

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 493/2022(D.B.)

Dr. Mrs. Vijaya Sunil Sangawar,
(before marriage- Vijaya Shankarrao
Shriramwar), Aged about 60 years,
Occu : Service, R/o. 15, Punyayi, VMV
Road, Shivarapan Colony, Amravati-444604.

Applicant.

Versus

- 1) The University Grants Commission
(UGC) Bahadurshah Zafar sMarg,
New Delhi, Through its Secretary.
New Delhi.
- 2) State of Maharashtra through its
Principal Secretary, Department of
Higher and Technical Education,
Mantralaya, Mumbai-32.
- 3) The Directorate of Higher Education,
State of Maharashtra Central
Building, Pune, Dist. Pune.
- 4) Government Vidarbha Institute of
Science & Humanities, Amravati
through its Director, Amravati.

Respondents

Shri A.I.Sheikh, Ld. Counsel for the applicant.
Shri A.M.Ghogre, Ld. P.O. for the respondents.

**Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).**

Dated: - 28th September 2022.

JUDGMENT

Per :Member (J).

Judgment is reserved on 26th September, 2022.

Judgment is pronounced on 28th September, 2022.

Heard Shri A.I.Sheikh, learned counsel for the applicant and
Shri A.M.Ghogre, learned P.O. for the respondents.

2. Facts leading to this O.A. are as follows-

By G.R. dated 05.03.2011 (Annexure A-1) policy was *inter alia*
laid down as follows-

राज्यांतर्गत कार्यरत अकृषी विद्यापिठांशी संलग्नित शासकीय महाविद्यालये
व महाराष्ट्र राज्य तंत्र शिक्षण मंडळाशी संलग्नित शासकीय तंत्र निकेतनातील
प्राचार्याव्यतिरीक्त उर्वरीत अध्यापकांचे नियतवयोमानानुसार सेवानिवृत्तीचे वय ५८
वर्षावरून ६२ वर्ष 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

By order dated 03.12.2011 (Annexure A-2), on being selected
by M.P.S.C., the applicant was appointed to the post of Professor in

respondent no.4 institute. Clause 12 of this appointment order stipulated as follows-

१२) उपरोक्त उमेदवाराचे प्रचलित नियमानुसार सेवानिवृत्तीचे वय शासन निर्णय क्र.संकिर्ण २०१०/(५०३/१०) विशि १, दि.०५.०३.२०११ मधील विहित अटीच्या अधीन राहून ६२ राहिल.

In pay slips (Annexure A-3) and correspondence (Annexure A-4) for verification of service book date of retirement of the applicant on superannuation was shown to be 30.04.2024 i.e. on completing 62 years. By communication dated 13.01.2022 (Annexure A-5) it was informed for the first time that the applicant would retire on superannuation not on 30.04.2024 but on 30.04.2022 i.e. on completing 60 years. The applicant submitted representations (Annexures A-6 and A-8) but to no avail. Then she filed W.P.No.1945/2022 but withdrew it on 11.04.2022 (Annexure A-10). In the meantime, on 25.03.2022 the impugned communication (Annexure A-13) was issued stating therein as follows-

उपरोक्त विषयासंबंधीच्या संदर्भाधिन क्र.२ येथील दि.३१.०१.२०२२ च्या निवेदनाद्वारे डॉ.विजया संगावार, प्राध्यापक, शासकीय विदर्भ ज्ञान विज्ञान संस्था, अमरावती यांनी, दि.०३.१२.२०११ च्या शासन निर्णयामधील मुद्दा क्र.१२ मध्ये नमूद केल्यानुसार सेवानिवृत्तीचे वय ६२ मान्य करून दोन वर्षांची मुदतवाढ मिळण्याबाबत व दिनांक ३०.०४.२०२२ रोजी वयाच्या ६० व्या वर्षी सेवानिवृत्त न

करण्याची विनंती केली आहे. याप्रकरणी डॉ.विजया संगार यांना खालीलप्रमाणे कळविण्यात यावे :-

