

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.588 OF 2019

Smt. Meena B. Sonavane.)...**Applicant**

Versus

1. The State of Maharashtra & 4 Ors.)...**Respondents**

Mr. Sanjay Kulkarni, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : P.N. DIXIT, VICE CHAIRMAN
A.P. KURHEKAR, MEMBER-J**

DATE : 29.08.2019

PER : A.P. KURHEKAR, MEMBER-J

ORDER

1. The Applicant is seeking interim relief for continuation in service upto age of 64 years contending that she is entitled to the benefit of extension of age from 58 to 64 for the post of Professor in terms of G.Rs. dated 30.04.2010 and 05.03.2011.

2. The Applicant is working as Professor with Institute of Nursing Education, J.J. Hospitals Group, Byculla, Mumbai. She claims that she falls within the definition of Teacher under statutory provisions and entitled to University Grant Commission (UGC) pay scale and benefit of superannuation of age from 58 to 64 years. She contends that UGC Scheme benefits are extended to Teacher faculty in all

Universities under the umbrella of Director of Medical Education, Higher and Technical Education and Research except Teachers working under Nursing faculty. She, therefore, claims that the denial of benefit of extension of age from 58 to 64 years to the Nursing faculty is unfair, arbitrary and discriminatory. The Applicant, therefore, claims that she is entitled to the benefit of extension of age in terms of G.Rs. dated 30.04.2010 and 05.03.2011.

3. The Applicant has, therefore, filed the present O.A. claiming declaration that she is entitled for UGC pay scale and entitlement for enhancement in age of superannuation from 58 to 64 years and also claimed consequential service benefits.

4. The Applicant is attaining 58 years of age at the end of August, 2019 and will be made to retire. Therefore, she is seeking interim relief for continuation in service till the decision of present O.A.

5. Per contra, the Respondents opposed the application contending that the Applicant being working in Nursing faculty, she is not entitled to the UGC Scheme as well as enhancement in age of superannuation from 58 to 64 years. The Respondents contend that the issue now raised by the Applicant in the present O.A. has been already dealt with by this Tribunal in O.A.No.416/2018 (Dr. Reshma Desai Vs. State of Maharashtra) decided on 28.11.2018 and the O.A. was disposed of on the ground that the Government of Maharashtra has not yet decided to extend the benefit of age of superannuation applicable to Teacher faculties in Medical Colleges of Government of Maharashtra to the Teacher faculties in Nursing Colleges, and therefore, so long as the decision is not taken, the benefit of extension of age cannot be granted to Nursing faculty. The Respondents further contend that the G.R. dated 30.04.2010 is applicable only to the Teachers in Medical Colleges under the Medical Education and Drugs Department and it has been also clarified by another G.R. dated 17.06.2010 that the age relaxation in terms of G.R. dated 30.04.2010

is applicable only to the Teachers with medical qualification and it would not apply to the Teachers other than holding medical qualification. The said decision was taken because of paucity of Teachers holding medical qualification and their age was extended. The Respondents denied that the G.R. dated 05.03.2011 issued by Higher Technical Education Department can be made applicable to the Nursing faculty.

6. Heard Shri Sanjay Kulkarni, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

7. Now, the issue posed for consideration is whether the Applicant has made out strong *prima-facie* case for her entitlement to extension of age. In other words, in order to succeed for interim relief, it must be shown that the Applicant has some subsisting legal right and the same needs to be protected till the adjudication of the matter by granting interim relief.

8. Admittedly, the Applicant is Professor in Nursing faculty. It is also not in dispute that in terms of G.R. dated 30.04.2010, the Government has enhanced the age of retirement from 58 years to 68 years of the Teachers in Medical College under the Medical Education and Drugs Department. Material to note that later immediately by G.R. dated 17.10.2010, it has been clarified that the G.R. dated 30.04.2010 pertains only to the Teachers with medical qualification and it would not apply to the Teachers other than holding medical qualification. The said decision was apparently taken because of paucity of Teachers holding medical qualification. As such, it is explicit that the decision taken in terms of G.R. dated 30.04.2010 is applicable only to the Teachers/Professors in Medical Colleges under the Medical Education and Drugs Department. Suffice to say, the G.R. dated 30.04.2010 is not said applicable to the Nursing faculty.

9. In so far as G.R. dated 05.03.2011 is concerned, it is issued by Higher and Technical Education Department and the same is applicable to the Institutions affiliated to the non-agricultural Universities and the Teachers working in Higher and Technical Education. Clause 5 of the said G.R. is as follows :-

“५. राज्यांतर्गत कार्यरत अकृषी विद्यापीठांशी संलग्नित शासकीय महाविद्यालये व महाराष्ट्र राज्य तंत्र निकेतनातील प्राचार्यव्यतिरिक्त उर्वरित अध्यापकांचे नियतवयोमानानुसार सेवानिवृत्तीचे वय ५८ वर्षावरून ६२ वर्षे करण्यात येत आहे. परंतु वयाच्या ६० वर्षांनंतर सेवानिवृत्तीसाठी मुदतवाढ देण्यापुर्वी अध्यापकांच्या कामकाजाचा विहित समितीकडून आढावा घेण्यात येईल. सदर समितीच्या अहवालातील शिफारशीनुसार संबंधित अध्यापकांना कमाल ६२ वर्षापर्यंत सेवानिवृत्तीसाठी मुदत वाढ देण्याची कार्यवाही शासनाच्या मान्यतेने करण्यात येईल.”

