

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 117/2016

Dr. Bhojraj Baswantrao Choudhari,
Aged about 61 years,
Associate Professor in Music,
Govt. Vidarbha Institute of Science
& Humanities(V.M.V.) Amravati.

-----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education Deptt.
Mantralaya, Mumbai.
2. The Director ,
Higher and Technical Education Deptt.,
Central Building, M.S. Pune.
3. The Director, Govt. Vidarbha Institute of
Science and Humanities (V.M.V) Amravati.
Tq. and Distt. Amravati. ----- **Respondents.**

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1. Shri V.A. Kothale, Advocate for the applicant.
 2. Smt. M.A. Barabde, Presenting Officer for the
Respondents.
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CORAM : B. Majumdar : Vice Chairman

DATE : 30th June, 2016

ORDER

The applicant, retired as an Associate Professor of Music. He has filed this O.A. as he is aggrieved that he has been retired at the age of 60 years instead of 62 years.

2. The applicant was appointed as a Lecturer in Music in 1985. He has worked as an Associate Professor since 2012. On 5/3/2011 the Govt. in the Higher and Technical Education issued a G.R. regarding extension of age of retirement of Teachers in various colleges and universities. On 3/6/2015, the applicant was served with a charge-sheet under Rule 8 of the Discipline and Appeal Rules for some irregularities that he committed while working as Joint Director, Higher Education, Amravati. The applicant retired on reaching the age of 60 years vide order dtd. 30/9/2015. The order states that he is being retired while the proposal for retiring him at the age of 62 years is pending with the Govt. On 14/1/2016, the Govt. issued an order stating therein that as a DE has been initiated against him under Rule 8, the proposal

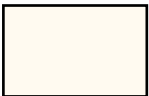


to retire him at the age of 62 years is rejected. The applicant has challenged both the orders in the O.A.

3. The applicant submits that he has a satisfactory record of service. He has not been served with any charge-sheet. The order of his retirement dtd. 30/9/2015 does not state whether any disciplinary enquiry is pending against him. He has been denied the benefits of retirement at the age of 62 years in spite of recommendations of the Review Committee.

4. The R/1, Secretary, Higher and Technical Education and R/2 Director, Higher and Technical Education in their affidavit-in-reply submit as follow :-

“ We would further like to submit on the behalf of Respondents that the Respondent no. 1 has issued order dated 14th Jan., 2016 whereby the Respondent no. 1 has rejected to grant extension of 62 years to the applicant as per the Section 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It is further submitted that since applicant is under the procedure of Departmental enquiry due to



the misconduct and unfair practices and therefore the decision of granting extension of 62 years to the applicant was rejected by the Respondent no. 1. The Respondent No. 1 has also issued memo dated 3rd June 2015 regarding initiating of departmental enquiry against the applicant under Section 8 of M.C.S.R. (Discipline and Appeal) 1979."

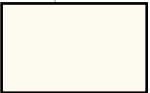
3. Thus, according to these respondents, the only reason why the applicant's case for extending his age of retirement to 62 years was rejected is that a departmental enquiry was pending against him.

4. Shri V.A. Kothale, Id. Counsel for the applicant, submitted that the conditions prescribed for extending the age of retirement of a Lecturer to 62 years are given in Para 11 of the G.R. dtd. 5/3/2011. The respondents do not deny that the applicant fulfills all these conditions. Hence the applicant could not have been denied the benefits of the above G.R. on the ground that a DE was initiated against him as such a ground



is extraneous to the policy as laid down in the above G.R. He relies on the judgment of hon'ble the High Court, Aurangabad Bench in **Prabhakar s/o Jagguji Rangari Vs- Hon'ble Minister of Industries and Chairman, Maharashtra Industrial Development Corporation, Mantralaya, Mumbai** [2016(1) Mh.LJ.827], in which it was held that a legitimate claim for promotion to the higher post cannot be denied solely on the ground of pendency of a DE. Hence, if promotion cannot be denied on the ground of pending of a DE, retiring a Govt. servant at a lower age is also not permissible on the same ground.

5. Smt. M.A. Barabde, Id. P.O. for the respondents reiterated the submissions of the respondents. She also submitted that grant of extension in age of retirement is a issue which is different from that of promotion and hence the judgment in **Prabhakar s/o Jagguji Rangari** (supra) is not applicable to the case of the present applicant.



