



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11453 OF 2023

Dr. Mahendra Vilas Phalke And
Ors ... Petitioners.

V/S.

The State Of Maharashtra
Thru The Prin. Secretary,
Public Health Dept. And Ors ... Respondents.

WRIT PETITION NO. 11452 OF 2023

Dr. Vikasini Narendra Chavan
And Ors ... Petitioners.

V/S.

The State Of Maharashtra
Thru The Prin. Secretary,
Public Health Dept. And Ors ... Respondents.

WRIT PETITION NO. 11454 OF 2023

Dr. Avinash Kulkarni And Ors ... Petitioners.

V/S.

The State Of Maharashtra
Thru The Prin. Secretary,
Public Health Dept. And Ors ... Respondents.

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WRIT PETITION NO. 11494 OF 2023

Dr. Shobhana Rohidas Chavan
And Anr ... Petitioners.

V/S.

The State Of Maharashtra
Thru The Prin. Secretary,
Public Health Dept. And Ors ... Respondents.

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Mr.Virendra Tulzapurkar Senior Advocate a/w. Mr.Abhijeet A.Desai
a/w. Mr.Shrikant Patil a/w.Mr.Arjun Pawar a/w. Mr.Karan Gajra a/w.
Mr.Vijay Singh a/w. Ms.Daksha Punghera for the Petitioners.

Dr.Birendra B. Saraf Advocate General a/w. Shri.P.P.Kakade
Government Pleader a/w. Shri.N.K.Rajpurohit, AGP for State-
Respondents in all WPs.

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**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 5 October 2023.

P.C. :

The Petitioners, permanent Medical officers working in the Public Health Department of the State of Maharashtra approached the Maharashtra Administrative Tribunal seeking the prayer to allow the Applicants to continue in their services in case their services are deemed to be relieved with effect from 31st May, 2023 by giving effect to the 2nd part of the proviso of Rule 10 of Maharashtra Civil

Services (Pension) Rules, 1982. By the impugned order passed by the Tribunal on 31 August 2023, the Tribunal has dismissed the original applications. After the impugned order is passed by the Tribunal on 31 August 2023, the Petitioners have been discontinued from the service. Thereafter, these Petitions are filed.

2. Heard Mr.Virendra Tulzapurkar Senior Advocate for the Petitioners and Dr.Birendra Saraf Advocate General for the Respondents.

3 Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 specified the retirement age of government servants such as the Petitioners as 58 years. A Government Resolution was issued on 29 August 2018 by the Public Health Department, citing the dearth of Medical Officers faced by the State Government. The Public Health Department took a decision to extend the age of retirement of Medical Officers serving in the Public Health Department from the age of 58 to 60 years. It was also resolved that appropriate amendment to Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, "MCS (Pension) Rules, 1982). shall be made in due course of time.

4. Accordingly, the amendment to MCS (Pension) Rules 1982 was made vide notification dated 23 February 2022. The relevant portion of the amended Rule 10 reads as under:

Rule. 10. Age of Retirement.

(1) Except as otherwise provided in this rule, every Government Servant, other than a Class IV Servant, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years:

.....
Provided that, the Officers in District Civil Surgeon, Specialist, Police Surgeon and Medical Officers Cadres in Maharashtra Medical and Health Services, Group A and Medical Officers Cadre in Maharashtra Medical Insurance Services, Group A (In Pay Level in Pay Matrix S-20 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years:

Provided further that, the Officers in Director, Additional Director, Joint Director, Deputy Director and District Health Officer Cadres in Maharashtra Medical and Health Services, Group- A and Officers in Director (Medical), Deputy Director (Medical) and Medical Superintendent Cadres in Maharashtra Medical and Insurance Services, Group-A (In Pay Level and Pay Matrix S-23 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years:

.....
Provided also that the above provisos shall be in force till the 31st May 2023.”

The said amendment was effected by way of notification on 23 February 2022. It was given effect from 1 June 2022, as a result of which, the Medical Officers in the employment of the Public Health Department who were on the verge of retirement, continued to be in the employment of the Government even after attaining the age of 58 years. The Proviso provides that the Medical Officers shall retire from service on the afternoon of the last date of the month in which

the Officer attains the age of 60 years. The said Proviso was further qualified by a rider in the form of Third proviso it shall be in force till 31 May 2023

5 All the Petitioners were serving in the Public Health Department even after attaining the superannuation of age of 58 years, as provided under Proviso to Rule 10(1) of the MCS (Pension) Rules, 1982. The Petitioners were discharging their duties till 31 May 2023. A notification was issued on 31 May 2023, purportedly relieving their services. Apprehending termination, they approached the Tribunal with a prayer to continue them in their services in case their services are deemed to be relieved with effect from 31 May 2023 by giving effect to the second part of the proviso of Rule 10 of Maharashtra Civil Services (Pension) Rules, 1982. According to the Petitioners, the proviso to Rule 10(1) of the MCS Rules, 1982, has been misinterpreted, and the Petitioners have been made to retire with effect from 31 May 2023. They contended that as a normal rule, Rule 10(1) of the MCS Rules, 1982 prescribes the age of retirement to be 58 years, however, the said Rule 10(1) was amended on 23 February 2022, and the Petitioners benefited due to the said amendment and got benefit of the extended age of retirement of 60 years. The Tribunal rejected these contentions.