२. शासन निर्णय क्रमांक : संकीर्ण -२०१०/(५०३/१०)/वि.शि.१, दि.०५.०३.२०११ अन्वये, राज्यांतर्गत कार्यरत अकृषी विद्यापीठांशी संलग्नित शासकीय महाविद्यालये व महाराष्ट्र राज्य तंत्र शिक्षण मंडळाशी संलग्नित शासकीय तंत्र निकेतनातील प्राचार्याव्यतिरीक्त उर्वरित अध्यापकांचे नियत वयोमानानुसार सेवानिवृत्तीचे वय ५८ वरून ६२ करण्यात आले होते. सदर निर्णयाचा पुर्नविचार करून शासनाने संदर्भाधीन क्रमांक ३ येथील शासन निर्णय दि. १२.०७.२०१६ अन्वये अध्यापकांचे नियत वयोमानानुसार सेवानिवृत्तीचे वय ६० वर्षे करण्यात आले आहे. त्यामुळे प्रत्येक अध्यापक कर्मचारी ज्या महिन्यात ६० वर्षांचा होईल, त्या महिन्याच्या अखेरच्या दिवशी मध्यान्होत्तर सेवेतून निवृत्त होईल तथापि, ज्या अध्यापक कर्मचा-याची जन्मतारीख महिन्याच्या १ तारखेला असेल तो अध्यापक कर्मचारी ६० वर्षांचा होताच मागील महिन्याच्या शेवटच्या दिवशी मध्यान्होत्तर सेवानिवृत्त होईल.

या बाबी विचारात घेता, डॉ.विजया संगार यांच्या नियुक्तीच्या शासन निर्णय दि.०३.१२.२०११ मधील अट क्र.१२ मध्ये, “उपरोक्त उमेदवारांचे प्रचलित नियमानुसार सेवानिवृत्तीचे वय शासन निर्णय दि.०५.०३.२०११ मधील विहित अटीच्या अधीन राहून ६२ वर्षे राहिल”, असे नमूद असले तरी, शासन निर्णय दि.०५.०३.२०११ बाबत पुर्नविचार करून, शासन निर्णय दि.१२.०७.२०१६ अन्वये अध्यापकांचे सेवानिवृत्तीचे वय ६० वर्षे करण्यात आले आहे. सदर निर्णय डॉ.विजया संगार यांना लागू आहे. त्यामुळे त्यांची, सेवानिवृत्तीचे वय ६२ मान्य करून दोन वर्षांची मुदतवाढ मिळण्याची व वयाच्या ६० व्या वर्षी सेवानिवृत्त न करण्याची, विनंती मान्य करता येत नाही.

Hence, this original application for quashing and setting aside the impugned communication dated 25.03.2022 (Annexure A-13), directing respondents 2 to 4 to implement the appointment order

dated 03.12.2011 (Annexure A-2) in letter and spirit by adhering strictly to Clause No.12 incorporated therein with regard to the date of retirement of the applicant on superannuation being 30.04.2024 i.e. on completing 62 years.

3. Reply of respondents 2 to 4 is at pp.87 to 98. It is their contention that by order dated 03.12.2011 (Annexure A-2) age of superannuation of the appointee / applicant was to be governed by G.R. dated 05.03.2011 (Annexure A-1) which stipulated that extension of age of superannuation from 60 to 62 was entirely dependent on recommendation of Performance Review Committee to be made to the Government and it was not to be claimed as a matter of course. Their further contention is that by G.R. dated 12.07.2016 (Annexure A-15) the age of superannuation of Professor is brought down to 60 years and hence there would be no question of extending it to 62 years as per G.R. dated 05.03.2011 and in view of the latter G.R. the former G.R. no longer holds the field.

4. It is the pleading of the applicant that in matters of pay fixation of employees like the applicant the UGC has primacy, G.R. dated 05.03.2011 was issued on the basis of Rules framed by the UGC, by this G.R. age of the employees like applicant was increased from 58 to 62, pursuant to this G.R., in the order of appointment dated

03.12.2011 it was specified that age of retirement of the applicant on superannuation would be 62 years and considering all these circumstances the respondents would be estopped from pressing into service G.R. dated 12.07.2016 (Annexure A-15) to scale down age of retirement of the applicant on superannuation to 60 years.

5. It was submitted by Shri A.M.Ghogre, learned P.O. for the respondents that extension of age of retirement on superannuation from 60 years to 62 years could not be claimed as a matter of right and it was dependent on performance review on completing 60 years. This submission is fully supported by para 5 of G.R. dated 05.03.2011 which we have reproduced above.

6. Further contention of the learned P.O. is that G.R. dated 12.07.2016 (Annexure A-15) would show that there is absolutely no substance in the contention of the applicant that her age of retirement on superannuation should be 62 years. This G.R. *inter alia* refers to G.R. dated 05.03.2011. It reads as under-

प्रस्तावना : -

राज्यातील अकृषि विद्यापीठे व शासकीय/अशासकीय अनुदानित महाविद्यालये/तंत्रनिकेतने येथील अध्यापकांच्या नियत वयोमानानुसार सेवानिवृत्तीच्या वयात वाढ करण्याचा निर्णय शासनाने संदर्भाधीन शासन निर्णयान्वये घेतला आहे.

