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M.G. PANDKE AND ORS.

v.

MUNICIPAL COUNCIL HINGANGHAT DISTRICT WARDHA
AND ORS.

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SEPTEMBER 9, 1992

[KULDIP SINGH AND K. RAMASWAMY, JJ.]

Madhya Pradesh Secondary Education Act 1951 : Section 20 & Regulations Chapter XII, Clause 7.

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Maharashtra Secondary Education Boards Act 1965 & Secondary Schools Code 1963 : Rule 82 (1).

Maharashtra Secondary Education Boards Regulations 1966, Regulation 19 (7) (XVI) :

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Hinganghat Municipal Council (Regulating the period of service of secondary school teachers) Bye Laws 1980 : Bye Law 4. Teachers in Municipal school of Vidarbha Division of Maharashtra—Superannuation age—Whether 60 or 58 years.

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Constitution of India 1950 : Article 16—Disparity within the class of teachers in the matter of superannuation—Hinganghat Municipal Council bye law 4 reducing superannuation of teachers struck down.

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The appellants joined service as teachers prior to November 1, 1956 in the High Schools run by the Municipal Council = Respondent No. 1 = which was situated in the district of Wardha which formed part of the then State of Madhya Pradesh. The conditions of service of these teachers were governed by the provisions of the Madhya Pradesh Secondary Education Act, 1951 and the regulations made by the State Government. Chapter XII of the regulations provided for "the School Code", and Clause 7 thereof prescribed Form IV, being an agreement between the management and the teachers, and Clause 9 therein provided that the teacher shall retire from service on attaining the age of 60 years, and that the exact time for such retirement shall be the last day of the academic year in which the teacher attains that age.

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Eight districts of the State of Madhya Pradesh including Wardha

ceased to be part of the State with effect from November 1, 1956 and were made part of the State of Bombay, and from May 1, 1960 the State of Maharashtra. The provisions of the Madhya Pradesh Secondary Education Act and the Regulations made thereunder continued to apply till January 1, 1966 when the Maharashtra Secondary Education Boards Act, 1965 came into force.

Before the enforcement of the Maharashtra Act, the Maharashtra Government framed the Secondary Schools Code which came into force with effect from 1963. Rule 82 (1) thereof provides that a teacher shall compulsorily retire on the date on which he attains the age of 58 years, but an exception was made in the case of a permanent teacher or head master in the service in a recognised non-Government secondary school in Vidarbha on 31st December, 1965 who was eligible to retire at the age of 60 years.

The Director of Municipal Administration, Government of Maharashtra by his letter dated March 17, 1973 informed the Municipal Councils in the Vidarbha Division that the age of superannuation of the Secondary School teachers who were made permanent on December 31, 1965 would be 60 years. Another circular dated May 5, 1976 was issued which stated that in view of the repeal of the Madhya Pradesh Secondary Education Act, 1951, and the old Secondary School Code not governing the terms and conditions of service of the teachers serving in the secondary schools in Vidarbha, it was not necessary to continue further the concession of retirement at 60 years of age that was allowed.

The Government of Maharashtra finally issued an order dated August 30, 1976 which enabled teachers in non-Government secondary schools in Vidarbha except those in the employ of statutory bodies like Municipal Councils who were confirmed on 31.12.1965 and governed by the Secondary Schools Code framed under the repealed Madhya Pradesh Secondary Education Act 1951, to continue to get the concession of 60 years of age, as the age of retirement.

The Municipal Council Hinganghat - 1st Respondent, notified the Hinganghat Municipal Council (Regulating the period of service of secondary school teachers) Bye-laws 1980 by a notification dated December 20, 1980. Bye-law 4 thereof provided the age of retirement of teachers and secondary school teachers confirmed on 31.12.1965, shall be 58 years.

A The appellants who were working in the High Schools run by the Municipal Council, assailed the aforesaid bye-law in their writ petition before the Nagpur Bench of the Bombay High Court, and claimed the age of superannuation to be 60 years.

B The High Court relying on an earlier Division Bench judgment *Baboolal Dalchand v. Director of Municipal Administration, 1974 Maharashtra Law Journal 451*, came to the conclusion that the provisions of the Code are not statutory and as such cannot over-ride the bye-laws framed under the Maharashtra Municipalities Act, 1965, dismissed the writ petition and held, that the age of retirement of the Municipal Council was valid and in accordance with law.

C The appellants being aggrieved by the judgment of the High Court appealed to this Court. It was contended that:

D (1) Regulation 19(7) (xvi) of Maharashtra Regulations which is a statutory regulation makes it obligatory for the Municipal Council to follow the provisions of the Code, and the field having been occupied by the Code under the statutory-mandate, no bye-law to the contrary could be framed by the Municipal Council.