6 The genesis of the dispute is this amendment to Rule 10 of MCS (Pension) Rules, 1982. As regards the implication of this proviso as to whether the age of retirement at 60 years as provided in

the amendment would continue even beyond 31 May 2023, the Tribunal has observed that even the Petitioners have not crossed the age of 60 as of 31 May 2023 and would stand retired on superannuation on 31 May 2023. The Petitioners contend that this interpretation is entirely incorrect and according to them, the extension of the age as per the proviso of 60 years would continue to apply till 31 May 2023 and those who do not attain the age of 60 as of 31 May 2023 will continue till they attain the age of 60 years. Petitioners contend that once the Rule has changed their retirement age to continue till the age of 60 years, the proviso cannot take it away.

7 Arguable questions are raised. **Rule.** Respondents waive service.

8 We have heard the learned counsels for the parties on the grant of interim relief.

9 The Petitioners have made out a prima facie case. The stand of the State Government itself, more particularly the Chief Secretary, which is reiterated before us by the learned Advocate General which supports the interpretation placed on Rule 10 by the Petitioner

10 As of date, the Petitioners are not in service, but the Petitioners have not completed the age of 60 years as of today. Generally, by

mandatory interim injunction, the Court may not direct that an employee be taken into service. However, the position before us is peculiar. The State Government has supported the interpretation placed on Rule 10 by the Petitioners.

11. It is pertinent to note that before the Tribunal, there was a divergence of views as regards the interpretation mentioned above of the amendment between the Health Department of the State and the Finance Department. The Health Department of the State had contended that irrespective of completion of the age of 60 years, the Petitioners would stand retired as of 31 May 2023. The Finance Department, however, through the Additional Chief General Secretary, had filed an affidavit before the Tribunal stating as under:

“4. I say and submit that in pursuance of above Cabinet decision dated 19.07.2018, the Public Health Department issued Government Resolution dated 29.08.2018 thereby increasing the age of retirement of abovesaid Medical Officers from age 58 to 60 years with retrospective effect from 31.05.2018 for period of five years i.e. dated 31.05.2023.

... ..
 8. *Hence, medical Officers who do not attain the age of 60 years during the period from 01.06.2022 to 31.05.2023 shall be deemed to retire on the last date of the month in which the Medical Officer attains the age of 60 years e.g. Medical Officers who will complete 58 years of age on 24.04.2023 will retire on 30.04.2025 instead of retiring on 31.05.2023 as per the above provision. Also Medical Officers who will complete 58 years of age on 24.06.2023 will however retire on 30.06.2023 as per original provision of Rule 10 of the Maharashtra Civil*

Services (Pension) Rules, 1982.”

Because of this divergence of views between the two departments, the Tribunal passed a specific order on 31 July 2023 directing the Chief Secretary to decide and inform the Tribunal. Thereafter, the Chief Secretary took the following decision:

“As there was contrary view taken by the Finance Department and the Public Health Department regarding the interpretation of the amendment to 10 of MCS (Pension) Rules by Notification date 23rd February 2022, the Hon’ble MAT, Mumbai directed the Chief Secretary to find out correct decision and inform accordingly.

I perused the relevant documents as well as the Notification dated 23rd February 2022 issued by the Finance Department. I concur with the stand taken by the Finance Department in their affidavit dated 24th July 2023 as being the concerned Administrative Department in the matter.”

This decision was placed on record by way of an affidavit. Interestingly, the note of the Chief Secretary was placed on record by the Secretary of the Public Health Department. Therefore, it is clear that even this divergence did not exist.

12 The Tribunal, however, has not given credence to this stand taken by the State Government before it and has referred to the Cabinet note dated 19 July 2018. We have perused the said note. This note precedes the amendment. This note by itself does not throw light on the various interpretations that arise regarding the amendment carried out thereafter. Though, it is correct that the

interpretation given by the State Government to statutory Rule will not preclude from taking a different view, for the interim order, we cannot overlook the stand of the State Government through the Chief Secretary reiterated before us by the learned Advocate General. Considering these factors and since, if no interim relief is granted, the Petitions would become infructuous, we are inclined to grant interim order.

13 Accordingly, there shall be an interim relief in terms of prayer clause (f).

“(f) Pending the hearing and final disposal of present Petition, this Hon’ble Court be pleased to allow the Petitioners to continue in their services in case their services are deemed to be relieved with effect from 31.05.2023 by giving effect to the 2nd part of the proviso of Rule 10 of Maharashtra Civil Services (Pension) Rules, 1982;”

14 We make it clear that the continuation of the Petitioner after they are so reinstated under the interim order till they attain the age of 60 years will be subject to the outcome of this Petition. The question of the Respondents' power, in case the Petitioners fail in their challenge, to pass necessary orders in respect recovery /adjustment of the Pay/Wages paid to them for the services rendered under the interim order, is kept open.

15 The learned Advocate General states that this order should not be construed as applying to even those who have accepted the retirement and without protest took retirement. As far as the

Petitioners are concerned, this question does not arise because the Petitioners have been contesting the litigation. As and when the contingency pointed out by the learned Advocate General arises, appropriate view/decision will be taken in those cases.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)