

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.983 of 2016**

**District : Mumbai**

Shri Keshav B. Tashi , )  
Age 60 years, Occ : Retired Professor )  
R/o Revenue Housing Society, near )  
Shantiniketan School, Kolhapur – 416 004. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
Secretary, Higher & Technical Education )  
Department, Mantralaya, Mumbai 32. )  
(one addition Copy through the AG, )  
Maharashtra). )
2. Director, Higher Education, M.S. )  
Pune 411 001. )
3. Joint Director, Higher Education, )  
Mumbai Region, Eliphinstone Technical )  
School Compound, 3 Mahapalika Marg, )  
Mumbai 400 001. )
4. Principal, Eliphinstone College, 156, )  
Mahatma Gandhi Marg, Fort, Mumbai 32.) ...**Respondents**

Shri C. T. Chandratre, learned Advocate for the Applicant.  
Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J  
Smt. Medha Gadgil, Member –A

PER : Shri A. P. Kurhekar, Member-J

DATE : 23.07.2021

**J U D G M E N T**

1. The Applicant has challenged the legality of G.R. dated 12.07.2016 and also prayed for extension of service up to the age of 62 years though infact he actually stands retired on the post of Professor on 31.05.2016.

2. The Applicant was working as Professor, Eliphinstone College, Mumbai. He attained the age of 60 years on 31.05.2016 and accordingly, he was superannuated by order dated 31.05.2016. However, he filed this O.A. on 06.10.2016 *inter-alia* challenging the legality and validity of G.R. dated 12.07.2016 contending that in view of earlier G.R. dated 05.03.2011 the age limit was already extended from 58 to 62, and therefore, he got vested right to continue the service up to attaining the age of 62 years.

3. Shri C. T. Chandratre, learned Counsel for the Applicant sought to contend that once by G.R. dated 05.03.2011 the age limit of Professor was extended from 58 to 62 years, the Applicant ought to have been continued till attaining the age of 62 years but he has been superannuated on the basis of subsequent G.R. dated 12.07.2016 whereby, the Government had taken decision to restrict the retirement age to 60 where proposals are under consideration and pending before the Government.

4. Thus, the sum and substance of his submission is that the Applicant has got vested right to continue up to the age of 62 years and such vested right could not have been taken away by G.R. dated 12.07.2016. He, therefore, submits that G.R. dated 12.07.2016 is arbitrary and liable to be quashed with consequential benefits of retirement benefits to the Applicant since he already retired on 31.05.2016.

5. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer submits that though initially by G.R. dated 05.03.2011, the age limit was extended by 58 to 62. It was not absolute right but it was subject to performance appraisal and eligibility for continuation to be decided by the Government. She has further pointed out that subsequently Government had issued another G.R. dated 12.07.2016 whereby age

limit was again restricted to 60 years and the decision was taken not to extend the age of retirement where the proposals are pending with Government. Importantly, she has further pointed out that legality and validity of G.R. dated 12.07.2016 is already upheld by the Hon'ble High Court Bench Aurangabd in **W.P. No.7831/2016 (Professor Dr. Yeshwant K. Khilare & Ors V/s State of Maharashtra)** decided on 06.06.2017. She further submits that SLP filed against the said judgment has been also dismissed by the Hon'ble Supreme Court.

6. As regard to the decision of the Hon'ble High Court Aurangabad Bench W.P. No.7831/2016, learned Counsel for the Applicant sought to contend that though legality of G.R. dated 12.07.2016 is upheld, the Hon'ble High Court has not considered all the aspects while arriving to conclusion of the legality of G.R. dated 12.07.2016.

7. In so far as the grounds raised in this O.A. are concerned, those are as follows :-

a) *Applicant states that on earlier occasion the decision was taken to extend the services of the Professors from the age of 60 years to the age 62 years stating various reasons as submitted in the facts of this Original Application. Applicant states that it is not on the record of the Govt. that 17,000 posts are filled up during the intervening period. Applicant further states that even while issuing the G.R. dated 12.07.2016 there was no figure before the Govt. that how may NET SET eligible candidates for various subjects are available in the State and are without job, stages at which the selection process is going on etc. Applicant states that the Govt. i.e. Respondent NO.1 has never been informed himself on this fact and the GR has come to be issued on uninformed reasons and i.e. to say without having any relevant material before the Respondent No.1. Therefore, the impugned GR is arbitrary and against the spirit of Article 14 of the Constitution of India.*

b) *Applicant states that the above ground is supported from the fact that till this date the post held by the Applicant i.e. Professor of Marathi is not filled in by the Respondents. Thus it is clear that the G.R. has been issued without having any nexus between the decision and object. On the other hand there is right of proper education tot eh citizens and student of Indian and such right has*

