

Priya Soparkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5179 OF 2026

Dr. Alka Krishnarao Chougale, Age: 60
years 7 month, Date of birth : 22.08.1965
Occ: Superannuated from the post of
Professor Zoology Department, Institute of
Science, Mumbai

R/at : Building No.17, A/12, Government
Colony, Keshavrao Khade Marg,
Mahalaxmi, Mumbai 400 034.

...Petitioner

~ versus ~

1. The State of Maharashtra through the
Additional Chief Secretary, Higher &
Technical Education Department,
Mantralaya, Mumbai.
2. The Director, Higher Education,
Maharashtra State, Central Building,
Pune 01.
3. The Director, Institute of Science,
Madam Cama Road, Mumbai 400 032.

...Respondents

APPEARANCES

For the Petitioner

**Ms. Vaishali K. Jagdale with Mr.
Yash K. Jagdale.**

For Respondent No. 1-State

Ms. R. A. Salunkhe, AGP

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**CORAM : SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.**

**RESERVED ON : 13th AUGUST, 2026.
PRONOUNCED ON : 19th AUGUST, 2026.**

JUDGMENT (Per Suman Shyam, J):-

1. Heard Ms. Vaishali K. Jagdale, learned counsel appearing for the Petitioner. Also heard Ms. R. A. Salunkhe, learned AGP appearing for the Respondent No.1/State.

2. Rule. Rule made returnable forthwith with the consent of both the parties.

3. The Writ Petitioner herein, namely, Alka Krishnarao Chougale, as Applicant, had instituted Original Application (OA) No.919 of 2025 before the Maharashtra Administrative Tribunal (MAT), Mumbai Bench, assailing the decision of the Respondent No.3 i.e. Director of Institute of Science, retiring the Petitioner from service on attaining the age of 60 years. According to the Petitioner/Original Applicant, she was entitled to remain in service till the completion of the age of 62 years. However, by issuing the order dated 28th August, 2025, she has been sent on retirement on attaining the age of 60 years. By the judgment and order dated 28th

August, 2025 passed in OA No.919 of 2025, the learned Tribunal had rejected the Original Application praying for a declaration that she should retire from service after completion of 62 years of age. Aggrieved thereby, the present Writ Petition has been filed. The facts and circumstances, giving rise to filing of this Writ Petition, in a nutshell, are as hereunder.

4. The Writ Petitioner was appointed in the post of Associate Professor in the Institute of Science *vide* appointment order dated 25th January, 2012. The Institute of Science is under the administrative control of the Respondent No.3 i.e. the Director of the Institution. At the time of issuance of the order of appointment dated 25th January, 2012, Government Resolution (GR) dated 5th March, 2011 was in force. According to the said GR, the age of retirement of certain category of employees, including Associate Professors appointed in the Institute of Science, was 62 years. As such, it was mentioned, in the order of appointment dated 25th January, 2012 that the retirement age of the Petitioner would be 62 years. The Petitioner would attain the age of 62 years on 31st August, 2027. Therefore, as per the order of appointment, read with the GR dated 5th March, 2011, the Petitioner claims a right to

remain in service till attaining the age of 62 years, i.e. until 31st August, 2027. However, by issuing the impugned order dated 28th August, 2025, the Petitioner was pre-maturely retired from service with effect from 31st August, 2025, i.e. with effect from the date on which she had attained the age of 60 years. The aforesaid order dated 28th August, 2025, according to the Petitioner, was based on a subsequent Government Resolution dated 12th July, 2016, more particularly, paragraph No.2.2 thereof, which was erroneously applied in her case adversely affecting her interest, that too, without serving any prior notice. The prayer of the Petitioner/Original Applicant made before the learned MAT, Mumbai, having been rejected by the impugned order dated 28th August, 2025, the present Writ Petition has been filed.

5. Ms. Vaishali K. Jagdale, learned counsel appearing for the Petitioner, has argued that since the retirement age of the Petitioner was mentioned in the appointment order itself as 62 years, the same could not have been reduced subsequently to 60 years, based on GR dated 12th July, 2016, that too, without serving any prior notice upon her client. According to Ms. Jagdale, learned counsel, the Petitioner has not assailed the GR dated 12th July,

2016, but had merely sought proper implementation of clause 2.2 of the said GR in her case. However, on an erroneous interpretation of the decision of this Court in ***Prof. Dr. Yeshwant Kondji Khillare and ors. Vs. State of Maharashtra and ors. (Writ Petition No.7831 of 2016)*** the learned Tribunal had rejected her prayer without properly appreciating the facts and circumstances of the case. She, therefore, submits that the learned Tribunal was not correct in placing reliance on the decision of the Division Bench of Bombay High Court, Aurangabad Bench, in the case of ***Prof. Dr. Yeshwant Kondji Khillare*** (supra) so as to reject her claim.

