

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.667 OF 2018

DISTRICT : KOLHAPUR

Shri Abhay Keshav Parlikar.)
Age : 57 Yrs., Occu.: Dental Surgeon at)
Sub-District Hospital, Kolhapur and residing at)
555/A, Krushna Nanda Colony, Kasbabawda,)
District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Health Services Department,)
Mantralaya, Mumbai 400 032.)
2. The Director of Health Services.)
Arogya Bhavan, 1st Floor, St. Georges)
Hospital Compound, Near CST Station,)
Mumbai.)
3. The Secretary,)
Finance Department, Mantralaya,)
Mumbai.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.04.2019

JUDGMENT

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.
2. In the present Original Application, the Applicant (Dental Surgeon) is seeking direction to the Respondents to extend the age of superannuation from 58 to 60 in terms of G.R. dated 30th June, 2018 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
3. Shortly stated facts giving rise to this application are as follows :-

In 1987, the Applicant was appointed as Dental Surgeon in the cadre of Maharashtra Medical Services, Group 'B' through Maharashtra Public Service Commission (MPSC). During the course of service, he was transferred to Kolhapur in 2013 as Dental Surgeon, Group 'B' Gazetted Officer. The present O.A. has been filed on 19.07.2018. The date of birth of the Applicant is 12.07.1960 and he was due to retire on 31.07.2018. At the time of filing of this application, he was in the pay scale of Rs.15600-39100 + G.P.5400. He contends that the Respondent No.1 – State of Maharashtra by G.R. dated 30.05.2015 had decided to extend the age of retirement of Medical Officers Group 'A' drawing salary in the pay scale of Rs. 15600-39100 + G.P.5400. Thereafter again, the Respondent No.1 by G.R. dated 03.09.2015 extended the age limit of some Medical Officers due to retire on 31.05.2015 and their age of superannuation has been extended to 60 years. Thereafter again, the Respondent No.1 by G.R. dated 30.06.2018 extended the benefit of extended retirement age to Medical Officers, who were due to retire on 31.07.2018. In view of these G.Rs. issued from time to time, the Applicant has filed this O.A. contending that he is also entitled to the benefit of extension of age, as he was due to retire on 31.07.2018. He contends that, though he was posted as a Dental Surgeon, he being in pay scale of Rs.

15600-39100 + G.P.5400 is entitled to the benefit of extension of age. He further contends that the denial of such benefit of G.Rs. to Dental Surgeons would be discrimination, and therefore, filed the present O.A. During the pendency of this O.A, he stands retired on 31.07.2018.

4. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page Nos.48 to 56 of Paper Book) *inter-alia* denying that the Applicant is entitled to the benefit of G.Rs. referred in the application. The Respondent contends that the Applicant's post falls in Group 'B' category, and therefore, though he is in pay scale of Rs. 15600-39100 + G.P.5400 not entitled to the benefit of G.Rs. relied by him. The Respondent in this behalf contends that the G.Rs. are applicable only to the Medical Officers of Group 'A' working under Directorate of Health Services and State Employees Insurance Scheme Hospitals. In so far as the Applicant is concerned, as per Recruitment Rules of Dental Surgeons, he falls in Group 'B' category, and therefore, not entitled to the relief claimed and prayed to dismiss the application.

5. Shri K.R. Jagdale, learned Advocate for the Applicant vehemently urged that, though the Applicant falls in Group 'B' category, he being in the pay scale of Rs. 15600-39100 + G.P.5400 is entitled to the benefit of G.Rs. for extension of retirement age. He further sought to contend that the benefit of these G.Rs. are extended by the Government to the Medical Officers having academic qualification M.B.B.S. or B.A.M.S, and therefore, denial of the benefits to the Dentists though in pay scale of Rs. 15600-39100 + G.P.5400 amount to discrimination. To drive home point, he referred to the decisions rendered by this Tribunal, Bench at Nagpur in ***O.A.42/2016 (Narayan Farkade Vs. State of Maharashtra) decided on 27th October, 2016, O.A.798/2016 (Rahul Talware Vs. State of Maharashtra) decided on 5th May, 2018*** and decision rendered by this Tribunal in ***O.A.392/2016 (Dilip Kamble Vs. State of Maharashtra) decided on***

28.03.2019. He has further pointed out that the decision in ***Narayan Farkade's*** case has been confirmed by Hon'ble High Court, Bench at Nagpur in ***Writ Petition No.6757/2017 decided on 5th March, 2018.***

6. Per contra, Ms. Manchekar, learned Chief Presenting Officer urged that the Applicant does not fall in Group 'A', and therefore, only because at the time of retirement he was drawing salary in pay scale of Rs. 15600-39100 + G.P.5400 is not entitled to the relief. She further emphasized that, basically, the G.Rs. referred by the Applicant pertains to the Medical Officers like Civil Surgeons, District Health Officers, Specialists or Medical Officers drawing grade pay of Rs. 15600-39100 + G.P.5400, and therefore, Dental Surgeons are not entitled to the benefit of these G.Rs. She also referred to Dental Surgeon Recruitment Rules, which shows that the post of Dental Surgeon is of Group 'B'.