*been prejudiced by issuing the GR i.e. colleges are run without having teachers in place of retired one. Thus the GR is against the letter and spirit of the directive principles of the Constitution of India, Act etc. and for that reason is invalid.*

*c) Applicant stated that by the G.R. dated 05.03.2011 the decision was taken to extent the age of superannuation in respect of principals and professors. However there is no change in the policy regarding principle. Applicant states that though, without admitting that it is separate class, so far as the reasons given in issuance of the G.R. dated 12.07.2016 are equally applicable to the principals also. Thus the prospect of in service professors to the promotion of principal and posting of the unemployed person on the available vacant post is equally affected by extending the outer limit of age of service. Applicant therefore states that eh professors are discriminated without any valid reason and the GR for that purpose is bad in law.*

*d) Applicant states that on the other hand the Govt. on the same date i.e. on 12.07.2016 issued another GR and thereby increased the age limit of the principals from 60 to 65 straight way and the conditions for reviewed their performance has been removed in respect of the institutions in tribal and hilly area. This reason and ground is equally apliable to the professors working in this area and also in other part of Maharashtra. A copy of the GR is annexed hereto and marked as Exh.A-7. Thus the arbitrariness in issuing the impugned GR and therefore requires to be set aside.*

*e) Applicant states that by enlarging the year of retirement till the completion of 62 years a legal and vested right was created in favour of the Applicant. It is the condition of service and the line, “ that necessary changes would be made in the MCSR”, clearly shows that the service conditions were created and thereby the right as also created. The same right has been taken away by the impugned GR and for that purpose the GR is invalid. Applicant states that right to consider for favorable service condition has also been taken away by the Respondents.*

*f) Applicant states that in view of the G.R. dated 05.03.2011 Applicant was legitimately expecting that he will get the extension to his service till the completion of 62 years of age. This legitimate expectation has been turned down by GR dated 12.07.2016.*

*g) Applicant states that even assuming that the GR is valid the condition No.3 stipulated in the GR is invalid. Applicant states that the GR is dated 12.07.2016 and every professor who has attended the age of 60 years till the date of this GR is entitled to consider his case for extension. Applicant is not responsible for not*

*consideration of his case before the date of issuance of GR. Therefore it is unfair on the part of the Respondents to stipulate the condition no.3 in the GR and the denial of continuation of service till the completion of 62 years of age.”*

8. In view of the submission advanced at bar, short question posed for consideration in this O.A. is whether it is open for this Tribunal to examine the legality of G.R. dated 12.07.2016 again in view of the decision rendered by the Hon'ble High Court Bench at Aurangabad in W.P. No.7831/2016 and the answer is in negative.

9. True, initially by G.R. dated 05.03.2011 the age of retirement of Professor and others were extended from 58 to 62. However, it was not absolute extension but it was concession subject to appraisal of performance. In this behalf, Clause No.5 of G.R. is material which is as under :-

*“५) राज्यांतर्गत कार्यरत अकृषी विद्यापीठांशी संलग्नित शासकीय महाविद्यालये व महाराष्ट्र राज्य तंत्र शिक्षण मंडळाशी संलग्नित शासकीय तंत्र निकेतनातील प्राचार्याव्यतिरिक्त उर्वरीत अध्यापकांचे नियतवयामानानुसार सेवानिवृत्तीचे वय ५८ वर्षावरून ६२ वर्षे करण्यात येत आहे. परंतु, वयाच्या ६० वर्षांनंतर सेवानिवृत्तीसाठी मुदतवाढ देण्यापूर्वी अध्यापकांच्या कामकाजाचा विहित समितीकडून आढावा (Performance Review) घेण्यात येईल. सदर समितीच्या अहवालातील शिफारसीनुसार संबंधित अध्यापकांना कमाल ६२ वर्षापर्यंत सेवानिवृत्तीसाठी मुदतवाढ देण्याची कार्यवाही शासनाच्या मान्यतेने करण्यात येईल.”*

10. Thus, it was not outright extension of age from 58 to 62 as a vested right but it was subject to performance appraisal by the Government. In other words, the Government reserved it's right whether to grant extension or not.