6. Ms. R. A. Salunkhe, learned AGP appearing for the State, on the other hand, has argued that fixing of retirement age of government employees is a matter of policy decision of the State. The retirement age of Petitioner was determined under the GR dated 12th July, 2016. Therefore, since the validity of the GR dated 12th July, 2016 has been upheld by this Court in the case of ***Prof. Dr. Yeshwant Kondji Khillare*** (supra), the learned MAT has rightly rejected the claim of the Petitioner. As such, submits Ms. R. A. Salunkhe, learned AGP, there is no scope for this Court to interfere with the impugned judgment and order.

7. We have considered the submissions made by learned counsel for both the parties and have also carefully gone through the material on record.

8. It is not in dispute that the Writ Petitioner was appointed as Associate Professor in the Institute of Science, Mumbai *vide* appointment order dated 25th January, 2012. It is also the admitted position of fact that the retirement age of the Petitioner was mentioned as 62 years in her order of appointment. The learned AGP has not denied the fact that the retirement age of the Petitioner as reflected in the order of appointment dated 25th January, 2012 was 62 years. Such retirement age was evidently fixed on the basis of GR dated 5th March, 2011, which had prescribed the retirement age of such employees as 62 years.

9. There is also no controversy in this case about the fact that there is no separate service rule governing the conditions of service of the teaching staff of Institute of Science and the Government Resolutions issued from time to time laying down the conditions of service including the age of retirement of such employees would have the force of statutory rules. If that be so, there can be no doubt about the fact that the appointment of the Petitioner in the

post of Associate Professor was clearly on the expressed condition that her age of retirement would be 62 years. Such condition i.e. age of retirement, was also fixed on the basis of GR dated 5th March, 2011, which prescribes the age of retirement. The question, that would, therefore, arise before this Court is as to whether, retirement of an employee having been fixed as 62 years as per the order of appointment, can such retirement age be subsequently reduced to 60 years by giving retrospective effect to the GR dated 12th July, 2016.

10. It would be pertinent to mention herein that GR dated 12th July, 2016 refers to seven previous GRs, including the GR dated 5th March 2011, which deals with the retirement age of the teaching staff. Since we are not concerned with the other GRs, save and except the GR dated 5th March 2011 and the GR dated 12th July, 2016, it would not be necessary for this Court to refer to those GRs.

11. It appears that GR dated 12th July, 2016 was also issued with the purpose and object of increasing the retirement age of teachers in non-agricultural universities and government/non-government aided colleges/technical institutes in the State, as per the

prescribed age limit, through the relevant government decisions. Since the Petitioner has contended that she has been sent on premature retirement by an erroneous interpretation of Clause 2.2 of the said GR, we deem it necessary to reproduce Clause 2 of the GR dated 12th July, 2016 along with the sub-clauses, as here-under, for ready reference:-

“2. Accordingly, the Government, with the approval of the Cabinet, is taking the following decisions:-

1) The decisions taken under reference dated 05 March, 2011, 23.11.2011 and 23.02.2012, 28 March, 2012, 22 August, 2012 and 11 October, 2012 regarding the retirement age of teachers in government institutions in the higher education sector/ government technical colleges/degree institutions/colleges affiliated to Maharashtra State Board of Technical Education from 58 to 62 years and the retirement age of teachers/librarians/ deputy librarians/ assistant librarians/ directors, deputy directors and assistant directors of physical education in non-agricultural universities, technical universities and affiliated non-government aided colleges from 60 to 62 years are being reconsidered and the retirement age is being increased to 60 years. Therefore, every such teaching staff who attains 60 years of age will now retire from service after noon on the last day of the month in which they attain the age of 60. However, the teaching staff whose date of birth falls on the 1st of the month will retire after noon on the last day of the previous month as soon as they attain the age of 60.

2) As per the provisions of the Government Decisions under reference dated 05 March, 2011, 23.11.2011 and 23.02.2012, 28 March, 2012, 22 August, 2012 and 11 October, 2012, the teaching staff whose retirement age has been extended from 60 to 62 years as per the prescribed age limit will retire on the date of extension specified in the Government Order granting them the extension.

3) It has been decided deliberately that no extension will be granted in any case that has been received or is being received or is pending with the government regarding the increase in the retirement age of teaching staff as per the prescribed age limit.

4) The Maharashtra Civil Service Rules will be amended as above.”

12. According to the Petitioner, her case is covered under Clause 2.2 of the GR dated 12th July 2016. However, the claim of the Petitioner appears to have been purportedly rejected on the ground that there was no specific order of extension of her retirement age from 60 years to 62 years. In our opinion, such an assumption of the Respondents-authorities is clearly erroneous for the following reasons.

13. Firstly, the retirement age of the Petitioner has already been fixed at 62 years at the time of issuance of her order of appointment. Therefore, there was no need for issuance of any

further order extending her retirement age upto 62 years. Clause 2.2 of the GR deals with only those cases where there is no order of extension of retirement age from 60 years to 62 years. By virtue of her appointment order, the tenure of service of the Petitioner was already extended to the age of 62 years. Therefore, the Petitioner did not belong to the category of employees contemplated under Clause 2.2 of the GR. In other words, Clause 2.2 of the GR dated 12th July, 2016, in our opinion, would not have any application in case of the Petitioner.