7. Undisputedly, the Applicant was appointed as Dental Surgeon and falls in Group 'B' category, as seen from Dental Surgeon Recruitment Rules, 1991. In so far as pay scale is concerned, at the time of retirement, the Applicant was in pay scale of Rs. 15600-39100 + G.P.5400 in 6th Pay Commission.

8. The perusal of decisions referred by the learned Advocate for the Applicant reveals that the benefit of G.Rs. has been extended to the Medical Officers, who are in pay scale of Rs. 15600-39100 + G.P.5400. In so far as the classification on the basis of pay scale is concerned, in view of G.R. dated 2nd July, 2002 about classification of posts on the basis of pay, the Hon'ble High Court in Writ Petition No.6757/2017 (referred to above) extended the benefit of this G.R. and maintained the decision rendered by the Tribunal in ***Narayan Farkade's*** case.

9. At this juncture, it would be apposite to reproduce the observations made by Hon'ble High Court in Writ Petition No.6757/2017, decided on 5th March, 2018 which are as follows :

“On hearing the learned counsel for the parties and on a perusal of the Government Resolutions dated 30.05.2015 and 2nd July 2002 it appears that that the Tribunal was justified in declaring that the respondent was entitled to continue in service till he completed the age of 60years. The respondent was admittedly a Medical Officer drawing the pay scale of Rs.15600 39100/ with grade pay of Rs. 5400/ at the relevant time when the petitioners sought to retire him on attaining the age of 58years. On a reading of the Government Resolution dated 2nd July 2002, it appears that every Government employee drawing the pay scale of Rs. 11500/ and above, is a group “A” employee. If that is so, the respondent was also a Group “A” employee, as he was drawing a pay scale of Rs. 15600 39100/ with grade pay of Rs. 5400/.While granting similar benefit to several other Medical Officers it appears that the petitioners had wrongfully denied the same benefit to the respondent. On a consideration of the Government Resolutions, the Tribunal rightly directed the petitioners to consider that the age of retirement of the respondent was 60 years and to fix his pay accordingly.

Though the Tribunal was justified in directing that the respondent was entitled to continue in service till the age of 60 years, the Tribunal was not justified in directing the petitioners to grant the monetary benefits flowing from the said declaration. Admittedly, after the respondent was relieved from service after attaining the age of 58 years, he had not worked with the petitioners since then. The respondent stood retired from service at the age of 58 years. Since the respondent did not work with the petitioners after the age of 58 years, the Tribunal could not have fastened the liability of payment of monetary benefits viz. the salary and the other allowances to the respondent for the period during which he did not work. It would be necessary to modify the order of the Tribunal only to that extent, more so when a statement is made by the learned counsel for the respondent that 6th respondent is ready to give up his claim to the actual monetary benefits till the date of impugned order.

Hence, for the reasons aforesaid, the Writ Petition is partly allowed. The impugned order of the Tribunal is modified. The part of the order that declares that the age of retirement of the respondent would be 60 years is confirmed. The part of the order that directs the petitioners to release the actual monetary benefits flowing from the declaration in respect of the age of retirement, is hereby quashed and set aside. It is held that the respondent would be entitled to receive the monetary benefits in view of the refixation of his salary from the date of the impugned judgment.”

10. However, admittedly, in **Narayan Farkade's** case, the Applicant was Medical Officer and not Dental Surgeon, which is the material distinguishing factor to be borne in mind while deciding the Applicant's entitlement to the relief claimed.