E (2) The age of superannuation of the teachers working in High Schools run by the Municipal Councils Wardha, Arvi etc. Where no bye-laws have been framed continue to be 60 years. Teachers working in Municipal Council Schools in Vidarbha division form one class and there cannot be different ages of superannuation within the class. The bye-law reducing the age of superannuation of the appellants in thus violative of Articles 14 and 16 of the Constitution of India.

F Allowing the appeal, this Court,

HELD: 1 (a) The appellants are entitled to superannuation on attaining the age of 60 years. [473-G]

G (b) When the Code was enforced in the year 1963, the Act and the Regulations were holding the field in Vidarbha Division. Under the Act and the Regulations the age of superannuation being 60 years the Code, while fixing 58 years as the age of superannuation for rest of Maharashtra, permitted the Vidarbha teachers to superannuate on attaining the age of 60 years. The Maharashtra Act which came into force on

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January 1, 1966 repealed the Act and the Regulations. [472 D-E]

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(c) The State Government can frame the Code in whatever manner it likes but once the Code is in operation its provisions have to be followed by the Municipal Council under the mandate of Regulation 19(7) (xvi) of Maharashtra Regulations. [472-G]

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(d) The Code has been framed with the purpose of bringing security of service, uniformity, efficiency and discipline in the working of non-Government High Schools. It has to be applied uniformly to the schools run by various Municipal Councils in the State. [472-H, 473-A]

(e) The Municipal Council Hinganghat has outstepped its jurisdiction in framing bye-law 4 of the bye-laws. It is directed that the conditions of service of the appellants shall be governed by the Code as enforced by Regulation 19(7) (xvi) of the Maharashtra Regulations. Bye-law 4 of the bye-laws shall not be applicable to the appellants. [473-B]

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2. Since 1951, when the Act came into force in the erstwhile State of Madhya Pradesh, the conditions of service of the teachers in Viharbha Division have been identical. They have been and are governed by the same statutory provisions and the same Education Code. Historically the teachers working under the Municipal Councils in Viharbha Division belong to one class. It would not be fair to bring in disparity within the class in the matter of superannuation. Bye-law 4 of the bye-laws framed by the Hinganghat Municipal Council has therefore to be struck down as violative of Article 16 of the Constitution of India. [473 E-F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1640 of 1981.

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From the Judgment and Order dated 18/19.2.1981 of the Bombay High Court in W.P. No. 184 of 1981.

UR. Lalit, PV. Vaidya, A.K. Sanghi and Himanshu Shekhar for the Appellants.

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Dr. N.M. Ghatate, S.V. Deshpande, Anand Prasad, Mrs. Priya Shrivastava, V.E. Joshi and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by

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A **KULDIP SINGH, J.** The question for our consideration is whether the age of superannuation of the teachers, working in the municipal schools in Vidarbha Division of Maharashtra is 60 or 58 years.

B The teachers working in the High Schools run by Municipal Council, Hinganghat filed a petition before the Nagpur Bench of the Bombay High Court claiming their age of superannuation to be 60 years and praying that the bye-law framed by the Municipal Council providing the said age to be 58 years be quashed. The High Court dismissed the writ petition holding that the age of retirement of the teachers fixed under the bye-laws of the Municipal Council Hinganghat was valid and in accordance with law. This appeal by way of special leave is by the teachers against the judgment of the High Court.

C The appellants joined service as teachers prior to November 1, 1956 in the High Schools run by the Municipal Council Hinganghat district Wardha. The said district was part of the then State of Madhya Pradesh. D The conditions of service of the appellants were governed by the provisions of The Madhya Pradesh Secondary Education Act, 1951 (the Act). The State Government framed Regulations (Regulations) under Section 20 of the Act which came into force on February 18, 1953. Chapter XII of the Regulations was under the heading "the School Code". Clause 11 of Chapter XI of the Regulations stated that "every recognised school shall comply with the provisions of the School Code as laid down in Chapter XII of the Regulations...." Chapters XI and XII of the Regulations being statutory it was mandatory for the recognised schools to comply with the provisions of "the School Code" as provided under Chapter XII of the Regulations. E Clause 7 of Chapter XII to the relevant extent reads as under:

F "(1)..... On confirmation, the headmaster or the teacher, as the case may be, shall sign a contract of service in the form prescribed in the Form III or IV appended to this Code. as the case may be, as soon as practicable...."