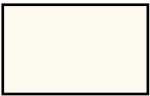
6. After hearing the arguments on both the sides, I find that it is undisputed that the applicant was refused an extension of retirement age ^{to} of 62 years in terms of the G.R. dtd. 5/3/2011 solely on the ground that a DE had come to be initiated against him under Rule 8 of the Discipline and Appeal Rules. The G.R. dtd. 5/3/2011 lays down the Govt.'s policy with regard to extension in the age of retirement for different categories of Teachers working in the Higher and Technical Institutions. Para 8(5) of the G.R. states that retirement age of Teachers other than Principals of Colleges affiliated to Non-Agricultural Universities and Technical Institutes affiliated to the State Technical Education Board is increased from 58 to 62 years, subject to a performance review on reaching the age of 60 years. The conditions required to be fulfilled for granting of an extension are enumerated in Para 11 of the G.R. The said Para is reproduced below :-

11. “ वरील सर्व संस्थातील अध्यापक तथा प्राचार्यांच्या सेवानिवृत्तीसाठी मुदतवाढ देतांना संबंधितांनी निम्न बाबींची पूर्तता अनिवार्य राहिल. -



- १) सदर संस्थामधील अध्यापक/प्राचार्य यांच्या प्रथम नियुक्त्या विद्यापीठ अनुदान आयोग व राज्य शासनाने विहित केलेल्या पात्रता, अटी व शर्ती प्रमाणे झालेल्या असणे आवश्यक आहे.
- २) संबंधित अध्यापक/प्राचार्य यांची शारिरिक व मानसिक क्षमता सुदृढ असणे आवश्यक असून त्याबाबत तज्ञ वैद्यकीय समितीचे(Govt. Medical Committee) प्रमाणपत्र संबंधित व्यक्तीने सेवानिवृत्तीपूर्वी तीन महिना अगोदर संबंधित संस्थेकडे सादर करणे आवश्यक राहिल.
- ३) संबंधित अध्यापक/प्राचार्यांनी Ph.D अथवा विद्यापीठ अनुदान आयोग तथा अखिल भारतीय तंत्रशिज्ञण परिषदेच्या निकषानुसार Ph.D शी समकक्ष अशी शैक्षणिक अर्हता धारण करणे आवश्यक राहिल.
- ४) संबंधित अध्यापक/प्राचार्य यांच्या मुदतवाढीच्या दिनांकापूर्वीचे मागील पाच वर्षातील वार्षिक गोपनीय अहवाल विचारात घेऊन, सदर गोपनीय अहवालाची सर्वसाधारण मूल्यमापनांची प्रतवारी किमान तीन वर्षे उत्कृष्ट (A) आणि दोन वर्षे निश्चित चांगला (B+) असणे आवश्यक आहे. "

7. The Respondents do not dispute that the applicant fulfills all the above conditions for being eligible for grant of extension in retirement age. It is a settled law that the



eligibility for benefits of a Scheme is governed by the conditions laid down in the Scheme. In view of this I find that denial of the benefits of the G.R. solely on the ground that a DE has been initiated against the applicant is not justified. It is obvious that if the benefits of extension in age of retirement was subject to there being no pending departmental initiation of proceedings of disciplinary action against a Teacher, it would have been so incorporated in the G.R.

8. In **Prabhakar s/o Jagguji Rangari Vs- Hon'ble Minister of Industries and Chairman, Maharashtra Industrial Development Corporation, Mantralaya, Mumbai(supra)**, hon'ble the High Court had categorically held that denial of promotion to a higher post cannot be justified solely on the ground of pendency of a DE and it is not justified to deny promotion to any person, merely on the basis of allegations against the person in the DE proceeding. If promotion to the higher post cannot be denied on the ground of pendency of a DE, I agree with the submission of the



learned counsel for the applicant that under similar conditions extension in retirement age also cannot be denied.

Thus, I find that the action of the respondents to deny extension of retirement age to the applicant on the ground of pendency of a DE, is not sustainable. Hence the O.A. is disposed of in terms of the following directions :-

- a) The impugned orders dtd. 30/9/2015 and 14/1/2016 are quashed and set aside.
- b) The respondents are directed to permit the applicant to retire at the age of 62 years by allowing him to join in service without there being any discontinuity. The applicant, however, will not be entitled to payment of any salary and other benefits for the period he was out of service.
- c) No order as to costs.

(B. Majumdar)
Vice-Chairman.

Skt.