11. Here, it would be useful to refer the G.R. dated 30.05.2015 whereby for the first time, the benefit of extension of age was made available to the Medical Officers retiring on 31.05.2015, which is as follows :

“राज्याच्या सार्वजनिक आरोग्य विभागातील आरोग्य सेवा संचालनालयातील संचालक, आरोग्य सेवा, अतिरिक्त संचालक, आरोग्य सेवा, सहसंचालक, आरोग्य सेवा, उपसंचालक, आरोग्य सेवा, सहाय्यक संचालक, आरोग्य सेवा तसेच महाराष्ट्र वैद्यकीय आरोग्य सेवा, गट- अ मधील जिल्हा शल्यचिकित्सक, जिल्हा आरोग्य अधिकारी विशेषज्ञ व वैद्यकीय अधिकारी (ग्रेड वेतन रु. ५४०० व त्यावरील) पदावरील जे अधिकारी नियत वयोमानानुसार दि. ३१.५.२०१५ रोजी सेवानिवृत्त होत आहेत. अशा सोबतच्या यादी क्र. १ व २ मधील १३ वरिष्ठ व २८ वैद्यकीय अधिका-यांची दि. ३१.५.२०१५ रोजी वयाची ५८ वर्षे पूर्ण होत असली तरी त्यांना दि. ३१.५.२०१५ रोजी निवृत्त न करता त्यांच्या बाबतीत मंत्री मंडळासमोर वय वाढविण्याबाबतचा प्रस्ताव सादर करण्याच्या अटीच्या अधिन राहून सेवानिवृत्तीचे वय ५८ वरून ६० वर्षे करण्याचा शासनाने निर्णय घेतला आहे.

राज्यातील आरोग्य सेवा संचालनालयातील वैद्यकीय अधिका-यांच्या कमतरतेच्या पार्श्वभूमीवर नियतवयोमान सेवानिवृत्तीचे वय वाढविण्याचा निर्णय घेण्यात आला आहे. त्यामुळे वेतनश्रेणी रु. १५६००-३९१००, ग्रेड वेतन ५४०० व त्याहून अधिक ग्रेड वेतन घेणा-या आरोग्य सेवा संचालनालयातील दि. ३१.५.२०१५ रोजी सेवा निवृत्त होणा-या वैद्यकीय अधिकारी व वरिष्ठ पदावरील अधिकारी वगळता अन्य अधिका-यांना हा शासन निर्णय लागू होणार नाही.”

As per this G.R, the benefit was extended to 13 + 28 Medical Officers as per the list annexed to the Government Resolution.

12. Then, by G.R. dated 3rd September, 2015, same benefit was extended to the Medical Officers in pay scale of Rs. 15600-39100 + G.P.5400 serving in State Employees Insurance Scheme Hospitals. Whereas by another G.R. dated 30th June, 2018, again the benefit of age was made available to the Medical Officers in the pay scale of Rs.15600-39100 + G.P.5400 and above as per the list attached. Thus, the benefit was extended to in all 42 Medical Officers and some of them are B.A.M.S, D.G.O, M.D, etc. However, none is Dental Surgeon.

13. As such, it is manifest from the decisions relied upon by the learned Advocate for the Applicant that the benefit of G.Rs. in question have been

extended to the Medical Officers in the pay scale of Rs. 15600-39100 + G.P.5400 irrespective of their classification in Group 'A' or Group 'B'.

14. However, all these Medical Officers were M.B.B.S, B.A.M.S, D.G.O, M.D, etc. but not Dental Surgeons. Therefore, the decisions referred by learned Advocate for the Applicant is of little assistance to him in the present context.

15. The crux of the matter is whether the benefit of G.Rs. referred to above can be extended to Dental Surgeons and in my considered opinion, the answer is in negative in view of its implied exclusion from G.Rs. It appears that the Government in its wisdom decided to extend the retirement age of Medical Officers having regard to the scarcity of the Medical Officers. The Medical Officers like Civil Surgeons, District Health Officers, Specialists were found not enough in number to cater the need of medical services, and therefore, the age of retirement of these Medical Officers referred in G.R. have been extended from 58 to 60. Thus, the decision of the Government was conscious decision for extending the benefit to the Medical Officers categorically specified in G.R. and Dental Surgeons are not included in the list. This being the position, it is manifest that the Government consciously did not include Dental Surgeons in its Resolutions, perhaps due to sufficient availability of Dental Surgeons in Government Hospitals. Be that as it may, one need to give plain meaning to the construction of G.R. only on the basis of pay scale, the Dental Surgeons cannot be included when it has been excluded from the G.Rs. As rightly pointed out by the learned Chief Presenting Officer that there are separate Recruitment Rules for Dental Surgeons and admittedly, it is Class-II post as per 'Dental Surgeon, Class II, in the Directorate of Health Services Recruitment (First Amendment) Rules, 1991'. Therefore, Dental Surgeons cannot be equated with Medical Officers referred in the G.Rs.

16. The necessary corollary of aforesaid discussion, therefore, leads me to sum-up that the Applicant's post of Dental Surgeon is not covered in the Government Resolutions and there is implied exclusion of them. Therefore, he is not entitled to the benefit of extension of age and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is hereby dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 04.04.2019

Dictation taken by :

S.K. Wamanse.

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