11. True, as pointed out by learned Counsel for the Applicant in the matter of Applicant, recommendation was made by the Department for extension. However, the fact remains that there was no such decision by the Government to extend the age limit of Applicant up to 62 years and

that is why he was superannuated on 31.05.2016. Then it comes another G.R. dated 12.07.2016 whereby the age limit was again brought down to 60 years. Para No.2 of G.R. is material which is as under:-

**“शासन निर्णय :-**

२. त्यानुसार मंत्रिमंडळाच्या मान्यतेनुसार शासन खालीलप्रमाणे निर्णय घेत आहे:-
  - १) संदर्भाधीन शासन निर्णय दि.५ मार्च, २०११, दि.२३.११.२०११ व दि.२३.०२.२०१२, दि. २८ मार्च २०१२, दि.२२ ऑगस्ट २०१२ व दि.११ ऑक्टोबर २०१२ अन्वये राज्यातील उच्च शिक्षण क्षेत्रातील शासकीय संस्था/महाराष्ट्र राज्य तंत्र शिक्षण मंडळाशी संलग्नित शासकीय तंत्र महाविद्यालये /पदविका संस्था/महाविद्यालयातील अध्यापकांच्या नियम वयोमानानुसार सेवानिवृत्तीचे वय ५८ वरून ६२ वर्षे व अकृषि विद्यापीठे, तंत्रशास्त्र विद्यापीठे व संलग्नित अशासकीय अनुदानित महाविद्यालयातील शिक्षक/ग्रंथपाल/उपग्रंथपाल/सहाय्यक ग्रंथपाल/संचालक, उपसंचालक व सहाय्यक संचालक, शारीरिक शिक्षण यांचे नियत वयोमानानुसार सेवानिवृत्तीचे वय ६० वर्षांवरून ६२ वर्षे करण्याबाबत घेण्यात आलेल्या निर्णयांचा पुनर्विचार करून सेवानिवृत्तीचे वय ६० वर्षे करण्यात येत आहे. त्यामुळे असा प्रत्येक अध्यापकीय कर्मचारी आता ज्या महिन्यात ६० वर्षांचा होईल त्या महिन्याच्या अखेरच्या दिवशी मध्यान्होत्तर सेवेतून निवृत्त होईल. तथापि, ज्या अध्यापकीय कर्मचा-यांची जन्मतारीख महिन्याच्या १ तारखेला असेल तो अध्यापकीय कर्मचारी ६० वर्षांचा होताच मागील महिन्याच्या शेवटच्या दिवशी मध्यान्होत्तर सेवानिवृत्त होईल.
  - २) संदर्भाधीन शासन निर्णय दि.५ मार्च, २०११, दि.२३.११.२०११ व दि.२३.०२.२०११, दि.२८ मार्च, २०१२, दि.२२ ऑगस्ट, २०१२ व दि.११ ऑक्टोबर, २०१२ येथील शासन निर्णयांतील तरतुदीनुसार यापूर्वी ज्या अध्यापकीय कर्मचा-यांच्या नियम वयोमानानुसार सेवानिवृत्तीच्या वयात ६० वरून ६२ वर्षे मुदतवाढ देण्यात आलेली आहे, ते अध्यापकीय कर्मचारी त्यांना मुदतवाढ दिलेल्या शासन आदेशात विहित केलेल्या मुदतवाढीच्या दिनांकास सेवानिवृत्त होतील.
  - ३) सद्यःस्थितीत अध्यापकीय कर्मचा-यांच्या नियत वयोमानानुसार सेवानिवृत्तीच्या वयात वाढ करण्याबाबतच्या शासनाकडे मुदतवाढीसाठी प्राप्त झालेल्या वा प्राप्त होणा-या किंवा प्रलंबित असलेल्या कोणत्याही प्रकरणात यापुढे मुदतवाढ देण्यात येणार नाही, हा निर्णय जाणीवपूर्वक घेण्यात येत आहे.
  - ४) महाराष्ट्र नागरी सेवा नियमांमध्ये वरीलप्रमाणे सुधारणा करण्यात येईल.”

12. It is thus explicit from Para No.2(1) & (3) that where the proposals for extension of age were pending at the Government level those should be deemed to be closed and there will be no extension in those pending proposals. It was the decision taken by the Government considering financial as well as administrative aspects.