G The Regulations prescribed Form IV being an agreement between the management and the teacher. Clause 9 in Form IV reads as under:

H "The party of the first part (the teacher) shall retire from service on attaining the age of 60 years and the exact time for such retirement shall be the last day of the

academic year in which he attains that age." A

It is thus clear from the above provisions of the Act and the Regulations that the retirement age of the appellants was 60 years. It was admitted case of the parties before the High Court and it was not disputed before us that under the Act and the Regulations the age of superannuation of the appellants was 60 years. B

Eight districts of Madhya Pradesh including Wardha ceased to be part of the State of Madhya Pradesh with effect from November 1, 1956 and were made part of the State of Bombay and from May 1, 1960 the State of Maharashtra. The area comprising of these eight districts is called Vidarbha Division of Maharashtra. The provisions of the Act and the Regulations continued to apply to the appellants by operation of law till January 1, 1966 when the Maharashtra Secondary Education Boards Act, 1965 (Maharashtra Act) came into force. Before the enforcement of the Maharashtra Act the Maharashtra Government framed the Secondary Schools Code (the Code) which came into force with effect from 1963. It is not disputed that the Municipal Council Hanganhat is getting grant-in-aid from the Government for running the schools which are recognised under the Code. Rule 82(1) of the Code provides that a teacher shall compulsorily retire on the date on which he attains the age of 58 years. Exception to rule 82(1) reads as under: C D E

"Exception: The age of compulsory retirement of a permanent teacher or headmaster in service in a recognised non-Government secondary school in Vidarbha, on 31st December 1965 shall be 60 years." F

It is not disputed that the appellants were made permanent prior to December 31, 1965. The Code continues to operate in the State of Maharashtra even after the coming into force of the Maharashtra Act. The first Regulations under the Maharashtra Act called "the Maharashtra Secondary Education Boards Regulations 1966 (Maharashtra Regulations) were made by the State Government under Section 37 of the said Act. Regulation 19(7)(xvi) of the Maharashtra Regulations reads as under: G

"(7) No Secondary School shall be recognised or continued to be recognised by a Divisional Board unless it fulfills the following requirement, namely:- H

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(xvi) The School shall comply with the provisions of the Secondary Schools Code of the State Government in so far as they are not inconsistent with the provisions of the Act and the Regulations."

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The provisions of the Maharashtra Act and the Maharashtra Regulations quoted above give statutory recognition to the Code. Under the Maharashtra Regulations it is obligatory for the Schools, which have been given recognition under the Maharashtra Act and the Maharashtra Regulations, to follow the provisions of the Code. Once a school is recognised, the management is bound to extend to the teachers employed by it the conditions of service as laid down in the Code.

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The High Court, relying on its earlier Division Bench judgment in *Baboolal Dalchand v. Director of Municipal Administration*, 1974 Maharashtra Law Journal 451, came to the conclusion that the provisions of the Code are not statutory and as such cannot over-ride the bye-laws framed under the Maharashtra Municipalities Act, 1965. Before dealing with this aspect we may refer to the bye-laws framed by Municipal Council Hinganghat providing 58 years as the age of superannuation of the teachers working in the schools run by the said council.

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The Director of Municipal Administration, Government of Maharashtra by his letter dated March 17, 1973 informed the Municipal Councils in Vidarbha Division that the age of superannuation of the Secondary School Teachers who were made permanent on December 31, 1965 would be 60 years. Thereafter circular dated May 5, 1976 was issued wherein it was stated that "in view of the repeal of the Madhya Pradesh Secondary Education Act, 1951, the old Secondary School Code framed under the Act will not govern the terms and conditions of service of the teachers serving in any of the Secondary Schools in Vidarbha. In view of this it is not necessary to continue further the concession of retirement at 60 years of age as allowed to a permanent teacher or a headmaster in service on 31st December, 1965 in a recognised non-Government Secondary School in Vidarbha". Finally the Government of Maharashtra issued an order dated August 30, 1976 in the following terms:

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"(i) Teachers in non-Government secondary Schools in

Vidarbha except those in the employ of statutory bodies like Municipal Council (Running Secondary Schools) who were confirmed on 31.12.1965 and who are governed by the Secondary Schools Code framed under the Ex. M.P. Secondary Education Act, 1951 (now repealed) should continue to get the said concession viz., 60 years of age as the age of retirement. A B

(ii) It should not be binding on the part of the Statutory bodies like Municipal Council (running Secondary Schools) to continues the Secondary Teachers in their employ till the age of 60 years with in respect of such teachers who were in their employ on 31.12.65, as their service conditions are governed by statutory rules framed by the respective bodies under the powers vested in them by Maharashtra Municipalities Act, the Maharashtra Zilla Parishad and Panchayat Samiti Act, etc." C D

It is obvious that the order quoted above, was issued by the State of Maharashtra as a sequel to the judgments of the High Court in *Baboolal's* case (supra) and in *N.J. Katakwar v. Municipal Council, Tumsar and others*, 1975 Maharashtra Law Journal 298. The Municipal Council Hinganghat notified the Hinganghat Municipal Council (Regulating the period of service of secondary school teachers) bye-laws, 1980 (Bye-laws) by a notification dated December 20, 1980. Bye-law 4 of the Bye-laws is as under: E