मानव संसाधन विकास मंत्रालय, नवी दिल्ली यांनी त्यांच्या दि.१४ ऑगस्ट, २०१२ च्या पत्रात विद्यापीठे व अशासकीय अनुदानित महाविद्यालयातील अध्यापकांच्या

सेवानिवृत्तीच्या वयाबाबत यापूर्वी ज्या अटी घालून दिलेल्या होत्या, त्यामध्ये सुधारणा करून अध्यापकांच्या सेवानिवृत्तीच्या वयाबाबत त्या त्या राज्य शासनाने त्यांच्या स्तरावर निर्णय घ्यावा, असे नमूद केले आहे. मा.सर्वोच्च न्यायालयाने सिव्हील अपील क्र. ५५२७-५५४७/२०१३ मध्ये सेवानिवृत्तीच्या वयोमर्यादेत वाढ करण्याचा निर्णय त्या त्या राज्य शासनाचा राहिल, असा निर्णय दिला आहे.

सद्यःस्थितीत शिक्षकीय पदांसाठी नेट/सेट पात्रताधारक उमेदवार उपलब्ध असून ते बेरोजगार आहेत व त्यांना सेवेची संधी देणे आवश्यक आहे.

या बाबीचा विचार करून राज्यातील उच्च शिक्षण क्षेत्रातील शासकीय संस्था /महाराष्ट्र राज्य तंत्र शिक्षण मंडळाशी संलग्नित शासकीय तंत्र महाविद्यालये/पदविका संस्था/शासकीय महाविद्यालयातील अध्यापकांच्या नियत वयोमानानुसार सेवानिवृत्तीचे वय ५८ वरून ६२ वर्षे तसेच अकृषि विद्यापीठे, तंत्रशास्त्र विद्यापीठे व संलग्नित अशासकीय अनुदानित महाविद्यालयातील शिक्षक/ग्रंथपाल/उपग्रंथपाल/सहाय्यक ग्रंथपाल/संचालक, उपसंचालक, सहाय्यक संचालक, शारीरिक शिक्षण यांच्या नियत वयोमानानुसार सेवानिवृत्तीच्या वयात ६० वर्षांवरून ६२ वर्षे वाढ करण्याबाबत घेतलेल्या निर्णयाचा फेरविचार करण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :-

२. त्यानुसार मंत्रिमंडळाच्या मान्यतेनुसार शासन खालीलप्रमाणे निर्णय घेत आहे :-

- १) संदर्भाधीन शासन निर्णय दि.०५ 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 नियत 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.०५ मार्च, २०११, दि.२३.११.२०११ व दि.२३.०२.२०१२, दि.२८ मार्च, २०१२ दि.२२ ऑगस्ट, २०१२ व दि.११ ऑक्टोबर, २०१२ येथील शासन निर्णयातील तरतुदीनुसार यापूर्वी ज्या अध्यापकीय कर्मचा-यांच्या नियत 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.

(Emphasis supplied)

7. It was submitted by Shri A.I.Sheikh, learned Advocate for the applicant that para 2 of G.R. dated 12.07.2016 supports contention of the applicant that her age of retirement on superannuation should be 62 years and not 60 years. So far as this submission is concerned, it would be necessary to consider para 5 of G.R. dated 05.03.2011 and para 2 of G.R. dated 12.07.2016 – together. By para 5 of G.R. dated 05.03.2011 age of retirement on superannuation was increased from 58 years to 62 years. However, said para stipulated that extension

beyond 60 years and up to 62 years was dependent on positive recommendation of Performance Review Committee. Para 2 of G.R. dated 12.07.2016 states that the teaching staff to whom extension was granted from 60 years to 62 years by various G.Rs. including G.R. dated 05.03.2011, would stand retired on superannuation on completing 62 years. A conjoint consideration of para 5 of G.R. dated 05.03.2011 and para 2 of G.R. dated 12.07.2016 clearly leads to the conclusion that under the latter para cases of only those teaching staff were saved to whom extension was granted from 60 to 62 years as per para 5 of G.R. dated 05.03.2011- before G.R. dated 12.07.2016 was issued. This conclusion receives support from para 3 of G.R. dated 12.07.2016 which refers to a conscious decision taken by the Government not to grant such extension from 60 years to 62 years.