13. Indeed, the petitioners in W.P. No.7831/2016 who were working on the post of Professor have challenged their retirement at the age of 60 years by Government and also challenged the legality of G.R. dated 12.07.2016. As such, similar issue was under consideration before the Hon'ble High Court wherein legality and validity of G.R. dated 12.07.2016 has been upheld with specific observation that petitioners have no vested right in claiming enhancement in the age of retirement up to 62 years.

14. After considering various decisions, the Hon'ble High Court in Para Nos.12, 13, 14 and 20 held as under:-

*"12. Indisputably, the proposals of the petitioners remained to be considered until issuance of the impugned Government Resolution on 12.07.2016. If this factual position is considered, the proposals of the petitioners certainly would be governed by the Government Resolution dated 12.07.2016. Consequently, the earlier Government Resolutions, which were reconsidered in the impugned Government Resolution, would be of no help to the petitioners to claim enhanced age of retirement upto 62 years.*

*13. As stated above, it was within the domain of the policy making power of the State Government to fix the age of retirement of the Associate Professors/Librarians. In exercise of that power, the State Government decided to bring down the age of retirement of the Associate Professors/Librarians from 62 years to 60 years. The reasons given by the State Government for changing the policy decision in respect of the age retirement appear to be reasonable and acceptable. The continuation of the petitioners and the persons similarly situated, would have increased the financial burden on the Government. Moreover, it is stated that there were many qualified persons available for being appointed as Associate Professors/Lecturers/Librarians. It was necessary to change the policy decision in order to extend an opportunity of employment to such persons. In view of these reasons, we hold that the decision taken by the Government to bring down the age of retirement from 62 years to 60 years cannot be said to be arbitrary, irrational or unreasonable.*

14. *It is true that some of the incumbents, whose proposals were recommended simultaneously with that of the petitioners, have got the benefit of the earlier Government Resolutions and they have been ordered to be continued till they attain the age of 62 years. However, their cases were considered prior to issuance of the impugned Government Resolution. There is not a single case pointed out by the petitioners to indicate that after issuance of the impugned resolution, an incumbent similarly situated to the petitioners has been given benefit of the enhanced age of retirement upto 62 years. Had such benefit been given to somebody, the petitioners would have been justified in saying that there was discrimination on the part of the State Government. The petitioners cannot equate themselves with the incumbents whose cases were considered prior to 12.07.2016 as per the policy that was then prevailing. The incumbents, whose cases were considered as per the earlier Government Resolutions, when they were in force, would form a different class and could not be treated at par with the petitioners. The cases of the petitioners have been considered as per the policy that was prevailing i.e. the policy contained in Government Resolution dated 12.07.2016. Consequently, the petitioners cannot be heard to say that they were discriminated.*

20. *As stated above, the State Government, in exercise of its policy making power resolved to reduce the age of retirement of the Lecturers/Associate Professors/Librarians from 62 years to 60 years as per the impugned Government Resolution dated 12.07.2016. It was the prerogative of the Government to fix the age of retirement of such employees. As stated above, there is nothing on record to show that after issuance of the said resolution, the Government granted the benefit of enhanced age of retirement upto 62 years to any of the Associate Professors/Lecturers/Librarians. All the incumbents, whose cases were pending till 12.07.2016, have been treated equally in terms of the impugned Government Resolution. Thus, no discrimination has been caused by the State Government. As stated above, the reasoning given by the State Government for change in the policy in the matter of age of retirement appears to be reasonable, proper and acceptable. The impugned Government Resolution, thus, is neither irrational nor unreasonable, nor discriminatory. In the circumstances, the above cited judgment would not be of any help to the petitioners to challenge the validity of the impugned Government Resolution."*

15. All these grounds pressed into service by the Applicant in effect have been already considered by the Hon'ble High Court Bench Aurangabad while deciding legality of G.R. dated 12.07.2016 and now it is not open for this Tribunal to consider the issue again. The decision of the Hon'ble High Court is binding on this Tribunal. Suffice to say, once the legality of G.R. dated 12.07.2016 is upheld by the Hon'ble High Court and has attained finality, it is fait-accompli and O.A. deserves to be dismissed.



16. The totality of the aforesaid discussion leads us to sum up that the Original Application is devoid of merit and deserves to be dismissed. Hence the following order :-

**ORDER**

Original Application is dismissed with no order as to costs.

Sd/-  
**(Medha Gadgil)**  
**Member (A)**

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

Date : 23.07.2021  
Place : Mumbai  
Dictation taken by :  
Vaishali Santosh Mane

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