial of 2<sup>nd</sup> TBPS/ACPS, she submits that the Applicant was given pay scale in terms of UGC and secondly she was carrying pay scale of Rs.37,400-67,000 and was therefore not entitled to the 2<sup>nd</sup> benefits of TBPS in terms of G.R. dated 20.07.2001.

5. In view of submission advanced at bar firstly, let us see whether the Applicant is entitled to pension on the basis of last drawn pay which she was getting on completion of 64 years of age. Admittedly, the Applicant was initially appointed as M.S.W in 1976, she is not holding MBBS degree. Later by order dated 31.07.1982 she was appointed as Lecturer in Health Education and Family Planning Department on probation for period of 2 years and after completion of probation continued in service. Government by G.R. dated 30.04.2010 took policy decision to enhance age of retirement of Teachers, Professors etc from 58 to 62 years. Later again by G.R. dated 28.07.2014 retirement age was extended from 62 to 63 years in view of paucity of Professor, Lecturers in Government Medical Colleges and Dental Colleges. Thereafter again by G.R. dated 05.03.2015 the age was extended from 63 to 64 years. It is in the light of these G.Rs the Applicant had filed O.A. No.72/2011 challenging communication dated 14.01.2011 whereby she was made to retired at the age of 58 years. Tribunal by order dated 25.07.2014 allowed the O.A. holding that the Applicant would be entitled to extension of age upto 62 years. Tribunal directed the Respondents to ensure that the age of retirement of the Applicant is 62 and not 58 and compliance was to be reported within 4 weeks.

6. Being aggrieved by the decision the Government filed W.P. No.7440/2015 before Hon'ble High Court, which was disposed on

28.02.2017. Hon'ble High Court held that since the Applicant was already allowed to continue in employment until she attained age of 64 years, the decision rendered by the Tribunal in O.A. No.72/2011 is rendered stale. It is thus explicit that though the Applicant was given benefit of extension of age upto 62 years by the Tribunal she was allowed to continue in employment till she attained the age of 64 years i.e. upto 30.09.2016. Review Petition filed by the Government vide R.A.(Stamp) No.19388/2017 came to be dismissed in view of the fact that the Applicant was allowed to retire at the age of 64 years by the Department, and therefore, challenge to the decision given by the Tribunal has become infructuous. Be that as it may, fact of the matter is that though the Applicant was given benefits of extension of age upto 62 years by the Tribunal she was allowed to continue by the Department till she attained age of 64 years i.e. upto 30.09.2016.

7. True, issue of applicability of G.R. dated 30.04.2010 to Assistant Professor (Statistics and Demography) serving in Government Medical Colleges was under challenge before Hon'ble High Court in W.P. No.3344/2017 which was arising from the decision rendered by the Maharashtra Administrative Tribunal, Aurangabad Bench giving the benefit of extension of age in terms of G.R. dated 30.04.2010. Hon'ble High Court set aside the order of Tribunal and in para.12, 13 & 14 it is held as under.

*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 23<sup>rd</sup> 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 31<sup>st</sup> May, 2011 and the respondent in Writ Petition No. 3345 of 2017 ought to have been relieved on 30<sup>th</sup> June, 2013. However, they have been continued till the impugned communication dated 23<sup>rd</sup> 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 23<sup>rd</sup> 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.*

8. Thus, here worth to note, Respondents in W.P. No.3344/2017 though not found entitled to the enhancement of age on par with the Teachers/Professor serving in Medical Colleges upto the age of 62 and 64 years respectively but when question of Pensionary benefits raised, Hon'ble High Court held that they are entitled to pension on the basis of last 10 months salary or last pay drawn which is beneficial to the employee in terms of Rule 9(38) of the Maharashtra Civil Services (Pension) Rules, 1982. Hon'ble High Court therefore directed that the Pension proposal be processed and retiral benefits were to be paid to them preferably within three months.

9. In present case also similar is the situation. In terms of decision rendered by this Tribunal in O.A. No.72/2011 benefit of extension of age of the Applicant was given upto attaining the age of 62 years. Government challenged the said order before Hon'ble High Court by filing W.P. No.7440/2015 but in mean time instead of retiring the Applicant on attaining the age of 62 years she was allowed to continue upto attaining age of 64 years i.e. upto 30.09.2016. As such, Respondents availed the service of the Applicant till she attained age of 64 years though she was to be retired on attaining age of 62 years i.e. 30.09.2014, in terms of decision rendered by this Tribunal in O.A. No.72/2011. However, fact remains that Respondents extracted and availed the services of the Applicant till she attained the age of 64 years. Therefore she is entitled to get pension on the basis of last 10 months salary or last month salary which is beneficial to the employee in terms of Rule 9(38) of the Maharashtra Civil Services (Pension) Rules, 1982, in view of the benefit granted by the Hon'ble High Court to the Respondents in W.P. No.3344/2017 being similarly situated person. It would be highly unjust and iniquitous to deny the Pensionary benefits considering last drawn pay as on 30.09.2014 though admittedly the Applicant had worked till 30.09.2016 i.e. till attaining the age of 64 years. In this view of matter impugned communication dated 25.10.2017 fixing pension on the basis of last drawn pay on 30.09.2014 is totally unjust and iniquitous. It deserves to be quashed.