8. The applicant has relied on **“Madan Mohan Sharma and Another versus State of Rajasthan and Others (2008) 3 Supreme Court Cases 724.”** In this case it is held-

Once advertisement had been issued on the basis of circular obtaining at that particular time, the effect would be that selection process should continue on the basis of criteria which were laid down, and it cannot be on the basis of the criteria which has been made subsequently.

Subsequent amendment of the Rules made during the pendency of the advertisement which was prospective cannot be made retrospective so as to make the selection on the basis of the Rules which were subsequently amended. If this was to be done, then the only course open was to recall the advertisement and to issue a fresh advertisement according to the Rules which had come into force.

The applicant has further relied on *"M/s. Motilal Padampat Sugar Mills Co. Ltd. Vs. The State of U.P. and Others AIR 1979 Supreme Court 621."* In this case it is held-

The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a Republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is

subject to the law as fully and completely as any other and the Government is no exception.

By relying on aforementioned rulings it was submitted by Advocate Shri A.I.Sheikh for the applicant that so far as date of retirement of the applicant on superannuation is concerned, G.R. dated 05.03.2011 under which she was appointed should be adhered to in letter and spirit and the subsequently issued G.R. dated 12.07.2016 should not be allowed to override what is expressly stipulated in the order of appointment dated 03.12.2011 on the basis of G.R. dated 05.03.2011. It was further submitted that by the order of appointment dated 03.12.2011 a promise was extended by the appointing authority to the applicant that she would stand retired on superannuation on completing 62 years, the applicant had accepted and acted upon the said promise and hence the respondents would be estopped from taking a contrary stand.

9. In reply, the P.O. relied on ***"Jagdish Prasad Sharma etc. Vs. State of Bihar and Others [@ SLP (c) Nos.18766-18782/2010]."*** (Judgment dated 17.07.2013 delivered by the Full Bench of the Hon'ble Supreme Court in Civil Appeal Nos.5527-5543 of 2013). In this case the issue for determination was articulated as follows-

2. The common thread running through all these various matters is the question as to whether certain regulations framed by the University Grants Commission had a binding effect on educational institutions being run by the different States and even under State enactments.

While answering this issue it was held-

The States are free to decide as to whether the scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision.

On the basis of this judgment of the Supreme Court dated 17.07.2013 Higher and Technical Education Department, Government of Maharashtra issued G.R. dated 12.07.2016.

10. The P.O. has further relied on the judgment dated 06.06.2017 delivered by the Hon'ble Bombay High Court in Writ Petition Nos.7831/2016 and 8589/2016. In these Writ Petitions validity of G.R. dated 12.07.2016 was impugned. The High Court held-

In our opinion, the impugned Government Resolution is neither unreasonable nor irrational, nor arbitrary. The proposals of the individual incumbents

for getting benefit of enhanced age of retirement have been considered as per the policy that was prevailing at the time of their consideration. No discrimination has been caused by the State Government in extending or denying such benefit to any incumbent. We do not find anything unconstitutional or violative of Article 14 of the Constitutions of India in the impugned Government Resolution dated 12.07.2016. The petitioners have no vested right in claiming enhancement in the age of retirement upto 62 years. If that be so, they are not entitled to get any relief as claimed in the petitions. The petitions are devoid of any substance.

11. The issue involved in this O.A. may be summed up thus. The applicant was appointed as per G.R. dated 05.03.2011. Under the said G.R. extension beyond 60 years and up to 62 years was subject to positive recommendation of Performance Review Committee. Such extensions were granted till G.R. dated 12.07.2016 was issued. This G.R. was based on the above referred judgment of the Supreme Court dated 17.07.2013, therefore question of estoppel would not arise. This conclusion receives support from what is held in- ***Krishna Rai (Dead) Through LRs & Ors. Banaras Hindu University Through Registrar & Ors. 2022 LiveLaw (SC) 553*** i.e. there can be no estoppel against law.

Para 2 of G.R. dated 12.07.2016 was applicable only to those to whom extension was granted before 12.07.2016 in terms of para 5 of G.R. dated 05.03.2011. G.R. dated 12.07.2016 clearly stipulates that rest of the cases i.e. the cases in which such extension was not granted would be covered by para 3 which expressly prohibits grant of extension of age of superannuation beyond 60 years. A conscious decision was taken while implementing this policy of not granting extension beyond 60 years.

12. For the reasons discussed hereinabove the O.A. is dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 28/09/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 28/09/2022.
and pronounced on
Uploaded on : 28/09/2022.