

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
OS-WP-LD-VC-122 OF 2020**

Dr. Nimish Shah ... Petitioner
versus
State of Maharashtra and Anr. ... Respondents

Mr. G.S.Godbole with Mr. Atharva A. Dandekar, Mr. Rahul Soman, for Petitioner.

Ms. Jyoti Chavan, AGP, for Respondent State.

Mr. Shankar Revankar, Medical Superintendent, Mahatma Gandhi Memorial Hospital, present.

**CORAM: S.J. KATHAWALLA &
V.G.BISHT, JJ.**

DATE: 6th JULY, 2020

P.C.:

1. In the year 1987, the Petitioner obtained a degree of M.D. (Radiology) from the KEM Hospital. In the year 1990, the Petitioner joined the employment of Respondent No.2 - Mahatma Gandhi Memorial Hospital (hereinafter referred to as the 'MGM Hospital'). The Petitioner thereafter, continued to be in service with the MGM Hospital for almost three decades. In the year 1997, the Petitioner was promoted as the Head of Department by the Department of Radiology at the MGM Hospital.

2. The State of Maharashtra through the Public Health Department, issued a Government Resolution dated 29th August, 2018, interalia enhancing the age of retirement of Grade 'A' Medical Officers from 58 years to 60 years. In continuation

of the Government Resolution dated 29th August, 2018, a Govt. Resolution dated 1st July, 2019 was also issued increasing the age of retirement of Grade 'A' Medical Officers from 60 years to 62 years.

3. The MGM Hospital issued a Circular bearing No. MGM/Estt/2019/2777 dated 19th September, 2019, which reads as under :

“A note dtd. 28/8/2019 was submitted to the Hon’ble Chairman, CBM / Commissioner, ESIS for implementation of Govt. Resolution under reference. It was discussed in presence of (1) Hon’ble Chairman, CBM/Commissioner, ESI Scheme, (2) Director (Admn.), ESI Scheme, (3) Medical Superintendent, MGM Hospital and (4) Administrative Officer, MGM Hospital on 30/8/2018 that the above Govt. Resolution should be implemented till the ensuing Board of Management Meeting in which approval for enhancement of age limit from 58 years to 60 years will be decided.”

The contents of the above Circular shows that the Govt. Resolution dated 29th August, 2018, enhancing the age of retirement of Grade 'A' Medical Officers from 58 years to 60 years, was discussed in the Meeting held on 30th August, 2018, in the presence of: (1) the Chairman, Committee Board of Management, ESI Scheme, (2) Director, Administration, ESI Scheme, (3) the Medical Superintendent of the MGM Hospital and (4) the Administrative Officer of the MGM Hospital, and it was decided to implement the Govt. Resolution dated 29th August, 2018, subject to approval by the

Board of Management in its ensuing meeting.

4. Accordingly, copies of the Circular dated 19th September, 2019 were forwarded to the Petitioner as well as to some other Doctors who were to attain the age of 58 years and retire on 30th September, 2019, but in view of the decision of the Committee of Management were continued in service of the MGM Hospital beyond 30th September, 2019.

5. Admittedly, no meeting of the Board of Management was held after 19th September, 2019, because of which the decision of the Committee of Management remained to be approved.

6. On 30th June, 2020, the Medical Superintendent of the MGM Hospital forwarded an Office Order addressed to the Petitioner interalia recording that pursuant to the Govt. Resolution, Public Health Department dated 29th August, 2018, the age of retirement of superannuation in respect of the Medical Officers was enhanced from 58 years to 60 years by the MGM Hospital, subject to post-facto sanction by the Board of Management of the Hospital; however, as the meeting of the Board of Management was not conducted to approve the decision of the Committee of Board of Management, the said Committee at its Meeting held on 3rd February, 2020, had decided to interalia retire the Petitioner who had attained the age of 58 years on 30th September, 2019 and pursuant to the said decision, the Petitioner is relieved from his service with immediate effect i.e. from 30th June, 2020.

7. The Petitioner has therefore, filed the above Writ Petition impugning the said Office Order dated 30th June, 2020, and has today moved this Court for urgent reliefs.