14. Secondly, the age of superannuation of the Petitioner, having been fixed as 62 years by her order of appointment, issued in terms of the relevant GR dated 5th March 2011, which was holding the field at the relevant point of time, reducing the same to 60 years, that too, without serving any prior notice upon the Petitioner, in our opinion, was wholly arbitrary exercises of administrative power and also in violation of the principles of natural justice.

15. Thirdly, in view of the projection made in her appointment order fixing the age of retirement as 62 years, a valuable right had accrued upon the Petitioner to continue in service till she attains the age of 62 years. The right, accruing to the Petitioner, could not

have been taken away retrospectively, by relying upon the GR dated 12th July, 2016.

16. Law is well settled that any right accruing to a person cannot be taken away by retrospective application of any statute. Such a recourse would be clearly hit by the basic philosophy of law, as enshrined in Article 13(2) of the Constitution of India. In this context, it would be pertinent to note herein that the Hon'ble Supreme Court, in the case of *State of Madhya Pradesh Vs. Yogendra Shrivastava, 2010 (12) SCC 538* has held that even the rules made under Article 309 cannot operate with retrospective effect, so as to take away any approved right. Observations made in Paragraph No.15 reproduced herein-below for ready reference:-

“15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (N.C. Singhal v. Armed Forces Medical Services reported in (1972)4 SCC 765; K.C. Arora v. State of Haryana reported in (1984)3 SCC 281:1984 SCC (L & S) 520 and T.R. Kapur v. State of Haryana reported in 1986 Supp SCC 584: (1987)2 ATC 595.) Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25%

of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to non-practising allowance @ 25% of their pay up to 20-5-2003.”

17. A government resolution in the State of Maharashtra operates as an executive instruction and/or an administrative order. In view of the decision in the case of *Yogendra Shrivastava* (supra) noted above, law is settled that, not to speak of an executive instruction or an administrative order, a right accrued cannot be taken away with retrospective effect even by amending the rules framed under Article 309 of the Constitution of India. In such view of the matter, the question of affecting the right/interest of the Petitioner by relying upon GR dated 12th July, 2016, that too with retrospective effect, in our opinion, would not arise in the eyes of law.

18. In the case of *Prof. Dr. Yeshwant Kondji Khillare* (supra), as many as nine employees had approached the Court, assailing the GR dated 12th July, 2016, which *inter-alia* provided that unless the retirement age was specifically extended from 60 years to 62 years, an employee covered by the previous GRs would retire at the age of 60 years. As noted above, this Clause is applicable in case of those employees whose retirement age under the relevant GR(s)

was 60 years. Fixing the age of retirement undoubtedly forms a part of the service condition of the employees and therefore, the employer would be entitled to prescribe the same.

19. The Division Bench of the Bombay High Court at Aurangabad, by placing reliance on the decision of the Hon'ble Supreme Court rendered in the case of *Jagdish Prasad Sharma Vs. State of Bihar*, (2013) 8 SSC 633, has held that the State Government is entitled to enact laws pertaining to service conditions of Associate Professor and other staff of State Universities, and also have the right to alter terms and service conditions of service of such employees, as the same would fall within the domain of policy-making power of the State. Accordingly, the validity of the GR dated 12th July, 2016 was upheld. However, in the said decision, the question as to whether, right accruing on an employee under a previous GR could be taken away by retrospective application of the subsequent GR dated 12th July, 2016 was neither raised nor dealt with by the Division Bench. In that view of the matter, we are of the opinion that ratio laid down in the case of *Prof. Dr. Yeshwant Kondji Khillare* (supra)

would not have any bearing in the facts and circumstances of the case.

20. The question in this case is not as to whether, the Government has the power to fix the retirement age of its employees, but if accrued right of an employee could be taken away with retrospective effect by issuing subsequent GR. In view of the discussions made here-in-above, we are of the firm opinion that by an erroneous application of the GR dated 12th July, 2016 the Respondent No.3 has unilaterally altered the service condition of the Petitioner and sent her on premature retirement at the age of 60 years although as per the terms of the order of appointment she had a right to continue in service till the age of 62 years. Therefore, this is a clear case where, the Respondents have taken away the right of the Petitioner to remain in service till 62 years, by retrospective application of the GR dated 12th July 2016, in a manner which is impermissible in the eyes of law.

21. For the reasons stated here-in-above, the Writ Petition must succeed. The same is accordingly allowed in terms of prayer clauses (a) and (b). Consequently, the Judgment and order dated 28th August, 2025 passed by the learned MAT stands set aside.

22. Since the Petitioner has been retired prematurely, we direct that she be reinstated in service forthwith, but not later than seven days from the date of uploading of this order in the official website. Upon such reinstatement, she shall be allowed to remain in service until she attains the age of 62 years, subject however, to operation of any other Law in force.

23. All concerned to act on the digitally signed order.

24. No order as to cost.

(ADVAIT M. SETHNA, J.)

(SUMAN SHYAM, J.)