10. Indeed, the issue of applicability of G.R. dated 05.03.2011 to the Teachers working in the Institutions other than the Institutes affiliated to the non-agricultural Universities and the Teachers working in Higher and Technical Education has been subject matter in **Writ Petition No.3344/2017 (State of Maharashtra Vs. Dr. Girish H. Thitte)**. In that matter, the Respondents therein viz. Dr. Girish Thitte, Ex-Assistant Professor (Statistics) and Dr. Vijay V. Deshpande, Ex-Assistant Professor (Statistics and Demography), S.R.T.R. Government Medical College, Ambejogai had filed O.As. before M.A.T, Bench at Aurangabad which came to be allowed by extending the benefit of G.Rs. dated 30.04.2010 and 05.03.1011 to them. However, the State being aggrieved by it, filed Writ Petition before Hon'ble High Court, Bench at Aurangabad which came to be allowed on 30.11.2018 and the order passed by the Tribunal has been set aside with the finding that the Petitioners therein working in Government Medical College affiliated to the Maharashtra University of Health Science would not be covered by the G.Rs. dated 30.04.2010 and 05.03.2011 and the age of retirement extended to 62 years as per G.R. dated 05.03.2011 is in respect of those Teachers who are working in Government Colleges affiliated to the non-agricultural Universities and the Government taking Institutions affiliated to the State Technical Education Board. The Hon'ble High Court further observed that it is the prerogative of the State Government to

formulate particular policy and if the policy decision is taken to enhance age of retirement in favour of Teachers holding the medical qualification because of paucity of Teachers, the same would not apply *ipso-facto* to others. The Hon'ble High Court further held that considering the exigency of the circumstances, a conscious decision has been taken by the Government and different clause has been carved out of the Teachers possessing medical qualification and the Teachers possessing non-medical qualification. Suffice to say that it is the case of reasonable classification and it *per se* cannot be termed discriminatory.

11. The learned Advocate for the Applicant, however, sought to emphasize that the Applicant falls in the definition of Teacher as per Maharashtra Universities Act, and therefore, entitled to UGC Scheme benefits and denial of the same amounts to discrimination. According to him, the teaching staff of Nursing are carrying similarities but they are subjected to discrimination. He further sought to place reliance on the decision of Hon'ble High Court in ***Writ Petition No.585/2017 (Dr. Gorakhsha Pargaonkar Vs. State of Maharashtra) decided on 06.11.2017***. The said petition was filed by qualified Teachers of Physical Education and sought the benefit of G.R. dated 05.03.2011. The Hon'ble High Court declared that the G.R. dated 05.03.2011 is applicable to Physical Education Colleges receiving grants in aid from the State of Maharashtra and which are affiliated to non-agricultural Universities and directions were given to refer the case of Petitioner therein for deciding the continuation of age to the Scrutiny Committee appointed under G.R. dated 05.03.2011. As such, the said decision pertains to the Teachers of Physical Education and in fact situation, the G.R. dated 05.03.2011 is held applicable to the Teachers working in Physical Education Colleges affiliated to Mumbai University. In our considered opinion, the said decision cannot be said applicable to the Nursing faculty as it pertains to Physical Education Colleges.

12. True, as per the provisions of Maharashtra University of Health Science Act, 1998 (hereinafter referred to as 'Act of 1998' for brevity), the Nursing is included in the definition of 'Health Science' as defined in Section 2(17) of 'Act of 1998'. However, that *ipso-facto* will not apply G.R. dated 05.03.2011 to the Nursing faculty which has been issued by Higher and Technical Education Department and is applicable to the Institute affiliated to the non-agricultural Universities and the Teachers working in Higher and Technical Education.

13. In view of above, unless policy decision is taken to apply the benefit of G.R. dated 05.03.2011 to the Nursing faculty, in our considered opinion, the Applicant cannot ask for the benefit of extension of age. Indeed, this issue has been already dealt with in O.A.416/2018 in the case of Dr. Reshma Desai (referred supra) and the O.A. was disposed of with observation that as the issue of extension of age to Nursing faculty being under the consideration of the Government, the relief claimed by the Applicant therein for extension of age is not yet crystalized. As such O.A. was found premature and accordingly disposed of.

14. For the aforesaid reasons, in our considered opinion, at this stage, it cannot be said that the Applicant has legal existing right of enhancement of age from 58 to 64 years. In such situation, the grant of interim relief would amount to grant of final relief claimed in the O.A. which is not permissible. Therefore, we are not inclined to grant interim relief.

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

Sd/-
(P.N. DIXIT)
VICE-CHAIRMAN