8. When the matter was called out in the morning session, none appeared for the MGM Hospital. The Advocate for the Petitioner informed the Court that although the Petitioner is the only Radiologist in the said Hospital, he has been asked not to report on duty with effect from 30th June, 2020, only because the Board of Management has till date failed to meet after 19th September, 2019 and approve the decision of the Committee of Management to increase the age of retirement from 58 years to 60 years, which decision was already implemented and continued to be in force upto 30th June, 2020. The matter was kept back and the Medical Superintendent was asked to appear before the Court through video-conferencing. Accordingly, Mr. Shankar Revankar, Medical Superintendent, MGM Hospital, has appeared before the Court. He has informed the Court that he has received the notice with respect to today's hearing just an hour back and was therefore not present before the Court when the matter was called out.

9. In response to the queries raised by this Court, Mr. Revankar informed the Court that at present the MGM Hospital has 60 operational beds. On a further query by the Court, whether at present the MGM Hospital has any Radiologist, he stated that "the resident doctor is in-charge". On finding that Mr. Revankar was trying to

avoid answering the question put to him by the Court, this Court asked him whether the resident doctor had a degree in Radiology. His answer is in the negative. Again on a query put to him by the Court, as to why a meeting of the Board of Management has not been held since 19th September, 2019 (i.e. in the last 10 months), the answer given by him is that though he had asked for a meeting about three months back, no meeting of the Board of Management has taken place.

10. The above revelations by the Medical Superintendent of the Hospital are shocking. The Committee of the Board of Management admittedly implemented the Govt. Resolution dated 29th August, 2018 to enhance the age limit from 58 years to 60 years, subject to the approval of the Board of Management at its next meeting. Accordingly, by its Circular dated 19th September, 2019, the doctors including the Petitioner, were informed about such extension in age limit and were allowed to continue in service despite them having completed 58 years on 30th September 2019. Subsequently the Doctors, including the Petitioner, were informed by an Order of the Medical Superintendent of MGM Hospital dated 30th June, 2020, that since the Board of Management has not held any meeting in the last 10 months, the Committee of the Board of Management in its Meeting held on 3rd February, 2020, had decided not to implement the Govt. Resolution and relieve the doctors from their services, including relieving the Petitioner from his service with immediate effect i.e. from 30th June, 2020. More startling is the fact that the Board of Management has not bothered to

hold a meeting despite the Medical Superintendent of the Hospital having made a request to do so about three months ago, i.e. even after the Board of Management decided to relieve the Medical Officer/Specialists including the Petitioner from their services. The MGM Hospital and its Management appear to have crossed all limits, when despite there being no Radiologist in the Hospital, the Petitioner has been informed that he is relieved from his service with immediate effect, only because the Board of Management did not meet for whatever reason/s, and approve the decision pertaining to the enhancement of the age of retirement from 58 years to 60 years, which the Committee of Board of Management had already decided to accept and implement, vide its Circular dated 19th September, 2019, and had infact implemented the same.

12. In view of the above facts, we are prima facie of the view that the functioning of the Board and its Committee of Management is grossly irresponsible. The Board of Management ought to have atleast had one meeting after 19th September, 2020 to consider and approve the decision of its Committee of Management to enhance the retirement age from 58 years to 60 years. Even if they failed to do so, the Committee of Management instead of revoking its decision dated 19th September, 2020 in its Meeting held on 3rd February, 2020, ought to have ensured that a Meeting of the Board of Management is scheduled and its decision

approved by the said Board. In view of the current pandemic, the citizens are going through trying times. However, the doctors who have served the Hospital for several decades, and are ready to continue their services in such difficult times also, are being treated in an obnoxious and callous manner by the Management of the MGM Hospital. The picture that emerges from the above facts is also that the MGM Hospital and its functionaries are not bothered about the well-being of its patients, and just because the Board of Management had no time to meet in the last 10 months, the patients have been left without any Radiologist in the Hospital. In the circumstances, we pass the following Order :

(i) The Circular dated 30th June, 2020 to the extent that the same is applicable to Dr. Nimish Shah is stayed.

(ii) The Petitioner – Dr. Nimish Shah shall forthwith report to the Medical Superintendent of the MGM Hospital, who will allow Dr. Shah to perform his duties as a Radiologist in the said Hospital.

13. The Respondents shall file their Affidavits on or before 8th July, 2020. Stand over to 9th July, 2020.

14. This Order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

(V.G.BISHT, J.)

(S.J.KATHAWALLA, J.)