10. Now, second issue fall for consideration is whether the Applicant was entitled to 2<sup>nd</sup> benefit of TBPS. The scheme of TBPS was initially introduced by G.R. dated 08.06.1995 and it was restricted to Group 'C' and 'D' employees. The object of the said scheme was to relieve Government servant from stagnation and to give monetary benefits of promotional post which is known as non-functional promotion. Later, scheme of TBP is modified as ACPS by G.R. dated 20.07.2001 and it was made applicable to Government servants in the pay scale of Rs.8000-13500 or less. Thereafter for the first time scheme of 2<sup>nd</sup> benefits in



ACPS was introduced by G.R. dated 01.04.2010 and it was made applicable to Government servant in pay scale of Rs.15600-39100 + Grade Pay 5400/-, this is undisputed position.

11. Now let us see pay scale of the Applicant at relevant time to find out whether her case fits in G.R. dated 01.04.2010 for the 2<sup>nd</sup> benefit of ACPS. The perusal of record reveals that on 01.01.1996 the Applicant was in pay scale of Rs.12000-420-18300. Later in view of 6<sup>th</sup> Pay Commission her pay was revised in pay scale of Rs.37400-67000 w.e.f. 01.01.2006. It is evident from extract of service book at page 204 of P.B.

12. As such, 2<sup>nd</sup> benefit of ACPS was applicable to the Government servant in pay scale of Rs.15600-39100 with Grade Pay Rs.5400/- in terms of G.R. dated 01.04.2010 but the Applicant was already placed in higher pay scale of Rs.37400-67000 + Grade Pay Rs.9000/- w.e.f. 01.01.2006. This being the position, the claim of the Applicant for grant of 2<sup>nd</sup> benefit of TBP is totally unacceptable since she was already carrying higher pay scale then prescribed in G.R. dated 01.04.2010. Suffice to say she was not eligible for the said benefit.

13. Learned Advocate for the Applicant sought to pick hole in impugned order dated 21.08.2018 whereby she was informed that she is getting pay scale as per U.G.C. guidelines, and therefore, not entitled to 2<sup>nd</sup> benefit of ACPS. According to learned Advocate for the Applicant the legality of impugned order dated 21.08.2018 will have to be decided on the grounds mentioned in impugned order itself and Respondent cannot be allowed to travel beyond it. In this behalf, he placed reliance on the decision in **AIR 1978 SC 851, Mohinder Singh Gill v/s. Chief Election Commissioner**, in the said case para 8, Hon'ble Supreme Court observed as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”

14. Now, turning to the facts of the present case, this is not a case where order is sought to be validated by additional ground later brought out. Here is the case of eligibility of the Applicant for 2<sup>nd</sup> benefit of ACPS on the touchstone G.R. dated 01.04.2010 which was already in force at the time of passing impugned order. Therefore it cannot be said that impugned order is tried to be validated by additional ground brought out later. Furthermore, in ***Mohinder Singh Gill's case (cited supra)*** appears pertaining to order passed by Election Commissioner pertaining to Election dispute and in that context, Hon'ble Supreme Court held that validity of order cannot be supplemented by additional ground, later brought out. As such, this decision is of hardly any assistance to the Applicant in facts and circumstance of the case.

15. The totality of the aforesaid discussion leads me to sum up that challenge to the order dated 21.08.2018 denying 2<sup>nd</sup> benefit of ACPS holds no water. In so far as, impugned order dated 25.10.2017 is concerned it is liable to be quashed and the Applicant is entitled to get pension in terms of Rule 9(38) of the Maharashtra Civil Services (Pension) Rules, 1982. O.A. therefore deserved to be allowed partly.

### **ORDER**

- A) The Original Application is allowed partly.
- B) Impugned order dated 25.10.2017 is quashed and set aside.
- C) The Applicant is held entitled to pension considering his pay in terms of Rule 9(38) of the Maharashtra Civil Services (Pension) Rules, 1982.
- D) Impugned order dated 21.08.2018 denying 2<sup>nd</sup> benefit of ACPS needs no interference.

- E) Respondents are directed to release retiral benefits of the Applicant in terms of above, within two months from today.
- F) No order as to costs.

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 21.12.2021  
Dictation taken by: N.M. Naik.