"Age of retirement except as otherwise provided in the bye-laws, the date of of compulsory retirement of teachers and secondary school teachers confirmed on 31.12.65, shall be the date on which he attains the age of 58 years. He may be retained in service after the date of compulsory retirement, only with the previous approval of the Council by means of resolution passed by 2/3rd majority of total number of Councillors, on ground which must be recorded in writing maximum till the end of particular academic term." F G

Learned counsel for the appellants has raised the following contentions in support of his case: H

A 1. Regulation 19(7)(xvi) of Maharashtra Regulations which is a statutory regulation makes it obligatory for the Municipal Council to follow the provisions of the Code. The Code itself may be non-statutory but the mandate to follow the Code flows from Regulations 19(7)(xvi) of the Maharashtra Regulations which is mandatory. The field having been occupied by the Code under the statutory-mandate, no bye-law to the contrary could be framed by the Municipal Council.

B 2. It is not disputed that the age of superannuation of the teachers working in High Schools run by the Municipal Councils Wardha, Arvi, Sidhi where no bye-laws have been framed continue to be 60 years. Teachers working in Municipal Council - schools in Vidarbha Division form one class and there cannot be different ages of superannuation within the class. The bye-law reducing the age of superannuation of the appellants is thus violative of Articles 14 and 16 of the Constitution of India.

D When the Code was enforced in the year 1963, the Act and Regulations were holding the field in Vidarbha Division. Under the Act and the Regulations the age of superannuation being 60 years, the Code, while fixing 58 years as the age of superannuation for rest of Maharashtra, permitted the Vidarbha teachers to superannuate on attaining the age of 60 years. The Maharashtra Act which came into force on January 1, 1966 repealed the Act and the regulations. In *Baboolal's* case (supra) the High Court referred to the repealing and saving section of the Maharashtra Act and came to the conclusion that there was no provision thereunder to save the regulations. Assuming that the Regulations under the Act stood repealed, the Code which was framed by the Maharashtra Government continued to hold the field. It is not disputed by the learned counsel for the appellants that the Code by itself is not statutory and is in the nature of executive instructions. But he strongly relies on Regulation 19(7)(xvi) of Maharashtra Regulations and contends that the said Regulation makes it obligatory for the Municipal Council Hinganghat to follow the provisions of the Code. It is for the State Government to frame the Code in whatever manner it likes but once the Code is in operation its provisions have to be followed by the Municipal Council Hinganghat under the mandate of Regulation 19(7)(xvi) of Maharashtra Regulations. We see considerable force in the argument of the learned counsel. The Code has been framed with the purpose of bringing security of service, uniformity, efficiency and discipline in the working of non-Government High Schools. It has to be

applied uniformly to the schools run by various Municipal Councils in the State. It is no doubt correct that the Municipal Councils have the power to frame bye-laws under the Maharashtra Municipalities Act, 1965 but if the field is already occupied under the mandate of statutory Maharashtra Regulations, the Municipal Council cannot frame bye-laws to the contrary rendering the mandate of the Maharashtra Regulations nugatory. We are of the view that the Municipal Council Hinganghat has outstepped its jurisdiction in framing bye-law 4 of the bye-laws. We, therefore, direct that the conditions of service of the appellants shall be governed by the Code as enforced by Regulation 19(7)(xvi) of the Maharashtra Regulations. Bye-law 4 of the bye-laws shall not be applicable to the appellants.

We also agree with the second contention advanced by the learned counsel for the appellants. It is not disputed that the High Schools are run by various Municipal Councils in Vidarbha Division under identical circumstances. The conditions of service of the teachers working in these schools are governed by the provisions of the Code as amended from time to time. Only the age of superannuation has been reduced from 60 to 58 years by some of the Municipal Councils by framing bye-laws. In the Municipal Councils where there are no such bye-laws, the age of superannuation continues to be 60 years. Since 1951, when the Act came into force in the erstwhile State of Madhya Pradesh, the conditions of service of the teachers in Vidarbha Division have been identical. They have been and are governed by the same statutory provisions and the same Education Code. Historically the teachers working under the Municipal Councils in Vidarbha Division belong to the class. It would not be fair to bring in disparity within the class in the matter of superannuation. We, therefore, strike down bye-law 4 of the bye-laws framed by Hinganghat Municipal Council as violative of Article 16 of the Constitution of India.

We allow the appeal, set aside the judgment of the High Court and direct that the appellants are entitled to superannuation on attaining the age of 60 years. The appellants shall be entitled to costs of this appeal which we quantify as Rs.10,000.

N.V.K.

Appeal allowed.